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Navigating the field – how NGOs in Khartoum work to address gender based violence

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Executive summary

This study examines how non-governmental organizations (NGOs) in Khartoum, Sudan work to address gender-based violence (GBV) and how they relate to international human rights law (IHRL) in the process. The results are based on qualitative field research, with in-depth interviews conducted with representatives of seven NGOs and three UN agencies in Khartoum. The study further explores how the politicization of GBV affects the work of the NGOs and which tools they choose to apply.

The thesis begins with outlining the contextual background of GBV and NGO work in Khartoum, and also identifies relevant sources of IHRL that could be applied by the organizations in their work. It then proceeds to outline the theoretical framework, showing how the intersectionality between patriarchal and postcolonial structures contribute to the over-politicization of GBV. Finally, the findings of the interviews are presented and conclusions and recommendations are based off of these findings.

The study shows that there is a split between NGOs working in Khartoum, with some employing IHRL regularly in their work, whereas others do not. It is shown that the usage of IHRL correlates with which activities the organizations carry out and also with their relationship to government. Organizations that focus mainly on advocacy tend to frequently utilize IHRL, whereas those that focus on service to victims of violence tend to avoid such usage. The latter focused instead on domestic legislation as well as education and sensitization. Furthermore the organizations that do employ IHRL in their work tended to be more critical of the government and also reported greater state interference in their work, whereas those that did not use IHRL reported no strained relationship with the government.

Three reasons are identified as to why some NGOs do not utilize IHRL. Firstly, the IHRL instruments are viewed as too far away from the local context in which the NGOs are working. Secondly, there is a capacity gap within the organizations as to how to relate IHRL to individual cases and ground level work. Thirdly, the over-politicization of the issue discourages NGOs from using IHRL in their work against GBV. These reasons also relate to each other, the over-politicization contributing to part of the capacity gap, whereas the bridging of this capacity gap could in turn show NGOs how the instruments could better be related to the local context. Other findings include that NGOs show a preference for utilizing regional instruments rather than international ones, since these are seen as more adept to the local context. Also, instruments with a clear, unambiguous wording were preferred seeing as they functioned as more powerful tools of advocacy and education.

The study concludes that further work addressing GBV in Khartoum must also address and attempt to curb the over-politicization of the issue, in order to strengthen the capacity of the active NGOs and contribute to their numerous efforts.

Sammanfattning

I studien undersöks hur icke-statliga organisationer i Khartoum, Sudan arbetar mot könsrelaterat våld, samt hur och i vilken utsträckning de använder sig av internationella människorättsinstrument i det här arbetet. Resultaten baseras på kvalitativa fältstudier som inbegriper djupintervjuer med sju representanter från lokala organisationer samt tre representanter från FN-organ i Khartoum. Studien undersöker även hur politiserandet av könsrelaterat våld påverkar organisationernas verksamhet samt vilka verktyg de väljer att inkorporera i sitt arbete.

Uppsatsen börjar med att beskriva den kontextuella bakgrunden genom att redogöra för förekomsten av könsrelaterat våld i Khartoum samt arbetet som icke-statliga organisationers utför. I samband med det här identifieras även de internationella människorättsinstrument som är aktuella i sammanhanget. Därefter utformas studiens teoretiska ramverk, som visar på hur intersektionaliteten mellan patriarkala och postkoloniala strukturer bidrar till en överpolitiserad av könsrelaterat våld. Slutligen presenteras intervjuernas slutsatser och de rekommendationer som har utformats på basis av dem.

Undersökningen visar på att det finns en klar skiljelinje mellan organisationer som arbetar med könsrelaterat våld i Khartoum, där ena hälften aktivt tillämpar internationella mänskliga rättigheter i sitt arbete, medan den andra hälften väljer att inte göra det. Det visas även att användandet av internationella människorättsinstrument korrelerar med aktiviteterna som organisationen i fråga utför, samt med deras förhållande till regeringen. Organisationer som huvudsakligen sysslar med påverkansarbete tenderar att ofta använda sig av internationella människorättsinstrument i sitt arbete, medan organisationer som istället fokuserar på att ge stöd till våldsutsatta tenderar att undvika dessa instrument. Den här gruppen använder sig istället av nationell lagstiftning samt utbildning i sitt arbete. De organisationer som använder sig av internationella människorättsinstrument var också mer kritiska mot regeringen och uppgav till en högre grad att staten hindrade dem i deras arbete. De organisationer som inte använde sig av internationella människorättsinstrument uppgav däremot att de inte hade något ansträngt förhållande till regeringen.

Tre skäl identifieras till varför några av organisationerna inte använder sig av internationella människorättsinstrument. För det första anses instrumenten vara för bortkopplade från den lokala kontexten som organisationerna verkar inom. För det andra återfinns en kunskapsbrist inom organisationerna om hur instrumenten kan tillämpas på enskilda fall och fältarbete. För det tredje avskräcker överpolitiseringen av frågan organisationer från att använda sig av internationella människorättsinstrument i sitt arbete. De här tre skälen relaterar också till varandra – överpolitiseringen bidrar till en del av kunskapsbristen, samtidigt som ett överbyggande av kunskapsbristen i sin tur skulle kunna visa organisationerna hur instrumenten kan vara användbara även i den lokala kontexten. Av intervjuerna framgår även att organisationerna föredrog regionala människorättsinstrument framför de internationella instrumenten, eftersom dessa ansågs vara bättre anpassade till den lokala kontexten. Organisationerna föredrog även instrument med tydliga, otvetydiga formuleringar eftersom dessa bättre kunde användas i påverkansarbete samt utbildningssyfte.

Studien visar slutligen att arbete med syfte att motverka könsrelaterat våld i Khartoum även måste beakta och försöka minska överpolitiseringen av frågan. Det här är nödvändigt för att stärka kapaciteten hos de verksamma icke-statliga organisationerna samt för att bidra till det betydande arbete som de utför.

List of abbreviations

ACHPR	African Charter on Human and Peoples' Rights
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
CVAW unit	Unit to Combat Violence against Women
DEVAW	Declaration on the Elimination of Violence Against Women
GBV	Gender-based violence
GNGO	Pro-governmental Non-governmental Organizations
HAC	Humanitarian Aid Commission
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICGLR	International Conference on the Great Lakes Region
ICCPR	International Covenant on Civil and Political Rights
IPV	Intimate Partner Violence
IHRL	International human rights law
INGO	International non-governmental organization
KCHRED	Khartoum Centre for Human Rights and Environmental Development
Maputo Protocol	Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MDG	Millennium Development Goals
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organization
NISS	National Intelligence and Security Forces
UNSCR 1325	United Nations Security Council Resolution 1325
SDG	Sustainable Development Goals
SGBV	Sexual or other forms of gender-based violence
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
VCLT	Vienna Convention on the Laws of Treaties
VHWA	Voluntary and Humanitarian Work Act

1 Introduction

I first came to Sudan in November 2014 to begin field research on how non-governmental organizations (NGOs) work to address gender-based violence (GBV) in Khartoum. The aim was to learn from civil society's experiences in order to improve capacity building among NGOs, and also to be able to draw conclusions on the effectiveness of our most common IHRL instruments when working on ground level. Throughout the months that followed, these ambitions have remained, with one important addition.

I soon noticed that every interview (or indeed conversation) that I conducted on the topic of GBV began in the same way. The interviewee would state within the first two minutes of the meeting that "Gender-based violence is a very sensitive topic in Sudan...". Most of the interviewees would then proceed to speak about the government, and would describe the relationship that their organization had with them. Oftentimes the International Criminal Court (ICC) would also come up, for reasons that will be clarified below. It soon became very clear that there was one issue that stood out in each interview – the over-politicization of GBV in Sudan and the effect that it was having on the work of NGOs. The interviews showed me clearly that GBV has become so politicized in Khartoum, that NGOs felt that it was more important to talk about their relationship with the government than to share with me their technical training strategies or what sections of IHRL conventions they found most useful. Although we discussed these matters as well, the politicization of the issue always came first. It also seemed to shape their answers with regard to the other questions raised. They were in fact explaining to me how the politicization affected them, and how they continue to navigate this at times precarious field, in order to be able to work with GBV.

Although GBV has long been a sensitive topic, recent events have catapulted the issue into the over-politicized spotlight that it enjoys today. In March 2009, the International Criminal Court issued the first warrant of arrest of the President of Sudan, Omar Al Bashir. The President was xxheld?xx allegedly criminally responsible for a number of crimes against humanity as well as genocide and war crimes.¹ The same day, 13 of the largest international non-governmental organizations (INGOs) were expelled by the Sudanese government.² The indictment had arguably further infected a situation that was already highly controversial,

¹ International Criminal Court, Warrant of Arrest, ICC-02/05-01/09.

² Tønnessen, 2014, p. 148.

and the relations between Sudan and foreign (mostly Western) powers became even more strained.³ In the wake of this, one issue stands out as being perhaps the most politicized of all, namely GBV.

One of the crimes against humanity that the President was accused of was allowing mass rapes as a weapon of war in Darfur.⁴ This accusation threw rape – and, I argue, GBV in general – into the center of political debate.⁵ As the issue has been highlighted, great efforts have been undertaken to address GBV in Sudan, both by governmental and non-governmental actors. Alongside this, however, the presence of GBV and how to address it have become controversial and part of a larger-scale political debate within Sudan.⁶ As we will see, this debate is connected *inter alia* to conflicting sentiments toward the governing party, and also to views on the postcolonial structures still very much affecting the nation. The study will show that the highly politicized nature of GBV in Sudan has in turn affected how actors work to address the issue and what remedies and access to justice are available to women victim of violence. It affects which forms of violence are dealt with, which legal instruments are used and how the different actors working in the field relate to one another.

Although particularly clear in the case of Sudan, the politicization of women's issues and their bodies is nothing new nor unique. Feminist theory and studies show that women's issues are particularly prone to becoming politicized – women's bodies often becoming the battle field for higher-level, ideological struggles.⁷ As we will see throughout the study, this is particularly the case when these ideological struggles are connected to postcolonial power dynamics. The politicization of GBV in Sudan can therefore be seen as a case study of this phenomenon – politicization of women's issues at the intersection of patriarchal and postcolonial structures – and I argue that steps taken toward improving work addressing GBV must recognize these overarching structures as a key to analyzing the situation at hand.

The following thesis looks into how this situation plays out among local NGOs working to address GBV in Khartoum, Sudan. Interviews have been carried out with actors in the field

³ Tønnessen, 2014, p. 151; Special Rapporteur on Violence Against Women Statement, Khartoum, 2015.

⁴ International Criminal Court, Warrant of Arrest, ICC-02/05-01/09.

⁵ Tønnessen, 2014, p. 151.

⁶ Tønnessen, 2014, p. 151.

⁷ See e.g. Kapur 2012, Osanloo, 2009.

and focus is put on how the NGOs relate to international human rights law (IHRL) in their work. The question will be posed, whether or not this body of law – which has been shaped to support and further work that addresses GBV – is at all useful to local NGOs, and why it is being or not being utilized in the field. I argue that the answer to these questions lie to a great extent in the politicization of the issue itself.

1.1 Research question and disposition

In order to approach the subject field, the following research question is posed:

***How** and to what extent do local NGOs in Khartoum employ international human rights law (IHRL) in their work of addressing GBV?*

In addition to this, we must also ask ourselves the background question:

***What** is the available IHRL framework for addressing GBV in Sudan?*

In addition, since the thesis also has the ambition to draw conclusions from the NGO's usage or lack of usage of the international legal framework, it is essential to add the follow-up question:

***Why** is the IHRL framework being used/not being used by local NGO's?*

The nature of the research question – addressing the *relation* between IHRL and NGO's in Khartoum – means that the conclusions reached will be two-fold. The conclusions will tell us something about the situation in Khartoum and the work and capacity of the interviewed NGO's, as well as the nature of the legal framework itself and its practicability in the field.

As for the disposition, the thesis begins with describing the contextual background in Section 2, beginning with analyzing the reality of GBV in Khartoum and an introduction to the actors working in this field with special focus on NGOs. Section 2 then continues by looking into the legal framework, first the domestic law that relates to GBV, then the applicable IHRL. Following this, Section 3 outlines the theoretical framework by exploring feminist and postcolonial theory, and ultimately how the patriarchal and postcolonial power structures intersect in relation to the politicization of GBV. Section 4 presents and analyzes the core findings of the interviews conducted for the thesis, split into three overarching themes. The findings and conclusions are summarized in Section 5, and finally lead up to a number of recommendations based off of them.

1.2 Terminology

With regards to the terminology used, there are a few important remarks to be made. Firstly, I use the term GBV throughout the entire study. I take this to refer to any form of violence (including economic, physical, psychological, emotional or sexual) directed toward a person based on that person's gendered identity. This echoes, to a great extent, the definition of violence against women found in the Declaration on the Elimination of Violence against Women, art 1:

"[...] the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

The reason then to use the term "gender based violence", rather than "violence against women", is that the former places a desirable emphasis on the root cause of the violence, and the structural discrimination on gender basis.

Gender based violence no doubt also encompasses violence directed toward men, however women are grossly overrepresented among the victims as a direct effect of the patriarchal structures within which GBV is occurring. Most of the UN workers and NGO's interviewed as well as the reports and articles reviewed for the purpose of this thesis focus accordingly on GBV against *women*, as does the thesis itself.

Some sources refer to *violence against women, intimate partner violence or sexual or other forms of gender-based violence (SGBV)*, rather than *GBV*. For the purpose of this thesis, I make little distinction between which of these terms the sources choose to use, being confident that they all mean to address the same general issue.

Also, the term international human rights law (IHRL) is used throughout the study and is taken to mean the collective body of both international and regional human rights law. In the context of this study, unless otherwise specified, reference is being made to the part of this body of law that relates to GBV. The main instruments that relate to GBV are specified and discussed in Chapter 2.

1.3 Delimitations

Firstly, the research is geographically delimited to Khartoum. As described in the introduction, Sudan makes for a particularly interesting case study to in viewing work against GBV in the field. Within this vast and diverse country however, it is necessary to delimit the geographical area. I have delimited the area of interest to Khartoum, seeing as the capital represents an area of relative stability and peace within the country.⁸ This means that among the different regions in Sudan, Khartoum is one of the places where NGO's have the highest ability to work and forward their causes. Consequently, if IHRL is relevant to any NGOs in Sudan, it should be the ones in Khartoum. This delimitation also has the effect of excluding forms of GBV that do not occur in times of peace, most notably sexual violence in conflict.

The research is also delimited to the work of NGOs particularly. There are many actors operating within Khartoum to eliminate GBV, such as governmental bodies, universities, INGOs and UN agencies. These actors will be introduced and discussed in Section 2.2. I have chosen to focus on the work of local NGOs in particular – in part due to what I believe is a need for better understanding of the work that NGOs in the field carry out. There has been an increased interest in the work of NGOs of Khartoum over the past few years which has led to studies such as mapping of actors and determination of their ideological beliefs,⁹ however much remains to be said about their relationship and interaction with IHRL. Another reason to put focus on NGOs is their important, potential power to act as an agent of development within a new democracy such as Sudan.

Finally, it is important to clarify that this is not a study about the occurrence of GBV in Khartoum – it is a study of the efforts undertaken to address GBV. Interviews have not been conducted with women victim of violence, nor is focus placed on them as an actor. I leave this important and interesting topic for other researchers to address. Although the prevalence of GBV is discussed, this is merely to serve as a background to the actual focus of the thesis – the women's rights activists, NGO workers, UN staff members and other actors that contribute to working against GBV in Khartoum.

⁸ Tønnessen, 2013, p. 134

⁹ See e.g. UN Women, Badri et. al, 2015; Badri, 2006.

1.4 Methodology

The methodology used is one of combined desktop research and qualitative field research based on interviews. The first part of the thesis, (Sections 2 and 3) which outlines the contextual and theoretical background, uses desktop research and builds on contemporary discourses on inter alia the presence of GBV in Khartoum, the role of NGOs in this field, and politicization of women's issues. The sections that present the legal framework, both domestic and international, employ legal dogmatic method, which seeks to answer the question what the law actually states and to what extent the relevant sources of law are applicable in the case of Sudan. In addition to legal instruments, academic journals and books have been consulted to deepen the understanding of the context within which these pieces of legislation are active. In outlining the theoretical framework, literature reviews have been conducted in relation to feminist theory, postcolonial theory and politicization of women's issues.

The second part of the thesis (Section 4) is based on field-based research, and represents the most central findings of the thesis. In order to study how NGO's work with GBV and how they relate to international legal instruments, in-depth interviews have been conducted with seven NGOs and three UN agencies in Khartoum. The research is of a highly qualitative nature and the interviews conducted have been semi-structured. This has been in order to ensure that the most central questions are covered in all of the interviews, while still allowing ample space for the interview subject to raise the topics that s/he thinks most important to discuss. The qualitative nature of the research and the decision to conduct a smaller number of in-depth interviews, rather than for instance a wide range of surveys, means that the findings do not bear generalizing ambitions. Instead they should be viewed as an in-depth look into the work of a number of NGOs in Khartoum that is then analyzed against a wider backdrop including prior research and studies.

The NGO representatives interviewed have all been either directors or other persons working on management level. This has the drawback of there being a risk that the answers are not representative for the staff members working hands-on with the projects. However, I believe this to be outweighed by the benefits, namely that it has enabled me to discuss the issues on a higher level with persons who are aware of the entire situation that the NGO is working within. It has also allowed me to gather an accurate image of what the NGO strives and works for as a whole, rather than focusing on specific parts of it.

In addition to meeting with NGOs, three interviews have been conducted with representatives of UN agencies. The UN frequently cooperates with NGOs as implementing partners and at times also organizes capacity building activities for civil society. The representatives have been selected based on their work with GBV and their close relationship to civil society. These interviews have been used as complementary material to the ones conducted with NGOs and are valuable in terms of adding to the background and context of NGOs working in Khartoum. They have also been useful in judging whether the findings from the NGO interviews seem representative of the community as a whole.

It is important to underline that interviewing NGO's in Khartoum raises significant ethical concerns. The politicization of GBV and IHRL in Khartoum is very real and may cause serious problems for the persons working with it. Comments that could be interpreted as an affront could therefore present a threat to the safety of the persons interviewed, and also to the projects that they carry out. Because of this, all persons interviewed for this thesis, and the NGOs that they represent, are completely anonymous. I refer to the persons as "NGO worker" or "UN staff member", since their position within either civil society or the UN is too important for the findings to omit, and I do not believe this to endanger their safety. Since the thesis does not aim at mapping out the actors or analyzing the work of any particular NGOs, the anonymity should not have any significant effect on the findings or the reading of the thesis. The aim of this thesis is rather to look into how NGOs in general relate to GBV and IHRL in Khartoum. The names of the interviewees are therefore not necessary in order to gain this understanding. For those who wish to complement the thesis with a mapping of actors, I highly recommend the recently published UN Women report "Mapping study of actors working to eliminate violence against women and girls in Khartoum state".¹⁰

Finally, it is essential to address my own role in this study. Before undertaking field research in Khartoum, I had no prior connection to the country besides having read about it extensively and visited it on a few occasions. It is therefore important to note and understand my role as an "outsider" in the Sudanese society while conducting the interviews. Being non-Sudanese can present an obvious drawback in terms of understanding the highly complex social, legal and cultural context of the country, one which has been intricately woven throughout centuries of regularly occurring political change. It can, however, also be an asset. Being new to the country, I have had the benefit of viewing the relationships and interactions between actors working with GBV with fresh eyes – seeing not

¹⁰ UN Women, Badri et. al, 2015.

decade-old conflicts but the roadblocks and issues that persist today. It has also granted me a certain degree of distance so as to analyze the problem field without immediately siding with one viewpoint. Most importantly however, I have noticed that many of the actors that I have interviewed have felt comfortable opening up about the situation and their own viewpoints, presumably because I do not represent a threat, competition nor ally. I have had the benefit of being a curious outsider trying to understand the situation of GBV in Khartoum, and the interviewees have graciously opened up in order to help me in this quest. The important part is thus not whether the benefits of being an outsider outweigh the drawbacks or vice versa, but rather that the reader understands this situation and how it has inevitably affected the research.

2 GBV in Sudan – a contextual analysis

Sudan is a country characterized by a high diversity of ethnicities, cultures and religions, and has a very particular historical context. It has a long history as an important actor on the global stage, both as an independent nation and as part of Egypt, the Ottoman Empire and under British control, ultimately gaining independence from British rule in 1956.¹¹ The nation was then comprised of what is today Sudan and South Sudan, making it in essence even more characterized by a multitude of ethnicities, religions and geographical variations than it is today.¹² Sudan's location has also situated it between two regions, geographically, culturally and in terms of ethnicity – namely the Arab world and (East) Africa.¹³

The ruling of Sudan since independence in 1956 has been characterized by regular changes and uprisings. Directly following independence, an elected government ruled between 1956-1958. This government was however overthrown in a military coup. The following military regime ruled from 1958-1964, at which point a popular uprising led to their overthrowing and an interim government was established. This interim government eventually prepared a democratic election, but the democratically elected government that ruled for a brief period was also overthrown in 1969 by another military coup. This resulted in a Communist ruling of the country from 1969-1985. In 1985 another popular uprising brought down the military regime, and Sudan saw yet another brief period of democratically elected governance between 1985-1989. In 1989, the Islamic Front government was brought to power with the help of the Al-Ignaz military coup. The Islamist government remains to this day, ruled by President Omar Al-Bashir since 1989.¹⁴

President Al-Bashir has now ruled longer than any other power since Sudanese independence.¹⁵ The past decades however, have in part been characterized by conflict and civil war. The civil war between the North and the South of Sudan had begun before President Al-Bashir came to power, through the breakdown of the 1972 Addis Ababa Agreement in 1983.¹⁶ The United Nations Mission in Sudan writes that:

¹¹ Holt & Daly, 2011.

¹² Badri, 2006, p. 2

¹³ Tønnessen, 2013, p. 134.

¹⁴ Badri, 2006, p. 2-3; Holt & Daly, 2011, p. 115-160.

¹⁵ Holt & Daly, 2011, p. 161.

¹⁶ UNMIS, The background to Sudan's Comprehensive Peace Agreement.

“The root causes which propelled the war included disputes over resources, power, the role of religion in the state and self-determination.”

A long peace process finally led to the signing of the Comprehensive Peace Agreement (CPA) in 2005, and stabilized the situation.¹⁷ As a result of this, in 2011 a referendum was held in which South Sudan voted for independence. The South seceded in July 2011 and the country was split into the two nations of Sudan and South Sudan.¹⁸

As a consequence of this turbulent history, Sudan has long found itself navigating between at times competing social structures, and also blending cultures and belief systems. As Tønnessen describes:

“Throughout its existence the Sudanese state has been characterized by a series of dichotomies: of Islamic law (Islamism versus secularism), of ethnicity (Arab versus African), and of centralization (Khartoum versus the rest of the country).”¹⁹

It is also a state recently affected by civil war in more than one region. Conflict has continued in the Darfurs as well as the southern parts of Sudan, in Kordofan and Blue Nile.²⁰ Sudan is a new democracy, still navigating between these dichotomies, which today arguably also include the dichotomy of tradition versus modernity. It also stands as a new state, one still shaping its cultural identity after its split from South Sudan. In the midst of this conflict and change, Khartoum stands as an anomaly – as Tønnessen describes it: “a strikingly peaceful, albeit authoritarian and oppressive, island, surrounded by the violence of peripheral regions.”²¹ It is in this Khartoum that we now delve into exploring the work of NGOs and the efforts undertaken to mitigate what is believed to be a high prevalence of GBV and to provide service to victims of violence.

The following section deals with analyzing the reality of GBV in Khartoum, as well as the actors involved in combatting it. In order to fully understand the context of the NGOs working in Khartoum, the prevalence of GBV will be addressed, as well as the actors present in the field, with special focus put on NGOs themselves and the climate within which they

¹⁷ UNMIS, The background to Sudan's Comprehensive Peace Agreement.

¹⁸ BBC, Sudan Country Profile, 2015.

¹⁹ Tønnessen, 2013, p. 134.

²⁰ BBC, Sudan Country Profile, 2015; Tønnessen, 2013, p. 134; Amnesty International, 2010, p. 6.

²¹ Tønnessen, 2013, p. 134.

are working. Following this, the Sudanese legal framework that deals with GBV is outlined, in order to give a better understanding of the domestic legal landscape that work against GBV is carried out within. Finally the applicable IHRL is outlined, which will serve as a description of the IHRL that NGOs theoretically speaking *could* be applying in their work – whether or not they do so (and why) is addressed later on in Section 4.

2.1 Prevalence of GBV

It is difficult to gather exact information on the factual situation of GBV in Sudan. No formal surveys or estimations have been carried out nationally, nor has there been any systematic collection of data by research centers or others that can accurately show the prevalence of GBV.²² GBV is a sensitive topic to discuss worldwide and estimations always take into consideration a high number of unreported cases. In the case of Sudan, however, this is coupled with the topic being viewed as politically sensitive, which needless to say, renders the accurate estimations of the prevalence of GBV even more difficult.

The difficulty of verifying the prevalence of GBV was also called to attention by the UN Special Rapporteur on Violence against Women following her country mission to Sudan in May 2015. She stated that the difficulty was due to inter alia:

“[...] the limited existence of disaggregated data; social stigma and silences surrounding certain manifestations of violence; the lack of or the underreporting of cases; an unresponsive, and sometimes hostile environment, when the issue of violence against women is raised; traditional, cultural and social norms that prevent disclosure and the seeking of assistance from persons outside of the family unit; and the focus on reconciliation, at the expense of accountability, for crimes against women and girls.”²³

Much will be said throughout this study on the politicization of GBV. In this context however, it is interesting to note that the difficulty of collecting data and the fact that the statistics found are often conflicting and tend to omit important pieces of information, can itself be viewed as a consequence of the politicization of the issue.

Despite the difficulty in collecting data on GBV prevalence, efforts are being made by all concerned parties, most notably the government, NGO's and various UN agencies, to

²² UN Women, Ibnouf, 2011, p. 6.

²³ Special Rapporteur on Violence Against Women Statement, Khartoum, 2015.

combat what is believed to be a high prevalence of GBV in the country. As UN Women states: “[...] the magnitude of VAW is high enough to demand urgent and active intervention strategies.”²⁴ Efforts are also being made by some of the actors to collect information that can offer an idea of how high the prevalence is and how best to address it.

UN Women/UNIFEM conducted a study on GBV in Sudan, collecting data that stretches over a decade, from 2000 to 2010.²⁵ Although the report emphasizes the difficulty in recording cases and encourages the viewing of the material as a “mere snapshot of the violence being perpetrated”,²⁶ it gives a welcome insight into the level of prevalence as well as its causes and effects.²⁷ Beginning with the forms of violence recorded, the report found that 56.6% of the recorded cases (in all of Sudan) were cases of domestic violence, of which the most common forms were beatings (40.6%), threats of violence (12.5%) and rape (9%). Other recorded forms of violence included forced marriage (4.3%), sexual harassment (4.1%), acid throwing (2.8%) and physical assault (2.8%).²⁸ A majority of the recorded perpetrators were found within the nuclear family (56.6%).²⁹ While these figures may very well be downplaying the violence perpetrated by inter alia state actors, it still gives an indication that intimate partner violence (IPV) and domestic violence represent a significant part of the GBV carried out.

Another highly common form of GBV is female genital mutilation (FGM), estimates stating that an alarming 89% of Sudanese women between the ages of 15-49 have undergone FGM.³⁰ Child marriage is also a common form of violence and is in turn intimately connected to other forms of GBV. UNICEF estimates that one in three women marry before the age of 18, whereas one in ten marry before the age of 15.³¹ Child marriage is a clear cause of physical and psychological harm for the girl child, and also correlates directly with a larger acceptance of domestic violence.³²

²⁴ UN Women, Ibnouf, 2011, p. 3.

²⁵ UN Women, Ibnouf, 2011.

²⁶ UN Women, Ibnouf, 2011, p. 7.

²⁷ Having said this, the data should be taken with the complex context in mind. There are clear gaps in the report, such as stating that 0% of the reported rapes have been carried out by state actors (p. 22), which is highly contestable. Furthermore, it seems that verbal abuse is likely not taken into account (see e.g. the list of psychological violence, p. 23).

²⁸ UN Women, Ibnouf, 2011, p. 17-18.

²⁹ UN Women, Ibnouf, 2011, p. 22.

³⁰ Landinfo, 2008, p. 6.

³¹ UNICEF, The State of Sudanese Children, 2011, p. 16.

³² UNICEF, The State of Sudanese Children, 2011, p. 16.

Furthermore, following her country mission to Sudan, the UN Special Rapporteur on Violence against Women also expressed concern regarding the increased level of trafficking of women and girls, especially among asylum seekers and refugees. She also drew attention to the racialized violence directed particularly toward Darfuri women students.³³

The landscape of GBV in Sudan is thus vast and incorporates many different types of violence. As for causes behind the violence and particular vulnerability, the UN Women study referenced above found certain patterns that can offer a better understanding. There was a clear link shown between education and/or socio-economic status and risk of GBV.³⁴ The violence was also shown to mostly be directed toward younger women. Over 80 % of the victims in the recorded cases were under 40 years of age. A large percentage of them (38.2%) were illiterate or with low education attainment (27.8%).³⁵ Also, 69.2 % of the victims were unemployed housewives.³⁶ Similarly, 29.5 % of the perpetrators were illiterate.³⁷ Under- or unemployment was also found to correlate with a greater risk of being subjected to or carrying out GBV.³⁸

Once more we need to emphasize that GBV in Sudan as a whole is intimately connected with conflict and civil war, most notably in the region of Darfur.³⁹ The focus of this study however is, as clarified above, on Khartoum state and the NGOs working there. Although being a major recipient of persons fleeing conflict and the connected GBV,⁴⁰ Khartoum is a stable and conflict-free zone in itself. Therefore, little emphasis is put here on analyzing the complexity of sexual and gender based violence in conflict.

Finally, the effects of GBV on society and on women in particular are always detrimental and Sudan is no exception. Besides severe physical damages to the women subjected to GBV, sometimes resulting in death, other effects include heavily decreased mental health among women.⁴¹ The economic costs of GBV on a societal level are also believed to be significant,

³³Special Rapporteur on Violence Against Women Statement, Khartoum, 2015

³⁴UN Women, Ibnouf, 2011, p. 24

³⁵UN Women, Ibnouf, 2011, p. 24.

³⁶UN Women, Ibnouf, 2011, p. 24.

³⁷UN Women, Ibnouf, 2011, p. 26.

³⁸UN Women, Ibnouf, 2011, p. 36.

³⁹UN Women, Badri et. al., 2015, p. 33-34; Special Rapporteur on Violence Against Women Statement, Khartoum, 2015.

⁴⁰UN Women, Badri et. al., 2015, 34.

⁴¹UN Women, Ibnouf, 2011, p. 28.

and can thus have a highly negative effect on a country like Sudan that is already struggling economically.⁴²

2.2 Actors and parameters

Studying the work against GBV in Khartoum, it quickly becomes apparent that the issue is a multifaceted one and involves a large number of different actors and parameters. In this section I will address the most important ones, and also clarify the focus of the thesis in relation to these actors and parameters.

Firstly, the Sudanese government is of course an important and active force in dealing with GBV. Besides working through legislation and the adoption of policy (both of which will be addressed below), the government has established a number of governmental bodies that deal with the issue of GBV, such as The National Council for Child Welfare, the National Reproductive Health Program of the Ministry of Health, Centers of Women Rights and Women Peace and Development and – most notably – The Unit of Combating Violence against Women (CVAW Unit), which is part of the Ministry of Welfare and Social Security.⁴³ The CVAW Unit coordinates work undertaken throughout Sudan to combat GBV and has units or interim committees established in states throughout the country.⁴⁴ Through these bodies, and in its own capacity, the government partners with actors from the local civil society and also with INGOs and the UN.

Secondly, NGOs, the focus of this study, play a crucial part in addressing GBV in Khartoum. There is a wide range of civil society actors in Khartoum, an important part of which work with women's issues and address GBV. As will become clear throughout the analysis to follow, the NGOs are diverse in their way of approaching the issue. They also have differing relations with the other actors, depending on their analysis of the problem field. The role of NGOs and their particular situation will be further expanded on below in Section 2.3.

Thirdly, the presence and work of UN agencies in Khartoum must be addressed. Numerous UN agencies are present and active in Khartoum, such as UN Women, UNDP, WFP, UNFPA

⁴² UN Women, Ibnouf, 2011, p. 28.

⁴³ UN Women, Badri et. al., 2015, p. 43-44.

⁴⁴ UN Special Rapporteur on Violence Against Women Statement, Khartoum, 2015; UN Women, Badri et. al., 2015, p. 28.

and UNHCR.⁴⁵ In addition, two UN missions have been active in Sudan – the United Nations Mission in Sudan (UNMIS) whose operations were finished in July 2011, and the United Nations/African Union Mission in Darfur (UNAMID) which is ongoing.⁴⁶ The UN agencies in Khartoum have a close relationship both with government and with civil society.⁴⁷

There are a number of other actors within civil society that play an important part in the landscape of working against GBV in Khartoum. These include academic institutions, political parties, religious and cultural groups and the media.⁴⁸ Although they are significant in addressing GBV, their role as actors will not be elaborated upon in this thesis. As clarified above, this is in order to narrow the research field and raise the quality of the findings relating to NGOs. It can also be interesting to note that a recent UN Women study found that registered NGOs, along with a few nonprofit companies, were the most active in Sudanese civil society in terms of engaging with GBV.⁴⁹

In addition, there are also a large number of other (non UN) international actors relating to GBV in Khartoum. These include embassies, national aid agencies and INGOs, such as Save the Children Sweden and the Red Cross.⁵⁰ As mentioned above, the ICC, although not physically present in Khartoum, also plays a significant role in how GBV is viewed and approached.⁵¹ In the interest of narrowing the research these international actors will not be considered other than as providing a background understanding of the postcolonial forces at work in Sudan. It is however important to note this high number of international actors present in Khartoum and other parts of Sudan, all looking to “develop” and “aid” the country from within their own political and cultural understanding of social development. I would ask the reader to keep these international actors and their various political intentions in mind as part of the backdrop on which the work against GBV unfolds.

In addition to relating to a large number of actors, the work of addressing GBV in Sudan also relates very directly to a number of social and political structures. Firstly, it is impossible, or

⁴⁵ see e.g. OCHA, 2015.

⁴⁶ UNMIS, Home Page; UNAMID, Mission Home.

⁴⁷ OCHA, 2015.

⁴⁸ UN Women, Badri et. al., 2015, p. 35.

⁴⁹ UN Women, Badri et. al., 2015, p. 38. Note: See the study for an interesting case made on how it is necessary to forward the awareness and capacity of other civil society groups to work with GBV and expand the knowledge beyond registered NGOs.

⁵⁰ See e.g. ICRC, 2015; Save the Children Sweden, 2015; SIDA, 2015.

⁵¹ Tønnessen, 2014, p. 148.

at least highly inappropriate, to address the work of NGOs in Khartoum and their relation to international law and actors without viewing the situation from a postcolonial perspective. As Osanloo points out: “International politics becomes part of the hermeneutics of understanding women’s status.”⁵² In the case of international factors in Sudan, postcolonialism serves as the most clear-sighted and comprehensive theory that can bring into light the complex relationship between Sudan and IHRL. Secondly, the analysis of gender-based violence and the politicization of the issue is intimately related to feminist theory and the understanding of a patriarchal society. The most interesting analysis of the problem field comes from viewing the politicization of GBV in Khartoum from within the intersection of postcolonial and patriarchal structures. This serves as the theoretical underpinning of the analysis and will be further developed in Section 3.

The actors and parameters described in this section can be summarized as seen in Figure 1, the focus of this study lying on the identified theoretical parameters and the three actors centered in the figure: NGOs, government and the UN.

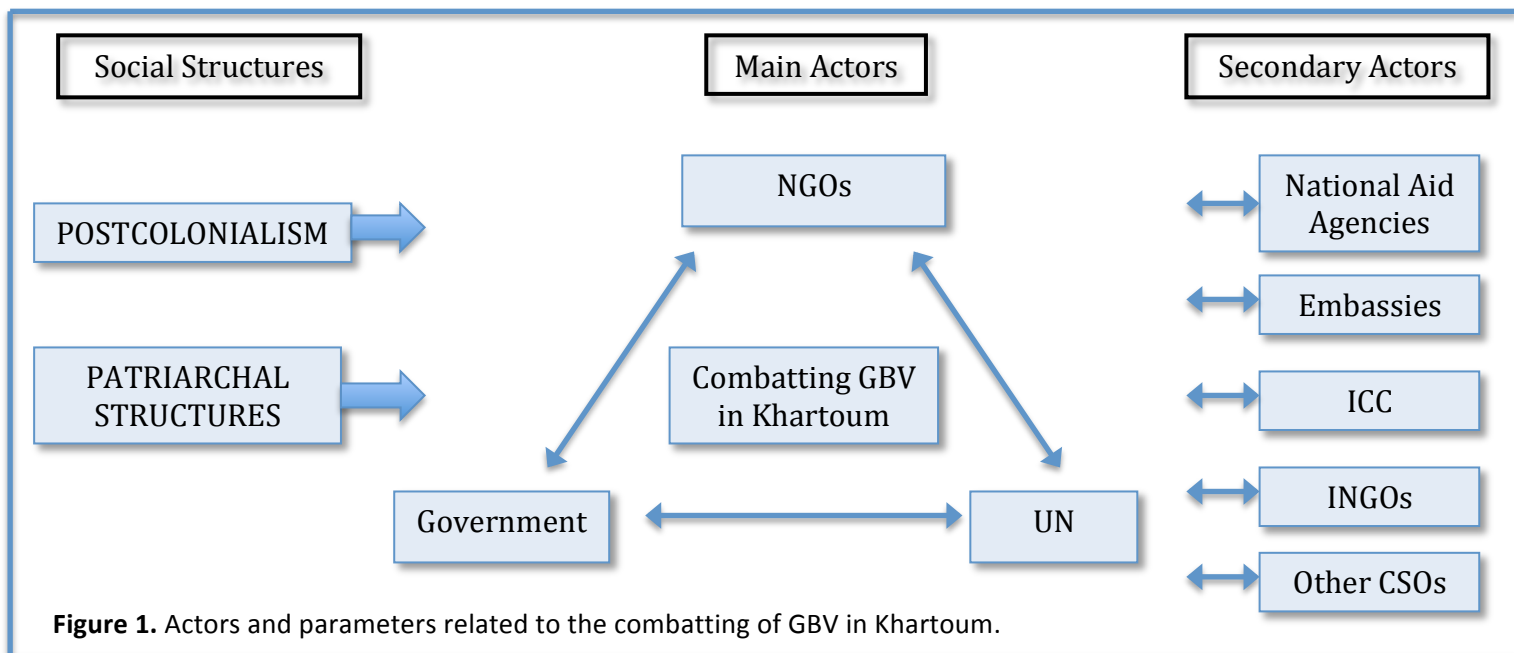


Figure 1. Actors and parameters related to the combatting of GBV in Khartoum.

The main focus of this thesis thus lays on the work of NGOs, and as an extension their relationship with the government, UN agencies and each other. The working context of NGOs in Khartoum, and also the role that NGOs have in addressing GBV, will therefore be

⁵² Osanloo, 2009, p. 205.

further explored in the following section. As for the two theoretical parameters – feminism and post colonialism – they are undeniably intertwined, as will be further developed in Section 3. As we will see, the politicization and controversy sparked around GBV can be viewed as the result of an intricate interaction between postcolonial and patriarchal structures.

2.3 NGO's and GBV in Sudan

We now turn our focus to the main actors of this study, namely the NGOs of Khartoum. In some ways, civil society has a longstanding tradition in Sudanese society. It can be traced back to the times of colonialism where tribal chiefs and councils would serve as active and influential “middle range actors”,⁵³ or arguably even further back to the introduction of educational systems by the first Sufi preachers.⁵⁴ There is a strong tradition of the Sudanese people organizing themselves for the sake of social movements and services.⁵⁵ In recent times however, NGO activities have been restricted through legislation and monitoring. In 1989, when the current government was brought to power, all NGOs were forced to dissolve and only a limited number of them were allowed to re-form.⁵⁶ This changed in part through Sudan's cooperation with the New Partnership for Africa's Development (NEPAD) in 2000.⁵⁷ Following this, NGOs were once again able to register and operate in Sudan. At the same time the Humanitarian Aid Commission (HAC) was established in order to monitor civil society, and remains to this day.⁵⁸ As will be further described below, the HAC along with the relevant legislative acts have posed significant difficulties for NGOs working in Sudan.

Though the possibility of NGOs to register and operate has greatly improved, the political climate remains harsh. NGOs are required to register in order to operate, in accordance with the Voluntary and Humanitarian Work Act,⁵⁹ and many fear having their registration revoked should they partake in undesirable activity. There is a sentiment among the civil society that NGOs working with GBV risk being closed down by the government for engaging themselves too politically. For instance, the prominent organization Salmmah Women's Resource Center

⁵³ Badri, 2006, p. 3.

⁵⁴ UN Women, Badri et. al., 2015, p. 36.

⁵⁵ UN Women, Badri et. al., 2015, p. 36; Badri, 2006, p. 3.

⁵⁶ Badri, 2006, p. 4.

⁵⁷ Badri, 2006, p. 4.

⁵⁸ Badri, 2006, p. 4.

⁵⁹ Voluntary and Humanitarian Work Act, 2006, Sections 8-14.

was shut down in 2014, which spurred suspicions that it was a response to their at times controversial critique of the Criminal Act and rape laws of the time.⁶⁰

In legal terms, it is mainly the 2006 Voluntary and Humanitarian Work Act (VHWA) that controls the activity of NGOs in Sudan. The monitoring and surveillance is carried out chiefly by the HAC and the National Intelligence and Security Forces (NISS). Most of the regulations of the VHWA are not very specific as such, but do allow for interference in NGO activity based on security reasons. A 2015 study conducted by a CSO based in Khartoum describes how the VHWA, in the hands of the HAC and NISS has become a tool for excessive control and restriction of NGOs.⁶¹ The study points inter alia at the regulations concerning dissolution of organization. The VHWA places the power to dissolve organizations with the Registrar, whose decision can in turn be appealed to a Commissioner, and subsequently to a Minister.⁶² Although the Minister's decision can be appealed before the Administrative Court⁶³, this places a great deal of power upon government-appointed persons. As the study also points at, in an already highly politicized climate, this presents a certain risk that the government may restrict civil society based on political reasons⁶⁴ - which, as described above, is precisely what NGOs in Khartoum fear. Other sources also describe excessive control of civil society, Badri explaining that NGOs are required to seek government permission for many of their activities, such as organizing workshops or conferences.⁶⁵ It should also be noted that according Art 52(3) of the National Security Act, members of the NISS are granted immunity from criminal or civil procedures for acts connected with their work.⁶⁶

There is a lack of concrete evidence of this excessive government control of civil society, beyond NGO testimonies.⁶⁷ However, in March 2015 the African Commission on People's and Human Rights (hereinafter: the African Commission) published a decision that describes the intimidation and ultimately abuse of three civil society human rights activists in Sudan. In *Monim Elgak, Osman Hummeida and Amir Suliman v Sudan*, the African Commission found

⁶⁰ WLUML, Marler, 2015, p. 3.

⁶¹ KACE, 2015, p. 41.

⁶² Voluntary and Humanitarian Work Act, 2006, Sections 8-14.

⁶³ KACE, 2015, p. 31.

⁶⁴ KACE, 2015, p. 31.

⁶⁵ Badri, 2006, p. 4.

⁶⁶ ACHPR, Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan, 2012, p. 31.

⁶⁷ See e.g. Dabanga, "NGO recounts events that led to its closure", January 2013; Freedom House, "Sudan's Desperate Crackdown on Human Rights Activists", January 2013.

that the Complainants rights had been violated with regards to inter alia Art 5 (freedom from torture or cruel inhuman or degrading punishment), Art 6 (right to liberty and security of person), Art 9 (freedom of expression), Art 10 (freedom of association) and Art 15 (right to work).⁶⁸ The three complainants were prominent human rights defenders in Sudan and detained as a result of their work, in addition Mr. Amir Suliman who was the director of Khartoum Centre for Human Rights and Environmental Development (KCHRED) had his NGO dissolved and its bank accounts frozen.⁶⁹ In relation to the freedom of association, the African Commission writes as follows:

“In the present Communication, it appears that the only reason that KCHRED and its director were targeted was on account of their perceived links with the ICC. The Respondent State has not provided any information showing that the activities of the organization endangered national security, morality, or the rights of other people in Sudan. In the circumstances, the Commission considers that the State’s interference with the activities of the organization and its staff was unjustifiable and arbitrary and finds a violation of Article 10 of the Charter.”⁷⁰

There is also another case from the African Commission that can also be seen as describing the excessive restriction of civil society in Sudan, namely *Law Offices of Ghazi Suleiman v Sudan*, published in 2003.⁷¹

Despite what can be perceived as a harsh climate at times, the Sudanese civil society is active and relatively large. There are a significant number of actors working with GBV, all from different perspectives and with different focal areas. The activities of the active NGOs range over a wide spectrum, engaging in inter alia capacity building, providing service to victims of violence as well as advocacy and education.⁷² It also covers different forms of GBV. A 2015 study by UN Women found that:

⁶⁸ ACHPR, Communication 379/09 – Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, p. 96-131.

⁶⁹ ACHPR, Communication 379/09 – Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, p. 131.

⁷⁰ ACHPR, Communication 379/09 – Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, p. 119.

⁷¹ ACHPR, Communication 228/99 – *Law Offices of Ghazi Suleiman v Sudan*.

⁷² UN Women, Badri et. al., 2015, p. 7-8.

“Most of the activism is directed towards combating FGM, followed by issues of early marriage, rape, family law reform and, lastly, domestic violence and sexual harassment.”⁷³

The same study also found that a majority of the activities deal with advocacy and awareness rather than service to victims.⁷⁴

The activities of the NGOs addressing GBV in Khartoum are thus vast and disparate. The political nature of their work, however, is always noticeable and creates a split between the active organizations. The organizations can roughly speaking be divided into those which are pro government, referred to sometimes as GNGOs, and those which are opposed (although there is also a portion that attempt to remain neutral). Often this also aligns with the NGOs being explicitly Islamic (GNGOs) or being secularist (opposing).⁷⁵ In line with these observations, Badri also illustrates the polarization of the feminist movement in Sudan. The movement, she argues, is polarized between Islamism and secularism, between pro-government and opposing, between generations, and also between which strategies and tools are favored.⁷⁶ The tension can often be palpable between these different strands of the feminist movement, or between NGOs with competing sets of priorities. The conflicting and polarized views of the NGOs form an important part of the landscape in which they work, and shows clearly that the work undertaken is often political and contested.⁷⁷

As for collaboration with other actors, UN agencies frequently cooperate with NGOs as implementing partners for their field based programs. The agencies also engage somewhat in capacity building directed toward civil society.⁷⁸ However, while NGOs often work in cooperation with international actors, and also with each other, they rarely partner with the government.⁷⁹ This trend has also been noted by UN Women and represents a gap that the agency wishes to address, *inter alia* through establishing a CSO forum.⁸⁰ The lack of cooperation between NGOs and government aligns of course with the political nature of the NGOs as described above – GNGOs collaborate frequently with government whereas ones opposing the government tend not to. As will be further developed in Section 4, this

⁷³ UN Women, Badri et. al., 2015, p. 7.

⁷⁴ UN Women, Badri et. al., 2015, p. 7.

⁷⁵ Badri, 2006, p. 4.

⁷⁶ Badri, 2006, p. 17.

⁷⁷ Badri, 2006, p. 19.

⁷⁸ See e.g. UNHCR, “2015 UNHCR country operations profile – Sudan”; UNDP, 2013, p. 20.

⁷⁹ UN Women, Badri et. al., 2015, p. 43.

⁸⁰ UN Women, 2014.

study has shown that NGOs' relationship to government is varied and complex and also relates directly to their work and priorities.

To sum up, the activity of NGOs working with GBV in Khartoum, is vast and by nature both political and controversial. This adds to the complexity of their work, and also to their will and/or ability to relate to international human rights law. It is therefore important to keep this context in mind while discussing and analyzing their work.

2.4 The legal framework of Sudan relating to GBV

The Sudanese law is based on a version of Islamic *Sharia* law. In 1991 when the Muslim Family Law and the Criminal Act were drafted, the islamization of the law became an important symbol for the culture and independence of the country.⁸¹ The law thus derives its legitimacy from religious doctrine. This has an important effect on the position of women within the law since, as will be illustrated below, both the family law and criminal law based on Sharia differentiate between men and women. In addition to this, the law is closely connected to issues of religion, culture and tradition,⁸² which may render legal reform more difficult and reluctant than in other contexts. In contrast to this, however, stands the thoroughly modern 2005 Interim National Constitution (hereinafter: the Constitution), which embodies values such as equality between the sexes.⁸³ The legal framework of Sudan can, as in most countries, be viewed both as part of the problem field and part of the solution when working with GBV. Whereas some laws specifically aim at protecting women from GBV, others are part of a structure that perpetuates the violence. Below, both of these aspects will be further examined.

Under family law based on Sharia, one of the most important principles relating to women is *qiwama* – guardianship. All women must be under the legal guardianship of a male relative, such as a husband, father or brother, and has a duty to obey him.⁸⁴ This creates a social and family structure built firmly on patriarchy, as will be further discussed under Section 3, and serves as an important background when approaching the laws that relate directly to GBV. The 1991 Muslim Family Law includes regulations that further differentiate between men and women. For instance, the man is established as the breadwinner of the family and can

⁸¹ Tønnessen, 2013, p. 136.

⁸² Abdelhalim, 2011, p 228.

⁸³ The Interim National Constitution of the Republic of the Sudan, 2005. See e.g. Section 1(2), Section 4(a), Section 31 and Section 32.

⁸⁴ Welchman, 2004, p. 243.

forbid his wife to work outside the home (Articles 27-28 and 91-95). He is also able to divorce his wife without stating the reason, whereas the wife has a limited amount of conditions under which she can file for divorce (Articles 151-203). Polygamy for men is allowed under the law, a man being allowed to marry up four wives. (Article 51). There are also laws aimed specifically at protecting the women, by for instance guaranteeing up to six months financial support after divorce, and ensuring that a woman's inheritance is her own, whereas a man's inheritance should be used for providing for the family.⁸⁵

When it comes to domestic violence between spouses, the consensus within Sharia law is split. There are sources that suggest that beating a disobedient wife is sanctioned as a last possible resort, whereas other interpretations maintain firmly that such an understanding is a misinterpretation and "run[s] counter to the fundamental injunctions of the Sharia of mutual kindness and respect".⁸⁶

Another piece of legislation also based on Sharia, that relates strongly to GBV is the 1991 Criminal Act. Until recently, the Criminal Act contained a serious gender gap in terms of sexual violence. The term *zina* was used for cases of both adultery and rape, in essence labeling rape as non-consensual adultery. Among other things, this had the effect that a woman's report of rape could be used as a confession of adultery, could she not prove that the intercourse had in fact been non-consensual.⁸⁷ The level of proof required was also set particularly high, because it had to be proved according to the rules of evidence that apply to *zina*.⁸⁸ Tønnessen found in 2014 that interviewed lawyers advised their clients not to report cases of rape because of the risks involved.⁸⁹ In February 2015 however, a long awaited amendment was made, separating adultery from rape and clarifying its definition.⁹⁰ This could significantly improve women's chances of claiming justice after rape, however the full effect of this amendment remains to be seen. As pointed out in a publication by "Women Living Under Muslim Laws", there are still many steps to be taken to further the empowerment of women in face of GBV, such as providing legal aid, raising awareness and ensuring a gender-sensitized implementation of the law itself.⁹¹

⁸⁵ Tønnessen, 2011, p. 30.

⁸⁶ Welchman, 2004, p. 244.

⁸⁷ Tønnessen, 2014, p. 147.

⁸⁸ Abdelhalim, 2011, p. 230-234.

⁸⁹ Tønnessen, 2014, p. 147.

⁹⁰ WLUML, Marler, 2015, p. 2.

⁹¹ WLUML, Marler, 2015, p. 4.

The Criminal Act remains silent on the matter of marital rape.⁹² Abdelhalim suggests that this is tied in with other Sharia norms, such as expressed in the 1991 Personal Status for Muslims Act which defends as Adbelhalim puts it “[a husband’s] unfettered right to his wife’s body as long as he does not cause her harm”.⁹³ This in turn may build toward the presumption that the marriage contract itself also functions as consent to sexual relations at any point throughout the marriage.⁹⁴

Following these two pieces of legislation, the most important legal document relating to equality, and as an extension GBV, is arguably the Constitution. Most notably, the Constitution contains a provision guaranteeing equality before the law without discrimination, in art 31. In art 32 equality between men and women is further specified and forwarded through the following provisions:

32. 1) The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.

(2) The State shall promote woman rights through affirmative action.

(3) The State shall combat harmful customs and traditions which undermine the dignity and the status of women.

(4) The State shall provide maternity and child care and medical care for pregnant women.

(5) The State shall protect the rights of the child as provided in the international and regional conventions ratified by the Sudan.

Finally, art 15.2 also states that “The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life.” As observed by Abdelhalim, there is a discrepancy between the gender equality enshrined in the Constitution and the clear differentiation between men and women in inter alia the Muslim Family Law and the Criminal Act.⁹⁵ It also interesting to note that the Constitution as such does not address gender-based violence, but rather guarantees gender equality.

⁹² Abdelhalim, 2011, p. 234.

⁹³ Abdelhalim, 2011, p. 234.

⁹⁴ Abdelhalim, 2011, p. 234.

⁹⁵ Abdelhalim, 2011, p. 229.

In terms of the rights of the girl child, the enactment of the 2010 Child Act is seen as an important step in furthering the rights of Sudanese children. It was a result of government efforts along with strong advocacy from CSOs, as well as international partners such as Save the Children Sweden and UNICEF.⁹⁶ However, in terms of GBV it failed to address one of the most acute issues, namely FGM. The inclusion of Section 13 in the draft law, which would have prohibited and criminalized FGM, was seen as a victory for those advocating greater protection for victims of GBV. In the final version of the law however, this section was omitted.⁹⁷ It does however include the general principle as set forth in Section 5(2)(k) that states that:

5. (2)(k) – this Act ensures the protection of a male, or female Child, against all types and forms of violence, injury, inhuman treatment, or bodily, ethical or sexual abuse, or neglect or exploitation;⁹⁸

Section 45 also lists rape, sexual abuse and sexual harassment of children as an offence. There are thus important means of protecting girls from GBV included in the Child Act, although the lack of criminalization of FGM remains an important gap.

The final piece of legislation to address, is the 1998 Khartoum Public Order Act and, in conjunction, Section 152 of the Criminal Act. Both of these regulations deal with public order and “decency”, and have been widely debated in relation to gender and GBV, particularly due to their discriminatory application.⁹⁹ They both regulate indecent behavior and dress, and they both target women to a greatly disproportionate degree.¹⁰⁰ It was Section 152 of the Criminal Act that was behind the controversial case in 2009 where Sudanese journalist Lubna Hussein was tried for indecent dress after wearing trousers in public.¹⁰¹ Although she was released after paying a fine, the women that were arrested with her received the penalty of whiplashes for their crime – a practice which continues to be common to this day.¹⁰² What constitutes “indecent dress or behavior” is as such not stipulated in either law,

⁹⁶ SIDA, Al-Nagar & Tønnesen, 2011, p.4-5.

⁹⁷ SIDA, Al-Nagar & Tønnesen, 2011, p. 12.

⁹⁸ 2010 Child Act, Sudan, Section 5(2)(k).

⁹⁹ Abdelhalim, 2011, p. 238.

¹⁰⁰ Abdelhalim, 2011, p. 238.

¹⁰¹ New York Times, “Sudan Court Fines Woman for Wearing Trousers”, 2009.

¹⁰² New York Times, “Sudan Court Fines Woman for Wearing Trousers”, 2009; Abdelhalim, 2011, p. 238.

but is rather at the discretion of the enforcing power.¹⁰³ These two regulations are thus part of the landscape that may create and perpetuate GBV, and also risks placing women in an inferior and insecure position.

In relation to these laws, the UN Special Rapporteur on Violence against Women issued the following statement after her visit to Sudan in May 2015:

“The discriminatory interpretation and implementation of provisions of some laws, including the Criminal Law, the Public Order Law and the Personal Status Law, was also raised as an issue of concern - due to it being seen as a cause and a consequence of violence against women and girls. For example, article 152 of the Criminal Law on ‘indecent behaviour’ has a disproportionately negative impact on the lives of women and girls; while the Public Order Law includes provisions that are interpreted to regulate freedom of dress, movement, association, and work, which in many instances targets and criminalises women’s behaviour. Despite the 2006 Presidential Decree abolishing numerous categories of public order crimes, the Public Order Police still patrol the streets and conduct sweeps, with the targeting of particular women, especially those who are working in the informal sectors of the economy, including as tea ladies, food sellers and domestic workers.”¹⁰⁴

Besides these acts of legislation, the Sudanese government has introduced a number of policies that aim at combatting GBV. In 2007, the National Strategy for Women’s Empowerment was introduced. The Strategy relates to the UN Security Council Resolution 1325 and the Beijing Platform, and deals with six areas of policy, inter alia health education, economic empowerment, women’s rights, participation in political and decision-making spheres as well as in conflict resolution.¹⁰⁵ It does not however explicitly deal with GBV.¹⁰⁶ Instead, the government established the Unit to Combat Violence against Women (CVAW Unit) in 2008, which in turn produced the National Plan for Combating Violence against Women for 2009-2011, as well as the later 2014 Strategy.¹⁰⁷ The Plan and Strategy both include strategic goals in addressing GBV and protecting women who fall victim of violence, whereas the Unit continues to work actively to further the combating of GBV.¹⁰⁸

¹⁰³ Abdelhalim, 2011, p. 239.

¹⁰⁴ UN Special Rapporteur on Violence Against Women Statement, Khartoum, 2015.

¹⁰⁵ UN Women, Badri et. al., 2015, p. 27.

¹⁰⁶ UN Women, Badri et. al., 2015, p. 27.

¹⁰⁷ UN Women, Badri et. al., 2015, p. 28.

¹⁰⁸ UN Women, Badri et.al. 2015, p. 28.

Although policies and national plans are of course a welcome step by the government toward addressing GBV, it is important to note that they are in no way enforceable. For this reason, they should not be seen as compensation for a low level of protection afforded to women through legislation, however positive the adoption of proactive policy may be.

2.5 Applicable International Human Rights Law

Gender based violence doubtlessly constitutes a human rights violation according to contemporary international and regional human rights law,¹⁰⁹ and the relevant instruments approach GBV from a number of different angles. Common for all approaches is that they acknowledge state responsibility in relation to GBV, thus framing it as a human rights concern. The key to this state responsibility is found in the structural and discriminatory nature of the violence, and the state's responsibility to protect the victims.¹¹⁰ The DEVAW phrases this in terms of states' obligation to exercise *due diligence* to "prevent, investigate and in accordance with national legislation, punish acts of violence against women".¹¹¹

The main focus of this thesis is, as known, to see how and why NGOs in Khartoum apply IHRL in their work against GBV. In order to assess this, it is essential to first understand what IHRL is accessible for NGOs and applicable in the case of GBV in Sudan – what IHRL *could* NGOs be using? In the following section we will therefore be looking at the most important international and regional legal instruments in addressing GBV and what legal obligations they entail for Sudan.

2.5.1 CEDAW and DEVAW

When it comes to applicable IHRL in relation to GBV in Sudan, the first thing to note is that the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – arguably the most important IHRL instrument to date that deals with issues of gender equality – has not been signed by Sudan. Even so, the CEDAW must be addressed in relation to actors working in Sudan due to its importance in the field of GBV, as we will see further below.

¹⁰⁹ See e.g. the Beijing Platform of 1995.

¹¹⁰ Boerefijn, 2005, p. 35.

¹¹¹ DEVAW art 4(c).

The CEDAW itself fails to address violence against women explicitly in its text, however the Committee on the Elimination of Discrimination against Women (hereinafter: the CEDAW Committee) clarified the Convention's applicability to GBV in 1992 through the adoption of General Recommendation no. 19. The recommendation, though not legally binding in itself, has greatly influenced the interpretation of the CEDAW and has clearly framed GBV as a form of discrimination against women, thus falling under the scope of the Convention and the work of the CEDAW Committee. General Recommendation no. 19 emphasizes inter alia that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation," thus demanding states to take positive measures to counteract GBV and including forms that are not carried out by state actors.

The CEDAW has been ratified by all but six countries worldwide¹¹² and is the most common starting off point in addressing gender-based violence from an international human rights perspective. In the case of Sudan, the CEDAW has remained unsigned and highly controversial. The government puts forth arguments against the signing of CEDAW that are closely related to ideas of Islamist feminism, stating that the Western ideals promoted through the Convention are not the ones best suited for dealing with women's issues in Sudan in their specific local context.¹¹³ As Tønnessen puts it:

"The fundamental argument put forward by Islamists, who have ruled Sudan since 1989, for not signing the convention is based on cultural relativism, championed by postmodernists, namely that different cultures provide indigenous answers to their social problems which should be judged in the context of their own environment. Islam is the solution, not Western feminism."¹¹⁴

Activists working in the field of women's rights are split between those who advocate the ratification of the CEDAW and those who oppose it.¹¹⁵ It has needless to say become an object of advocacy, and although the convention is in no way legally binding for Sudan and the country is not connected to the reporting mechanisms of the CEDAW Committee, the convention could still be used by actors as a source of guidance and inspiration as well as a framework from which to start discussing women's rights and gender-related issues. In

¹¹² Iran, Palau, Somalia, Sudan, Tonga, and the United States.

¹¹³ Tønnessen, 2011, p. 26.

¹¹⁴ Tønnessen, 2011, p. 26.

¹¹⁵ Badri, 2006, p. 7.

other words, whichever side is supported in the debate, the CEDAW remains an important legal and, most of all political, reality, which NGOs must relate to in one way or another.

In conjunction with this, the Declaration on the Elimination of Violence Against Women (DEVAW) should be addressed. As opposed to CEDAW, the DEVAW explicitly condemns GBV and labels the practice as a human rights violation.¹¹⁶ It also calls upon states to undertake extensive positive measure to address GBV, and specifies that states “should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”.¹¹⁷ The declaration as such is non-binding but serves as an important source of customary law, which thus also applies in the case of Sudan.

2.5.2 ICCPR, ICESCR, UDHR and the UPR

Even though the CEDAW has not been signed, the two largest and most comprehensive IHRL instruments are both ratified by Sudan – the ICCPR and the ICESCR.¹¹⁸ These conventions outline a vast number of basic human rights, some of which relate directly to gender-equality and non-discrimination, and as an extension GBV.

The ICCPR most notably presents in art 3 that “[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” In its highly influential General Comment no. 28, the Human Rights Committee (HRC) developed this further and put emphasis on inter alia GBV as a human rights concern. The HRC requested information on laws and policies relating to violence against women and on what measures of protection are available to victims of GBV, in order to assess if States Parties are fulfilling their obligations under art 3.¹¹⁹ The topic was addressed by the government of Sudan in its latest Periodic Report, in which was stated on the topic of GBV, that great measures were being undertaken by the government and “women’s organizations” to eradicate traditional harmful practices such as FGM.¹²⁰ The government also described efforts to combat violence against women such as the establishment of the CVAW Unit and adopting the policy on women’s empowerment outlined above.¹²¹ The HRC however expressed great concern

¹¹⁶ DEVAW Art 3.

¹¹⁷ DEVAW Art 4.

¹¹⁸ Both acceded in 1986.

¹¹⁹ HRC General Comment no 28, p. 11.

¹²⁰ CCPR/C/SDN/4, p. 68.

¹²¹ CCPR/C/SDN/4, p. 70.

about the situation of GBV in the country and that legislation on inter alia rape had not been amended in order to ensure adequate protection.¹²²

This sheds light on Sudan's obligations under the ICCPR in relation to GBV and also the shortcomings of the government in meeting them. It also shows clearly that the HRC and the ICCPR open up a forum in which to discuss GBV within Sudan, outside of the CEDAW, especially when taking into account General Comment no 28.

Likewise, the ICESCR also contains important provisions that connect to GBV. Most notably, art 10 – the right to protection of the family – and art 12 – the right to the highest standard attainable of physical and mental health. The connected treaty body, the Committee on Economic, Social and Cultural Rights (ESC Committee), deals with different forms of GBV within the reporting mechanism. In the latest Concluding Observations, the ESC Committee inter alia expressed concern about the discrepancy between constitutionally guaranteed rights and freedoms and other legal provisions and customary practice within Sudan, noting in particular how this affects women's status and treatment.¹²³ The ESC Committee also expressed concern about the Public Order Act and how it was enforced in relation to women's clothing, through flagellation or lashing.¹²⁴

In close connection with the ICCPR and ICESCR, we need also to address the Universal Declaration of Human Rights (UDHR) – the predecessor and root of both conventions. UDHR is a declaration and thereby non-binding, however it is widely influential on the international arena as a source of customary law. It also contains provisions that relate to GBV. Art 2 of the UDHR ensures that the enjoyment of the rights and freedoms set forth shall be enjoyed without discrimination based on inter alia sex. Art 3 enshrines the right to life, liberty and security of person, whereas Art 5 prohibits torture and cruel, inhuman or degrading treatment or punishment. Taken in conjunction, these articles thus entail a responsibility for the State to protect women from acts of structurally discriminatory gender-based violence that threaten women's life, liberty or security of person, or that amount to torture or cruel, inhuman or degrading treatment.

¹²² CCPR/C/SDN/CO/4, p. 12.

¹²³ E/C.12/1/Add.48, p. 20, 1 September 2000.

¹²⁴ E/C.12/1/Add.48, p. 24, 1 September 2000.

Finally, the latest Universal Periodic Review (UPR) conducted in 2011 concluded useful recommendations for Sudan in relation to GBV and the work of NGOs, which should also be addressed.¹²⁵ These recommendations included for Sudan to within the near future ratify those of the main IHRL instruments to which they are not yet States Parties, there among the CEDAW.¹²⁶ It was also recommended that Sudan oversee the 2010 National Security Act and the authority of NISS and render them in line with relevant IHRL, such as the ICCPR.¹²⁷ Sudan was also recommended to amend laws relating to women's situation, such as those concerning marriage, divorce, property rights and indecency.¹²⁸ Sudan was recommended to continue and intensify efforts made to protect and promote women's rights in Sudan.¹²⁹ Finally, it was recommended that the state continue or further their measures to combat GBV, some states placing particular emphasis on FGM.¹³⁰ These recommendations can serve as important guidelines and as an advocacy tool for actors working with GBV in Khartoum.

2.5.3 ACHPR and the Maputo Protocol

Besides these international instruments, the IHRL landscape of GBV in Khartoum includes two important regional instruments. The ACHPR was ratified by Sudan in 1986¹³¹ and is the most comprehensive African human rights treaty. If the above-mentioned international instruments are criticized for being too Western, then the ACHPR is drafted specifically to address the African context, incorporating the States Parties' perspectives on human rights and aiming at dealing with issues that are particularly relevant to the African continent.¹³²

The ACHPR prohibits discrimination based on *inter alia* sex, according to Art 2, and demands equality before the law, according to Art 3. The Charter also includes specific protection of women under Art 18 (3), which stipulates that:

Art 18 (3) – The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

¹²⁵ Human Rights Council, A/HRC/18/16.

¹²⁶ UPR recommendations p. 83.1; 83.5-14.

¹²⁷ UPR recommendations p. 83.20-27.

¹²⁸ UPR recommendations p. 83.30-33.

¹²⁹ UPR recommendations p. 83.62; 83.77-84.

¹³⁰ UPR recommendations p. 83.103-109.

¹³¹ Signed in 1982.

¹³² Banda, 2005, p. 47.

Furthermore, Arts 4-6, ensure the right to life, freedom from torture or other inhuman and degrading treatment, as well as the security of person. Taken in conjunction with the non-discrimination clause, these regulations can effectively be used to forward work that addresses structural GBV – the States Parties have an obligation to ensure these rights, regardless of the victim’s gender.

The ACHPR also established the African Commission on Human and People’s Rights (hereinafter: the African Commission), through Arts. 30-46. The African Commission monitors the implementation of the ACHPR, which entails inter alia receiving communications on alleged human rights violations as well as regular reports from the States Parties and issuing statements on the situation of human rights within the member states.¹³³

The last reporting session of Sudan before the African Commission was held in 2012. In the Concluding Observations, the Commission expressed concern over two matters that relate directly to NGOs working with GBV – the 2010 National Security Act and the overall issue of women’s rights. In relation to the National Security Act, they expressed concern over some of the operations of NISS, the immunity of NISS members to civil and criminal procedures, as well as the lack of efforts to deal with police and security agents’ excesses.¹³⁴ In relation to women’s rights, the Commission noted inter alia the absence of disaggregated data that could show patterns in terms of violence against women. It also regretted that the CEDAW has not yet been ratified, and that violence against women, including rape and FGM, persisted as a practice.¹³⁵ The Commission also noted that a number of Sudanese laws allowed for corporal punishment that amount to cruel, inhuman and degrading treatment, such as stoning, amputation, cross-amputation and whipping, and that these were carried out in particular against marginalized women.¹³⁶

In addition to these observations the Special Rapporteur on Human Rights Defenders in Africa, Commissioner Reine-Alapini Gansou, has issued statements about the situation in Sudan. In June 2014, the Commissioner issued a statement expressing “grave concern about

¹³³ ACHPR, Arts 45-54.

¹³⁴ ACHPR, Concluding Observations and Recommendations on the 4 th and 5th Periodic Report of the Republic of Sudan, p. 31-33.

¹³⁵ ACHPR, Concluding Observations and Recommendations on the 4 th and 5th Periodic Report of the Republic of Sudan, p. 34-39.

¹³⁶ ACHPR, Concluding Observations and Recommendations on the 4 th and 5th Periodic Report of the Republic of Sudan, p. 40.

reports of restrictions on freedom of expression and association, thereby affecting the work of human rights defenders in Sudan.”¹³⁷ The statement followed the closure of the above-mentioned NGO Salmmah Women’s Center, a prominent women’s rights organization that was active in Khartoum. The Commissioner reminded Sudan of their obligations under the ACHPR and other international instruments, calling on the authorities to annul the decision of closure.¹³⁸ Although the center remains dissolved, the Commissioner’s statement gives NGOs an important tool of advocacy, and a clear indication of where the ACHPR stand on the issue.

Also highly noteworthy, is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter: the Maputo Protocol), which was signed by Sudan in 2008 but has not been ratified. The Maputo Protocol focuses on women’s rights and, like the ACHPR, aims at incorporating issues of regional concern.

As opposed to CEDAW, the Maputo Protocol specifically addresses violence against women. Art 4 of the Maputo Protocol calls upon States Parties to take far-reaching positive measures to combat GBV, including to “enact and enforce laws to prohibit all forms of violence against women”, “identify the causes and consequences of violence against women”, “actively promote peace education through curricula and social communication” and “establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women”.¹³⁹ The Maputo Protocol is as such a comprehensive act when it comes to GBV and places significant obligations on the States Parties.

Legally speaking, the non-ratification of the Maputo Protocol means that the binding obligations of Sudan are highly limited, if existent at all. According to art 18 of the Vienna Convention on the Law of Treaties (VCLT), states that have signed but not ratified a treaty are obliged to “refrain from acts which would defeat the object and purpose of a treaty”. This is obviously not much of a legal obligation. However the signing of the Maputo Protocol does open up a much wider possibility of lobbying and discussion surrounding it, making it a potentially powerful political and advocacy tool.

¹³⁷ ACHPR, “Press Release on the Closure of the Salmmah Women’s Center in Khartoum, Sudan”, 2014.

¹³⁸ ACHPR, “Press Release on the Closure of the Salmmah Women’s Center in Khartoum, Sudan”, 2014.

¹³⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art.4.

2.5.4 The ICGLR Conference

Another important regional body includes International Conference on the Great Lakes Region (ICGLR) of which Sudan is also a member.¹⁴⁰ The most important document in relation to GBV, is the 2008 Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region (hereinafter: the Goma Declaration). The Goma Declarataion is not legally binding and contains mere recommendations for the Member States, however the recommendations are highly detailed in their character and can therefore present useful tools of guidance and advocacy. It also addresses issues specific to the region, by emphasizing the threat that GBV presents in relation to regional and national peace and security, as well as the increase of HIV/AIDS.¹⁴¹

2.5.5 UN Security Council Resolution 1325

The IHRL instrument most used by the Sudanese government in relation to GBV at the present time is arguably the UN Security Council Resolution 1325 (UNSCR 1325). The 2007 National Strategy for Women's Empowerment, was for instance adopted by the government in order to uphold Sudan's obligations under this resolution.¹⁴² The reason that UNSCR 1325 has become so popular to work with may be that it has been advocated for by the International Conference on the Great Lakes Region (ICGLR).¹⁴³ UNSCR 1325 was adopted by the Security Council in 2000 and addresses gender equality and women's empowerment, particularly in relation to peace and security. Therefore, it particularly addresses gender-based violence in conflict, calling on:

“[...] all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;”¹⁴⁴

It is interesting to note that the Sudanese government takes such interest in UNSCR 1325, when sexual violence in conflict is arguably what has sparked most of the controversy surrounding GBV. It can be seen however as a welcome step toward addressing the issue, in line with the United Nations priorities and international law.

¹⁴⁰ ICGLR, “About ICGL – Background”.

¹⁴¹ UN Women, Badri et.al., 2015, p. 27.

¹⁴² UN Women, Badri et. al., 2015, p. 27.

¹⁴³ Interview 4, 2015-04-14, Khartoum.

¹⁴⁴ United Nations Security Council, Resolution 1325, p. 10.

2.5.6 Other relevant conventions

Other relevant conventions in addressing GBV include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

The CAT strictly prohibits “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” for reason of inter alia obtaining information, but also “for any reason based on discrimination of any kind”.¹⁴⁵ To fall under the convention, the pain or suffering must be “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.¹⁴⁶ In General Comment no. 2, the Committee against Torture (hereinafter: CAT Committee) clarified that acts committed by private individuals may fall under the CAT under certain circumstances. The CAT Committee emphasized here that States Parties have an obligation to exercise due diligence to “intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non- State actors to commit acts impermissible under the Convention with impunity”.¹⁴⁷ This entails that GBV which meets the criteria and amounts to torture or other cruel, inhuman or degrading treatments or punishment, and is committed or condoned on the basis of gender discrimination, falls under the scope of the CAT. This is the case whether the acts have been committed by State actors or they have been committed by non-State actors with the States Parties failing to exercise due diligence. The CAT has been signed but not ratified by Sudan, meaning once again that the legal obligations involved are highly limited.¹⁴⁸ However it can still be used as a tool of advocacy, education and guidance.

The CRC contains relevant provisions concerning violence against the girl child. Art 2 of the convention ensures the enjoyment of the rights and freedoms set forth free from discrimination based on inter alia sex. The CRC also calls upon States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”, according to Art 19, and

¹⁴⁵ Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 1.

¹⁴⁶ Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 1.

¹⁴⁷ Committee against Torture, General Comment no. 2, p. 18.

¹⁴⁸ Sudan signed the CAT in 1986.

to protect the child from “all forms of sexual exploitation and sexual abuse”, Art 34. It also ensures the “freedom from torture or other cruel, inhuman or degrading treatment or punishment” according to Art 37. All of these regulations relate directly to violence against girls, and prohibit inter alia domestic violence, FGM, child marriage and such abuse that amounts to torture. Sudan is one of the States Parties to the CRC, since it acceded in 1990 and is thus legally bound by its regulations. The CRC is connected to the treaty body Committee on the Rights of the Child (CRC Committee) which receives regular reports from States Parties, and thus also presents an opportunity for NGOs to submit shadow reports highlighting the situation of GBV in Sudan.

2.5.7 Other international policy instruments

Finally, there are a number of other policy instruments that can be related to GBV in Sudan. First and foremost the 1995 Beijing Platform, which first addressed GBV as a human rights issue, forms an important part of customary law, although it is not binding as such. The platform calls upon states to take positive measures to “prevent and eliminate violence against women”, and includes specified strategic objectives.¹⁴⁹

For the past 15 years the Millennium Development Goals (MDGs) have formed an important part of the international policy landscape as well. GBV relates to a number of MDGs. The third goal is to “Promote gender equality and empower women” – although it does not explicitly target GBV, doing so can be seen as an important and integral part of achieving greater equality and empowerment for women. Furthermore, Goal 4 is to reduce child mortality, which directly relates to issues such as domestic violence against girls, child marriage and FGM. Finally, the fifth MDG is to improve maternal health, which ties in with issues of reproductive health rights and the associated freedom from violence.¹⁵⁰

As of 2015, the MDGs will reach a finish, and will instead be replaced by the Post-2015 Sustainable Development Agenda and a new list of Sustainable Development Goals (SDGs) to be adopted at the Sustainable Development Summit in September 2015.¹⁵¹ The proposed SDGs include to “Achieve gender equality and empower all women and girls”,¹⁵² which will also be related directly to forwarding the addressing of GBV.

¹⁴⁹ Beijing Platform for Action, 1995.

¹⁵⁰ Millennium Development Goals, 2000.

¹⁵¹ For more information on this, see United Nations Sustainable Development Summit, 2015.

¹⁵² UNDP, “Post-2015 Sustainable Development Agenda”.

3 Theoretical framework – postcolonialism, feminism and the politicization of GBV

The previous section outlined the factual basis of working against GBV in Khartoum, now we turn instead to the theoretical lenses that will help in analyzing and understanding the work of NGOs in this field. The theoretical framework that encompasses this thesis draws upon postcolonialism and feminism in order to understand the politicization of GBV in a given context. Both of these theoretical perspectives build on an understanding of power structures – postcolonial and patriarchal structures respectively – that affect society and its members in a multitude of ways. This shared assumption of existing power structures encourage, and indeed often compel, the parallel reading of feminist and postcolonial critique. Intersectionality between these perspectives and the connected power structures is thus one important way of reading the politicization of GBV in Sudan, a country much affected both by its postcolonial identity and by a strongly patriarchal social structure. Below, I will outline first how postcolonial theory relates to the application of IHRL, then how patriarchal structures and politicization of GBV can be explained in general terms, and finally how the intersection between these two power structures come together in the case of Khartoum to create a politicization of GBV to such a degree that the issue may be rendered difficult to work with for the actors involved.

3.1 Postcolonial structures and the universal versus the local

In order to understand the usage of IHRL by NGOs in Sudan it is imperative to view the issue in its postcolonial context. Postcolonial theory builds on the understanding that the remnants (or rather continuation) of colonial power structures continue to affect global inequality to this day, and can be used as a way to explain contemporary power dynamics.¹⁵³ Off of this basis, postcolonialism is a broad term and theory. The part that is used in this study focuses on the critique of the idea of development and IHRL, as one single, universally applicable path – the thinking is that this path has in fact been set out by Western powers and enforced upon the non-Western ones.¹⁵⁴ As we have seen, Sudan has a long history of foreign rule, ending in 1956 when the British rule ended and Sudan became independent.¹⁵⁵ Viewing the modern context of Sudan from a postcolonial perspective, means seeing how this history

¹⁵³ McEwan, 2008, p. 124-128.

¹⁵⁴ McEwan, 2008, p. 126

¹⁵⁵ Badri, 2006, p. 2-3; Holt & Daly, 2011, p. 115-160.

continues to affect the nation – and also how foreign, mostly Western, influence continues to be exerted on the nation as part of an unequal global power balance.

Postcolonial critique of IHRL can then observe that this body of law is one mainly originating from the West and exerting an unbalanced political power and influence on developing, non-Western countries such as Sudan.¹⁵⁶ Merry refers to “the space of transnational modernity” as a way of describing the space and culture within which human rights processes take place. This space is one influenced heavily by the West and also by cosmopolitan elites.¹⁵⁷ When studying the translation of human rights into local context and the vernacular, Merry states that:

“The localization of human rights is part of the vastly unequal global distribution of power and resources that channels how ideas develop in global settings and are picked up or rejected in local places.”¹⁵⁸

Indeed, the drafting of IHRL instruments to a great extent takes place within the world’s (mostly Western) power centres and are enforced globally, that is to say also in former colonies still struggling from the effects of global inequality. Although the case can be made that IHRL treaties within the UN are negotiated with all member states, it is difficult to escape the global inequality that these negotiations take place within.¹⁵⁹

As we saw above, the argument against Western influence through human rights, is one of the main objections by the Sudanese government and parts of civil society toward the signing of the CEDAW.¹⁶⁰ The debate on CEDAW can thus be seen as a reaction to these postcolonial power structures, and as Sudan’s resistance toward them. In conjunction with this stands the indictment of Omar al-Bashir by the ICC, a body which is seen by many as yet another forum for exerting Western power over developing countries, through albeit not IHRL but international law all the same.¹⁶¹

¹⁵⁶ McEwan, 2008, p. 124-128; Mingst & Arreguin-Toft, 2011, p. 226-228; Merry, 2006, p. 100-102; 225-231.

¹⁵⁷ Merry, 2006, p. 100.

¹⁵⁸ Merry, 2006, p. 4.

¹⁵⁹ See e.g. Merry, 2006, p. 225-230.

¹⁶⁰ Tønnessen, 2011, p. 26..

¹⁶¹ See e.g. The Telegraph “The International Criminal Court is Hurting Africa”, 2012; Al Jazeera, “The International Court’s Africa problem”, 2013.

The postcolonial structures in this case, build toward a tangible tension between Sudan and many international actors. The UN Special Rapporteur on Violence against Women, also noted with regret the tension between Sudanese authorities and international actors when conducting her country mission to Sudan in May 2015, stating that:

“The tension, lack of trust, and the conflation of issues, as regards the international community in general, and the UN in particular, was reflected in dialogues with some interlocutors. This unhealthy situation does not bode well for the people who live in Sudan, and who depend on both the government and the international community, for the effective promotion and protection of civil, political, economic, social, cultural and developmental rights. I hereby encourage the Government of Sudan and all stakeholders to find common ground in constructively engaging and addressing the tensions that exist, in the interests of the people living in Sudan.”¹⁶²

The postcolonial structures in place and the reluctance of Sudan to adhere to IHRL or the decisions by the ICC should also be seen in connection with the debate on the universal versus the local. It is clear that there is a certain tension between the universality of IHRL and more local solutions to social problems. As Merry points out:

“Local communities often conceive of social justice in quite different terms from human rights activists [...].”¹⁶³

At the basis of this disjuncture between the universal and the local, is the fact that IHRL is created as a universal set of regulations that should apply equally to each context, without exception. More local concepts of justice tend to instead see the specific context of the community in which the regulations will be implemented and take into consideration the particular social and political situation at hand.¹⁶⁴ The question is whether one set of regulations can really fit every community and can serve justice regardless of the local context? IHRL is built on the idea that it can. This can become problematic from a postcolonial perspective, when one takes into account where and how IHRL standards are created, namely within the globally unequal distribution of power as described above.¹⁶⁵

¹⁶² UN Special Rapporteur on Violence Against Women Statement, Khartoum, 2015.

¹⁶³ Merry, 2006, p. 1.

¹⁶⁴ Merry, 2006, p. 104.

¹⁶⁵ Merry, 2006, p. 104; Osanloo, 2009, p. 2.

Arguably, human rights in this context come to symbolize more than the actual enjoyment of rights. As Osanloo summarizes, “human rights are indicative of how civilized a society is in the view of international groups.”¹⁶⁶ This in turn echoes the division between civilized and uncivilized societies as a remnant of colonial structures and discourse, where the adoption and adherence with IHRL, a product of the “civilized” West, becomes indicative of a society’s progress.

To sum up, regardless of one’s take on the universality of IHRL, it is imperative to recognize the complexity of international relations and postcolonial structures that affect the application of IHRL in non-western societies such as Sudan and the translation of universal rights to a local setting. It is the view of the author that IHRL is – and most of all has the potential of being – a highly positive and indeed necessary agent of change and empowerment. However, when discussing its translation into a Sudanese context we are tapping into a much wider debate on globally unequal power distribution, postcolonial structures and sovereignty. It is essential that the reader, as well as the actors working with IHRL in the Sudanese context, are aware of this. Also, as we will see below, these structures and the strong resistance toward them build toward the politicization of a number of connected issues – there among GBV.

3.2 Feminist theory and politicization

In addition to using postcolonial theory, I find it important to analyze the presence and methods of addressing GBV in Sudan from a theoretical feminist perspective. Feminist theory recognizes GBV as one of the ultimate expressions of patriarchy – violence directed primarily toward women as an expression of their inferior social position, and often as a means to ensure the status quo of the patriarchal power structure.¹⁶⁷ Also, as pointed out by Ibnouf, the continuation of GBV is closely associated with women relying on men for financial support and ultimately their survival. Women who are not financially independent (as they often are not in strongly patriarchal societies) tend to be more at risk of GBV.¹⁶⁸

As we have seen while examining the Sudanese laws on GBV in Section 2, Sudan is organized as a particularly patriarchal society, by for instance placing women under guardianship of a male relative, and also monitoring through law the way women behave and dress.

¹⁶⁶ Osanloo, 2009, p. 196.

¹⁶⁷ Edwards, 2011, p. 143.

¹⁶⁸ UN Women, Ibnouf, 2011, p. 36.

Furthermore, although the exact prevalence of GBV remains unknown, it is thought to be significant. This makes feminist analysis a highly useful tool when looking into the occurrence of GBV in Khartoum.

Feminist thought also gives a valuable insight into the practice of politicization of GBV. Central to most feminist thought and theory is the binary division between the private and the public. This dichotomy illustrates the division of our reality and surroundings into one public (male-dominated) sphere and one private (female-dominated) sphere. The public, male sphere also represents the setting for most political activity, whereas the private sphere, connected to the home and family-related issues, has traditionally been kept outside of the political debate.¹⁶⁹ One of the greatest achievements of feminist movements has been the launching of issues that have previously been kept within the private sphere, to the midst of the public and political debate – i.e. the politicization of women’s issues.¹⁷⁰ This is embodied by one of the most important feminist slogans to date – “The personal is political”.¹⁷¹

These feminist movements are the ones that ensured that a number of “women’s issues” – such as rape, marital rape, abortion and domestic abuse – have found an important place on the political agenda and are subject to debate and legislation, instead of being viewed as “private” or “personal” issues to be resolved within the family. Politicization can thus be, and is, a positive and imperative part of forwarding the addressing of social issues that are particular to women. Without politicization these issues would remain untouched and unspoken of, instead of being lifted into the forefront of political debate.¹⁷²

There is however another side to the politicization of women’s issues – when women’s issues and bodies become so politically controversial that it actually hinders progress in addressing them. This is arguably what has happened in the case of Sudan. In her 2014 article “When rape becomes politics”, Tønnessen describes how the political reality – including the signing of the CPA, the outbreak of armed conflict in Darfur and the indictment of President Al Bashir based on charges relating to sexual violence in armed conflict – have

¹⁶⁹ Crawley, 2001, p. 18.

¹⁷⁰ Harrington, 2010, p. 7.

¹⁷¹ Hanisch, 1969.

¹⁷² Harrington, 2010, p. 130.

all led to the politicization of rape.¹⁷³ In this context she is speaking of this negative form of politicization, what I would refer to as *over-politicization* of the topic. As she describes the situation:

“The indictment has proved to be a double-edged sword. It made it possible to put sexual violence, beyond the Darfur conflict, on the political agenda and stirred public debate on the issue for the first time in Sudanese history. At the same time it made activism within this area more difficult because calls for reform are framed as a direct threat to the current government. The room for maneuver is small, and activists operate under severe constraints.”¹⁷⁴

We will come back to this analysis of the Sudanese context toward the end of the thesis, where we can draw conclusions based on the interviews conducted with NGOs in Khartoum. As the reader will see in the following sections, Tønnessen’s description of the over-politicization of rape, resonates perfectly with the interview findings of the present study – I would however go one step further in one respect. Based on the findings of this study, I will suggest that the politicization has in fact seen a spill-over effect from rape to include all forms of GBV – leaving even forms such as domestic violence over-politicized.

3.3 The intersection of feminist and postcolonial theory

The question then remains, why rape or GBV becomes *over-politicized*, and why this has happened in the case of Sudan. This relates to an important question that Lisa Fishbayn Joffe asks in her work “Gender, religion & family law”, namely:

“Why are women’s equality claims so often at the heart of multicultural conflicts?”¹⁷⁵

In fact it does seem that women’s issues are particularly prone to becoming heated and controversial, a phenomenon of which Sudan provides yet another case study. As Kapur writes:

“Gender equality remains a site of intense political contestation in which right wing religious and fundamentalist forces endeavor to claim the terrain as their own. [...] the

¹⁷³ Tønnessen, 2014.

¹⁷⁴ Tønnessen, 2014, p. 151.

¹⁷⁵ Fishbayn Joffe, 2013, p. xiii.

right to equality is a discursive terrain where competing understandings about gender and culture are produced.”¹⁷⁶

In response to Fishbayn Joffe’s question, I argue that the strong patriarchal structures and ensuing position of women and women’s issues in Sudan, ties in with the postcolonial structures and ensuing political debate outlined above to form a heated intersection where politicization of GBV becomes a highly tangible and at times obstructive element in addressing the violence at hand. It is at the intersection of these two structures that we can see one of the main reasons that women’s issues are so readily made out to be controversial, and why claims of cultural sensitivity and relativism seem to more often fend off granting “universal” women’s rights than they do many other human rights.

I argue that at the heart of the controversy of postcolonial, Western domination lies, inter alia, an issue of culture and religion. Western, cultural hegemony is criticized, as is the lack of respect for other cultures and religions, such as Islam. In Sudan this is highly noticeable in the debate, where Islam and Sudanese values are put forth as the morally superior alternatives to Western influences.¹⁷⁷ I argue that because of the religious and cultural dimension, this battle between the Western, postcolonial powers and the domestic (in this case Sudanese and Islamic) one is often carried out in relation to the *private* sphere. This is due to the battle’s interest in values, religion and family structures. With the private sphere being one so closely associated to women and femininity, this raises the controversy of women’s issues in particular.

Fishbayn Joffe adds to this by observing that women tend to a greater extent to be seen as a representation of the community’s identity and culture, often representing tradition and authenticity whereas men represent growth and modernization.¹⁷⁸ Perhaps particularly in Islamic societies, this tends to have the effect of placing the honor of the family or community on the representation of its women.¹⁷⁹

Having said this, the over-politicization of GBV is in no way a phenomenon that arises solely within the Sudanese, or other non-Western, contexts. On the contrary, it is often a response to Western rhetoric and political actions. As Osanloo summarizes:

¹⁷⁶ Kapur, 2012, p. 265-266.

¹⁷⁷ Tønnessen, 2011, p. 26.

¹⁷⁸ Fishbayn Joffe, 2013, p. xv.

¹⁷⁹ Fishbayn Joffe, 2013, p. xv.

“Historically, in political debates aimed at justifying imperialism or struggling against colonial domination, women’s bodies have served as the grounds of these struggles.”¹⁸⁰

I would argue that the current debate continues this same tradition. In Section 3.1, I touched upon the topic of human rights as a broader political issue with roots in international relations and structures of postcolonialism. This is arguably clearer than ever when it comes to women’s rights. Osanloo points for instance to the writing of David Frum and Richard Perle, both closely connected to the US Bush administration, where they explore women’s rights as an important step in “winning the war on terror”. Defending and exporting women’s rights is illustrated as means of winning a war on “Islamic terrorists”.¹⁸¹ In a later speech Frum further stated that “One of the central ideological struggles we have is the role of women.”¹⁸² This is a clear example of how broader international relations and conflicts between nations are translated into the issue of women’s enjoyment of fundamental rights – where woman’s bodies once again become the battlefield for a war of culture, principles and values.

In Sudan, we see evidence of the politicization based on these postcolonial and patriarchal structures, when for instance the CEDAW becomes a heated political issue quickly tying into issues of international relations and identity. It is interesting to note however that the ICCPR and ICESCR have both been acceded (albeit not without a sturdy debate), backing the observation that women’s rights are more prone to being politicized than other human rights. In the following, we will see more of this evidence through the work of NGOs that address GBV in Khartoum.

Throughout this section we have touched upon postcolonial critique of IHRL, as well as the politicization of GBV – finishing in how the combination of patriarchal and postcolonial structures can result in the over-politicization of GBV and IHRL. With this theoretical background and understanding, we turn now to the interviews conducted with NGOs and UN representatives in Khartoum, to see how these issues play out in their work.

¹⁸⁰ Osanloo, 2009, p. 199.

¹⁸¹ Osanloo, 2009, p. 201-202.

¹⁸² Osanloo, 2009, p. 202.

4 Findings of the interviews – a thematic analysis

For the purpose of this thesis, as described in Section 1.4, in-depth interviews have been conducted with seven NGO representatives and three UN representatives. The main findings of these interviews are presented below, structured in three thematic parts. The first part (Section 4.1) deals with the extent to which NGOs use IHRL in their work to combat GBV. The second (Section 4.2) presents which IHRL instruments were found to be the most common and best adept to work with, and what patterns can be spotted. Finally the third section (4.3) addresses what the NGOs saw as the best tools to use, whether IHRL or others, when working on ground level against GBV.

4.1 The usage of IHRL by NGOs

The general outlook that the interviewed NGOs showed on IHRL is diverse, but can roughly speaking be split into three groups – the organizations that work explicitly with IHRL and apply a rights-based approach, the ones that use IHRL as an entryway to speak about rights and empowerment, and the ones that do not deal with IHRL at all.

Starting with the organizations that do not relate to IHRL in their work, only one of the organizations that I interviewed expressed this view so strongly that it was clear that they had no direct interaction with IHRL.¹⁸³ The representative of this organization expressed that international law is something dealt with by the government. As an NGO, she suggested, their work relates instead to the framework set up by the government, meaning that any connection with international law that the organization has is at most indirect and through government decisions or policy.¹⁸⁴ It seems however that this is not a unique case, as the observation was echoed during an interview with a UN staff member that works closely with NGOs and women's issues. She expressed that many NGOs in the field of GBV view international law as "the government's thing", and not something for the NGOs themselves to interact with.¹⁸⁵ The fact that some NGOs work with GBV but still see IHRL as something outside of their scope and a topic dealt with exclusively by the government, is intimately linked with both capacity gaps within NGOs and the politicization of GBV. Both of these issues will be returned to and discussed below.

¹⁸³ Interview 1, 2015-03-30, Khartoum.

¹⁸⁴ Interview 1, 2015-03-30, Khartoum.

¹⁸⁵ Interview 4, 2015-04-14, Khartoum.

Two of the organizations interviewed stated that they do work with IHRL but upon discussion showed that the usage was of a rather shallow nature, rarely extending beyond quoting conventions as an entryway to speaking about rights and empowerment.¹⁸⁶ These NGOs tended to have IHRL conventions included in presentations and educational material, but could not elaborate on the connection between these conventions and concrete cases of GBV in Khartoum. One NGO worker for instance, when asked which conventions he found useful responded “the basic ones”, without being able to name which these were or how they were used.¹⁸⁷ A UN staff member named this as a common capacity gap among NGOs, explaining that many know *of* the main IHRL conventions and their wording, but have a limited understanding of how to implement them and apply the legal content to concrete cases.¹⁸⁸

These NGOs also tended to not differentiate much between the different conventions or their actual legal applicability in Sudan, seeing as the usefulness of the conventions was derived not from their legal status but simply from their wording. The conventions were however used as an entryway to talk about rights and violations. The NGOs tended to quote conventions such as the ICCPR stating that they guaranteed equality between men and women, in order to then proceed to talking about equality and GBV in more general, non-legal terms. Although the rest of the education or presentation did not relate to the convention or the legality of it, the IHRL instrument in question still provided a source of legitimacy and an entryway to putting GBV and other issues in relation to human rights and violations of these. This resonates with the usage of IHRL that Merry discusses in relation to the universality of human rights,

“When these activists challenge the acceptability of domestic violence, for example, they find the transnational prohibition that rejects all cultural justifications very helpful.”¹⁸⁹

This is a way of using IHRL that relies on the instruments to lay down principles that may otherwise be contested. Although this is also a highly useful application of IHRL instruments, the ability to conduct a deeper analysis of IHRL and its applicability may benefit the organizations’ work even further. Much like the organizations that do not apply IHRL at all, the reason behind not delving into a deeper analysis and contextualization of IHRL is often

¹⁸⁶ Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum.

¹⁸⁷ Interview 8, 2015-04-27, Khartoum.

¹⁸⁸ Interview 4, 2015-04-14, Khartoum.

¹⁸⁹ Merry, 2006, p. 104.

twofold. Firstly, there is a knowledge gap within the NGOs, and secondly there is the sentiment that discussion on and contextualization of IHRL is within the government's sphere of work and capacity rather than the civil society's.

Four of the interviewed NGOs label themselves as human rights or women's rights organizations and employ several human rights instruments in their work.¹⁹⁰ They view human rights law as one of the primary tools in addressing GBV. As one NGO worker expressed when asked if IHRL was useful for local NGOs in their work: "Human rights law is *especially* useful for us."¹⁹¹ These organizations go beyond quoting articles of conventions, and structure their work within a human rights framework.¹⁹² They showed an analysis of GBV that included a clear understanding of IHRL and how it relates to individual cases. These organizations also tended to a greater extent to discuss the *structural* nature of discrimination and GBV during the interviews.¹⁹³

As for how the NGOs use IHRL, it is also interesting to note that only one of the interviewed organizations stated that they draft shadow reports to treaty bodies concerning GBV in Sudan.¹⁹⁴ The shadow reports that this organization drafted had been in relation to violence against girls and submitted to the CRC.¹⁹⁵ Girls' rights are arguably less controversial than adult women's rights in the Sudanese context. Furthermore, the CRC is acceded in its entirety making Sudan legally bound to its provisions. Even so, the NGO worker interviewed explained that the shadow report was drafted with many other organizations, so as to minimize the security risk involved.¹⁹⁶ The same person also regretted that so few NGOs submit reports about GBV in Sudan, and expressed the ambition to conduct capacity building for other NGOs so as to increase the number of shadow reports written.¹⁹⁷ As with many other issues described here, the low rate of submission of shadow reports seems to be a consequence of capacity gaps within NGOs but also of organizations wanting to mitigate security risks in the midst of a politicized climate.

¹⁹⁰ Interview 5, 2015-04-16, Khartoum; Interview 6, 2015-04-20, Khartoum; Interview 7, 2015-04-25, Khartoum; Interview 10, 2015-05-28, Khartoum.

¹⁹¹ Interview 5, 2015-04-16, Khartoum.

¹⁹² Interview 5, 2015-04-16, Khartoum.

¹⁹³ Interview 5, 2015-04-16, Khartoum.

¹⁹⁴ Interview 10, 2015-05-28, Khartoum.

¹⁹⁵ Interview 10, 2015-05-28, Khartoum.

¹⁹⁶ Interview 10, 2015-05-28, Khartoum.

¹⁹⁷ Interview 10, 2015-05-28, Khartoum.

4.1.1 Usage depends on the activities of the NGOs

During the interviews, it was shown that the NGOs' usage of IHRL depends partly on what activities they carry out in relation to GBV. As mentioned above, the activities of NGOs addressing GBV in Khartoum can be summarized in three categories:

- lobbying and advocacy;
- service to victims;
- and awareness and education.

The usage of IHRL by the interviewed organizations correlates with which of these activities they engage in.

Most of the interviewed organizations that work with advocacy toward government stated that they view IHRL as an important advocacy tool.¹⁹⁸ They make use of signed treaties, such as the CRC and the ICCPR, and advocate that domestic legislation be harmonized with these treaties. Although this was not true for all NGOs dealing with advocacy – some relying instead on the domestic Constitution as a legal advocacy tool as will be further explored below¹⁹⁹ – a majority of them viewed IHRL instruments as a crucial component in this work.

The interviewed organizations that focus instead on service toward victims of violence tended to use IHRL to a lesser extent.²⁰⁰ There may be a number of reasons behind this, two of which came up during the interviews. One, which will be further developed below, is that organizations may not have a full understanding of how IHRL relates to individual cases.²⁰¹ Another reason may be that organizations dealing solely with service to victims seek to stay out of the politicization of the topic and the associated risks – choosing then to not relate to IHRL for the same reason that they do not work with advocacy.²⁰²

When it comes to those working with education and sensitization, the organizations were split. Whereas some viewed IHRL as an integrate part of their trainings and educations on

¹⁹⁸ Interview 5, 2015-04-16, Khartoum; Interview 10, 2015-05-28, Khartoum; Interview 6, 2015-04-20; Interview 7, 2015-04-25.

¹⁹⁹ Interview 8, 2015-04-27, Khartoum.

²⁰⁰ Interview 1, 2015-03-30, Khartoum.

²⁰¹ Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum

²⁰² Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum.

GBV,²⁰³ others reported that they focus on other sources and sets of information during the sessions.²⁰⁴ This is a natural consequence of the fact that nearly every interviewed NGO deals with awareness and education in some way. The usage of IHRL among the interviewed NGOs thus seems to depend more on the interaction with service or advocacy respectively, than that of awareness and education.

Interesting to note is that organizations that work with advocacy and employ IHRL in this area, also reported to a higher degree that they use IHRL in their other areas of their work.²⁰⁵ This can be viewed as a spillover of knowledge, where organizations that engage with IHRL in relation to advocacy, use their deepened understanding of the body of law also when working with sensitization and service. For instance, organizations that employ an approach based on a deeper understanding of human rights, also mentioned that they use IHRL when documenting violations. In this instance IHRL instruments were able to offer guidance as to what violations to document and how to structure claims.²⁰⁶ They also reported using IHRL instruments and mechanisms in teaching people how to make claims at international and regional courts during trainings and educations.²⁰⁷ This suggests that engaging NGOs in advocacy and IHRL capacity building can have a highly positive effect on all parts of NGOs' operations by deepening their understanding of the available instruments.

4.1.2 Usage correlates with the NGOs' relationship to government

Throughout the interviews, it became apparent that there is an undeniable correlation between the organizations' level of usage of IHRL and their relationship with the government. The NGOs that stated that they do work with IHRL also tended to be more critical of the government and report more state interference in their own work.²⁰⁸ The NGOs however that tend to view IHRL as a governmental issue and instead rely on domestic law or other tools in their work, described no strained relationship with the government. One NGO worker for instance described that the reason that the organization does not work with the CEDAW is that they are "very fortunate to have such good contact with

²⁰³ Interview 5, 2015-04-16, Khartoum; Interview 7, 2015-04-25, Khartoum.

²⁰⁴ Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 10, 2015-05-28, Khartoum.

²⁰⁵ Interview 5, 2015-04-16, Khartoum; Interview 7, 2015-04-25, Khartoum; Interview 6, 2015-04-20, Khartoum.

²⁰⁶ Interview 7, 2015-04-25, Khartoum.

²⁰⁷ Interview 7, 2015-04-25, Khartoum.

²⁰⁸ Interview 5, 2015-04-16, Khartoum; Interview 7, 2015-04-25, Khartoum; Interview 10, 2015-05-28, Khartoum.

parliamentarians”, implying that working with the controversial CEDAW would jeopardize this relationship.²⁰⁹ Another NGO worker expressed that, GBV being a sensitive issue in Sudan, you have to try hard to find a way to work with it.²¹⁰ For many NGOs the “way to work with it” seems to involve limited contact with IHRL, or at least limiting this contact to referencing certain articles as an entryway to speak more generally about rights.

One UN staff member pointed out that there is a large gap in communication between NGOs and the government, stating that “they do not work *together*”.²¹¹ On this note, UN Women is trying to increase and facilitate contact between the two actors through forums and meetings. One NGO worker also regretted the strained relationship between NGOs and government and the suspicion that has built between the two, emphasizing how important it is for NGOs to work with government and invite them to various trainings and workshops.²¹²

It is not possible to say from these interviews which comes first – a strained relationship with government or higher usage of IHRL. Critical NGOs seem to be more prone to engage in advocacy and view IHRL as an important tool in this, as we saw above. At the same time, this shows clearer than anything how politicized working with GBV and IHRL has become – being so controversial that NGOs that do engage with these tools are likely to further worsen their relationship with government.

In this respect, NGOs made no difference between different forms of GBV. They deemed it controversial and risky to work with GBV, regardless if the topic was domestic violence, rape or sexual harassment. This shows evidence of what I refer to as the spill-over effect of politicization. The controversy surrounding sexual violence in conflict and the indictment of President Al Bashir, has in fact spilled over to include all work addressing GBV, making it difficult to approach any type of violence without concern about the political meaning of the tools used.²¹³ I argue that the reason the topic has become so politicized as to have a spill-over effect on all forms of GBV can be explained within the theoretical framework outlined in Section 3. What can be witnessed then is the postcolonial politicization of IHRL, with

²⁰⁹ Interview 9, 2015-05-11, Khartoum.

²¹⁰ Interview 8, 2015-04-27, Khartoum.

²¹¹ Interview 4, 2015-04-14, Khartoum.

²¹² Interview 10, 2015-05-28, Khartoum.

²¹³ All conducted interviews 1-10.

particular controversy placed on women's issues due to patriarchal structures – leading to a spill-over effect and rendering the combination of IHRL and GBV over-politicized to such a degree that engaging with it may jeopardize a functional relationship with government.

For civil society to not freely be able to engage with the IHRL instruments that have in fact been signed by Sudan, is of course a severe threat to the development of the country and the combatting of GBV. This will be further addressed below.

4.1.3 Knowledge and capacity gaps

Capacity gaps in relation to IHRL within the interviewed NGOs have been pointed to throughout the above sections. These gaps cover three main issues

- knowledge or understanding of the instruments themselves;
- understanding of how to relate the instruments to ground level work and individual cases;
- and knowledge of how international and regional reporting mechanisms and judiciary systems function.

Though in a clear minority, some NGO workers showed a highly limited knowledge of the IHRL instruments themselves. They could for instance not name any instruments that were relevant to their work or named relevant instruments but showed a limited understanding of what they contained.²¹⁴ Most likely, this is not the case for all workers in any of the interviewed NGOs, but may still be a modest indication that the knowledge of IHRL instruments is not always adequately distributed throughout the NGOs' personnel. One of these NGO workers expressed that there is a limited group that has knowledge regarding IHRL instruments, mainly people working within the government or the UN. It is when in contact with these particular groups that he feels that the NGO he is working for comes in touch with IHRL, not in other areas of their work.²¹⁵

The most commonly observed capacity gap however was a lack of understanding of how to relate the IHRL instruments to ground level work with GBV and to individual cases. As illustrated above, many NGOs showed a rather shallow understanding of the conventions and associated rights. They knew of the conventions in the broadest sense – mentioning for

²¹⁴ Interview 1, 2015-03-30, Khartoum; Interview 8, 2015-04-27, Khartoum.

²¹⁵ Interview 8, 2015-04-27, Khartoum.

instance that the ICCPR stated that there should be equality between men and women – but could not go further than this in their reasoning – by for instance connecting the non-discrimination clause of the ICCPR with security of person and reasoning about state responsibility and the legally binding effect of the convention.²¹⁶ Also, when asked how they related the content of the conventions to their own work, they could not answer.²¹⁷ All in all these interviews suggest that the NGO workers in question know *of* IHRL but not necessarily how to use it or how it relates to working with GBV in the field.

Another clear capacity gap within NGOs is the knowledge required to participate in regional and international conferences and organizations.²¹⁸ The interviewed representatives showed a very limited understanding of and interest in reporting mechanisms within treaty bodies. As described above, only one of the interviewed organizations participates in shadow report writing, and this was solely in relation to the situation of girls in Sudan²¹⁹ (which is arguably less controversial than that of women’s rights). This indicates an important capacity gap among NGOs as to their ability to work practically with IHRL and utilize the available mechanisms.

Another reason as to why NGOs do not use IHRL or complaint mechanisms was suggested by an interviewed NGO representative, namely that NGOs in Sudan have a tendency to think short term. He suggested that this encourages them to take “the easy way out”, which in this instance does not involve using IHRL for advocacy (or other) purposes, but rather relying on domestic legislation and other tools to offer direct service to victims. Similarly, he stated, using complaint mechanisms such as those connected with the ACHPR is thought to cause more trouble than it is worth in the short term.²²⁰ This can be seen as another effect of the politicization of GBV and IHRL, namely that engaging with reporting mechanisms is ruled out because of the negative short term effects due to its controversy. Interestingly enough, the NGO worker suggested that this problem is then further accentuated by donors and international partners that also think short term, and support projects that offer direct relief

²¹⁶ Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

²¹⁷ Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

²¹⁸ Interview 4, 2015-04-14, Khartoum; Interview 8, 2015-04-27, Khartoum; Interview 1, 2015-03-30, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

²¹⁹ Interview 10, 2015-05-28, Khartoum.

²²⁰ Interview 10, 2015-05-28, Khartoum.

rather than sustainable change.²²¹ I leave it to future research to further explore this possibility.

Yet another dimension of the capacity gap problem within NGOs is the instability of Sudanese civil society.²²² The tension between NGOs and the government is very real and leads to concrete consequences, at its most extreme it can lead to entire organizations being shut down as discussed in Section 2. Whatever the reasons behind these decisions, whether justified or not, the reality of it does create a slightly volatile civil society where NGOs close and new ones are created on a regular basis. It is difficult in this context to accumulate a deeper knowledge and understanding of IHRL and its application. As one interviewed representative expressed it, “NGOs are not practically speaking *allowed* to work effectively with these instruments.”²²³

4.2 The most used IHRL instruments

As outlined in Section 2.4, there are a large number of IHRL instruments that NGOs could navigate among when addressing GBV in Khartoum. We have seen the NGOs’ general attitude toward using IHRL in their work, but during the interviews it also became clear that certain instruments were more useful and popular among the NGOs than others.

4.2.1 Regional or international instruments?

One divide that was possible to observe during the interviews was that between regional and international human rights law instruments. There was a clear preference among a number of the NGOs for using regional instruments rather than international ones.

Some of the NGOs expressed, for instance, that they preferred working with the Maputo Protocol rather than the CEDAW. This was not only because of the CEDAW’s politically sensitive nature, but also because the Maputo Protocol explicitly addresses violence against women, whereas the CEDAW only deals with the issue through General Recommendation

²²¹ Interview 10, 2015-05-28, Khartoum.

²²² Interview 6, 2015-04-20, Khartoum.

²²³ Interview 4, 2015-04-14, Khartoum.

no. 19.²²⁴ More importantly however, the Maputo Protocol was seen as more adept to dealing with the specific context of African women and the violence that they face.²²⁵

In relation to the more general human rights instruments, one NGO pointed out the similarity between UDHR and ACHPR, but stated that the main difference is that ACHPR (like the Maputo Protocol) is developed specifically for the African context, which he meant made it better to work with when addressing GBV in Sudan.²²⁶

The NGOs' preference for regional instruments is interesting in a number of ways. Firstly, it can encourage capacity building efforts to put a greater emphasis on regional instruments in their trainings. This could be useful so as to further the understanding and appreciation of these instruments that already seems to exist within civil society. Secondly, it gives us an indication of the fact that international instruments may not be as adept to dealing with local context. If verified through further research and larger surveys, this can send a clear signal to policy makers that the local context, especially the African one, needs to be taken into better account while drafting IHRL documents. It also suggests that efforts could be undertaken to show how the already existent international instruments could be better translated into local context.

4.2.2 Clear wording preferred

There is also a tendency among the interviewed NGOs, and to a certain extent UN agencies, to prefer conventions that have simple wording and refer to clearly defined rights.²²⁷ The perfect example of such a convention is the CRC. One UN staff member pointed to the convention's practicability, giving the example of a visit she conducted to a location where child labor was used. She explained how the CRC allowed her to clearly and unambiguously state that the practice of child labor was illegal, and to back it up with a clearly defined article.²²⁸

²²⁴ Interview 5, 2015-04-16, Khartoum; Interview 4, 2015-04-14, Khartoum; Interview 10, 2015-05-28, Khartoum; Interview 9, 2015-05-11, Khartoum.

²²⁵ Interview 5, 2015-04-16, Khartoum; Interview 4, 2015-04-14, Khartoum; Interview 10, 2015-05-28, Khartoum; Interview 9, 2015-05-11, Khartoum.

²²⁶ Interview 6, 2015-04-20, Khartoum.

²²⁷ Interview 3, 2015-03-29, Khartoum; Interview 7, 2015-04-25, Khartoum; Interview 10, 2015-05-28, Khartoum.

²²⁸ Interview 3, 2015-03-29, Khartoum.

Clear wording also makes for a better advocacy tool. When working with government, NGOs need something clear, specific and unambiguous to point to.²²⁹ When working in an already controversial field, being able to back up your statements with an unambiguous, signed agreement can make all the difference to NGOs working with advocacy.²³⁰

The preference for clear wording tells us two main things. Firstly, policy makers should learn from the experience of NGOs and attempt at drafting documents that contain clearly defined and defensible rights. Emphasis should also be put on clear regulations during capacity building trainings, due to their practicability in the field. Secondly, the existent IHRL instruments need to be translated into a more simplified language in order to build capacity among civil society. It is of course important for NGOs to also understand and work with those conventions that are not necessarily clear and simplified. In the interest of furthering their understanding of these instruments, it is thus important to provide more simplified versions of the convention texts. This can be done by e.g. printing pamphlets with the IHRL conventions, including simplified and clarified versions of them for practical use.

4.2.3 The CEDAW

The CEDAW deserves to be addressed on its own due to its particular and highly controversial setting in the political landscape of Khartoum. As could be expected from the background information provided in Section 2.4, the CEDAW proved to be a hot and most of all dividing topic during the interviews. There were those that showed exasperation with the debate on the CEDAW, one UN staff member suggesting that more of the NGOs should put focus on the conventions that have already been signed, rather than repeatedly advocate for the CEDAW.²³¹ Similarly, another UN staff member expressed that there is little in the CEDAW that could not already be backed up by other, ratified, conventions.²³² CEDAW was also described as difficult to use for people of lower education,²³³ which could contribute to why it is not necessarily useful for NGOs that tend to prefer clear and simple texts that are easy to communicate to their target groups.

In stark contrast to this, two persons interviewed argued strongly for the usage of the CEDAW by NGOs and ultimately its ratification by the state.²³⁴ Again, these were NGOs that

²²⁹ Interview 10, 2015-05-28, Khartoum.

²³⁰ Interview 10, 2015-05-28, Khartoum.

²³¹ Interview 4, 2015-04-14, Khartoum.

²³² Interview 3, 2015-03-29, Khartoum.

²³³ Interview 3, 2015-03-29, Khartoum.

²³⁴ Interview 5, 2015-04-16, Khartoum; Interview 7, 2015-04-25, Khartoum.

were more critical of the government and also reported more government interference in their work. The NGO workers advocating for the usage and ratification of CEDAW, expressed a disappointment in that the convention had been abandoned by other actors, NGOs and UN agencies alike. They also advocated strongly for the usage of CEDAW by civil society as a tool of advocacy and guidance, regardless of its legal status.

Finally, a number of NGOs expressed how controversial the CEDAW is and explained that this made it impossible, or near impossible, to work with.²³⁵ An example of this is the above-mentioned NGO worker who explained that they could not work with CEDAW because it would jeopardize their good relationship with government.²³⁶

4.3 The best tools on the ground

As we have seen above, the usage of IHRL by NGOs varies but seems to be most common when engaging in advocacy. In this section, however, attention is turned toward working with GBV on a ground level, when dealing with individual cases or with education on a community level. The question is – do NGOs view IHRL as useful when they are working in this context? If not, which tools are more useful to them?

4.3.1 Is IHRL useful on ground level?

We examined above whether NGOs interact with IHRL in their work. The question of whether they find it useful on a ground level in Sudan, not just on policy or advocacy level, proved almost equally divisive. Some of the interviewed organizations expressed firmly that IHRL was in fact the most important way to work on ground level.²³⁷ One NGO worker stated for instance that:

“If organizations work with [GBV on ground level], they *have to* work according to the Constitution and the Conventions.”²³⁸

²³⁵ Interview 9, 2015-05-11, Khartoum; Interview 7, 2015-04-25, Khartoum; Interview 8, 2015-04-27, Khartoum; Interview 4, 2015-04-14, Khartoum.

²³⁶ Interview 9, 2015-05-11, Khartoum.

²³⁷ Interview 7, 2015-04-25, Khartoum; Interview 10, 2015-05-28, Khartoum; Interview 5, 2015-04-16, Kharotum.

²³⁸ Interview 7, 2015-04-25, Khartoum.

Another NGO worker stated that IHRL is important when working with individual cases because it presents an alternative to Sharia law. Although IHRL is not as easily applicable in these cases as domestic law, she stated that:

“Everything is better than Sharia. The thing about religious laws is that you can’t challenge them. Human rights means non-discrimination, and that is the most important thing.”²³⁹

Other NGO workers however expressed that although IHRL is important in other aspects, it is not a useful tool for them when working with individual cases on ground level.²⁴⁰ One NGO worker who gives legal advice to women explained that:

“[IHRL instruments] are difficult to understand. These women hardly know about their rights according to Sudanese law. There are many steps before you can start talking about human rights and international law. They need other things, like psychological help, someone who will listen to them, and then basic information on moving forward. Not for me to start talking about international law.”²⁴¹

Similarly, another NGO worker explained that they use IHLR to send a message to stakeholders and to raise awareness, but when working on a ground level it is sometimes more important to find an alternative approach that is more locally appropriate and community-based.²⁴² The overall impression from those who stated that IHRL was not useful on a ground level was that the instruments were seen as too far away from people’s reality to serve as a functional tool on an individual level.²⁴³ Those who did find it useful viewed it as such either because of its high level of legitimacy or, as described above, because IHRL presented an important alternative to other legal tools in the field.²⁴⁴

²³⁹ Interview 5, 2015-04-16, Khartoum.

²⁴⁰ Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

²⁴¹ Interview 9, 2015-05-11, Khartoum.

²⁴² Interview 6, 2015-04-20, Khartoum.

²⁴³ Interview 8, 2015-04-27, Khartoum; Interview 1, 2015-03-30, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

²⁴⁴ Interview 5, 2015-04-16, Khartoum; Interview 10, 2015-05-28, Khartoum; Interview 7, 2015-04-25, Khartoum.

4.3.2 Alternative tools – education, trainings and sensitization

While discussing whether or not IHRL was a useful tool, some organizations also presented alternatives which they deemed equally or more useful to them when addressing GBV. When asked which tools they found most useful, a majority of the interviewees spoke of education, training and sensitization as the best tools to use.²⁴⁵ These answers can give an insight into the capacity of the NGOs and also what their experience shows is most useful when working on a ground level.

The educations and trainings that they spoke of were not necessarily ones focused on the legal aspects of GBV, but rather on sensitization to the very concept of human or women's rights and why this prohibits violence and discrimination.²⁴⁶ Trainings on domestic law were also emphasized over trainings in international law, seeing as this knowledge was more useful to women in their everyday setting.²⁴⁷

One NGO representative, who stated that her NGO did not relate to IHRL at all, had a clear image of which tools were more appropriate to use. She explained that the problem when it comes to GBV in Sudan is that the culture and habits of people are not in line with the law. She stated that GBV is forbidden as such, but that it continues in cultural practice. Therefore, she explained, the most important tools when addressing GBV in Sudan are not legal instruments such as those within IHRL, but rather education alongside cultural sensitization and adaptation.²⁴⁸

Although not expressing it quite as strongly, other NGO workers shared similar experiences and stressed the importance of using other tools than legal ones in their work.²⁴⁹ One NGO worker for instance expressed, in contrast to the one above, that the fundament of their work is in human rights as expressed in IHRL, but still found that when working in the community with GBV, the tools of cultural sensitization and adaptation are more useful.²⁵⁰

²⁴⁵ Interview 8, 2015-04-27, Khartoum; Interview 3, 2015-03-29, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 10, 2015-05-28, Khartoum; Interview 6, 2015-04-20, Khartoum; Interview 7, 2015-04-25, Khartoum.

²⁴⁶ Interview 8, 2015-04-27, Khartoum; Interview 7, 2015-04-25, Khartoum.

²⁴⁷ Interview 9, 2015-05-11, Khartoum.

²⁴⁸ Interview 1, 2015-03-30, Khartoum.

²⁴⁹ Interview 6, 2015-04-20, Khartoum; Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum.

²⁵⁰ Interview 6, 2015-04-20, Khartoum.

4.3.3 The importance of local context

One issue that surfaced a number of times throughout the interviews was the importance of understanding the local context when working with GBV in Khartoum. As touched upon many times throughout this thesis, GBV is a form of violence intimately linked with tradition, cultural values and the private sphere. A number of the interviewed NGOs stressed that this also needs to be reflected in the work addressing it.²⁵¹ The particular context of Sudan and the sensitivity of GBV in the country demands perhaps an even greater understanding of the local context. As one NGO worker warned:

“You need to know the context to work in Sudan. This is why local NGOs are better [than international ones]. If you go somewhere and start talking in the wrong way, you could end up creating *more* GBV.”²⁵²

The NGOs explained how important it is to tie IHRL into the local culture and understanding when using this as a tool against GBV. The need to show that human rights is in accordance with Islam when working in communities was stressed, one NGO worker stating that otherwise “they will not believe you.”²⁵³ Another NGO worker suggested that it is better to first speak about religion and Islamic law when working in the community, and then later on base discussions on human rights off of this.²⁵⁴

It was also seen as important to show how IHRL and related terms relate directly to local issues. One UN staff member, when speaking of NGOs’ sensitization efforts in communities, expressed that:

“Many people hear ‘gender’ and think of it as a Western concept. It is important to be smart about it, and put it in a local context and show why it is important.”²⁵⁵

Another issue that surfaced a number of times was the importance of building trust and confidence in the community when working with GBV.²⁵⁶ One NGO worker explained how

²⁵¹ Interview 10 2015-05-28, Khartoum; Interview 6, 2015-04-20, Khartoum; Interview 3, 2015-03-29, Khartoum; Interview 1, 2015-03-30, Khartoum.

²⁵² Interview 10, 2015-05-28, Khartoum.

²⁵³ Interview 10, 2015-05-28, Khartoum.

²⁵⁴ Interview 6, 2015-04-20, Khartoum.

²⁵⁵ Interview 3, 2015-03-29, Khartoum.

²⁵⁶ Interview 1, 2015-03-30, Khartoum; Interview 6, 2015-04-20, Khartoum; Interview 9, 2015-05-11; Interview 10, 2015-05-28, Khartoum.

she needs to be in touch with a community for weeks before she can even begin discussing GBV with them, and much longer before she can begin to learn about individual cases of GBV.²⁵⁷

The emphasized need for local context, shows the importance of consciously translating universal standards to the community in which the NGO is working. As discussed in Section 3, the disjuncture between universal standards and local justice is one often highlighted in postcolonial critique. All of the NGOs that did state that IHRL was useful to them on a ground level, also pointed out the importance of translating them into the local context. Merry writes that: “Activists often participate in two cultural spheres at the same time, translating between them with a kind of double consciousness.”²⁵⁸ This seems to be true of those Khartoum-based NGOs that employ IHRL as well. Their interviews have shown that understanding and employing IHRL is for them equally important to understanding and adapting to the local context.

4.3.4 Using domestic legislation

Finally, a number of organizations referred to domestic legislation as an important tool when addressing GBV, often more important and accessible than IHRL.²⁵⁹ One interviewed NGO worker stated that they use a wide range of domestic laws when supporting victims of violence. Most importantly they use the Family Law and Criminal Law in order to inform women about their rights and also their responsibilities under Sudanese law.²⁶⁰ She explained that the most important tool in addressing GBV was awareness on women’s rights:

“Women need awareness about their rights, first in national law, and then in international law.”²⁶¹

Mostly however, the interviewed organizations stated that they work with the 2005 Constitution and find this useful in their human rights work,²⁶² often more useful than

²⁵⁷ Interview 1, 2015-03-30, Khartoum.

²⁵⁸ Merry, 2006, p. 3.

²⁵⁹ Interview 8, 2015-04-27, Khartoum; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

²⁶⁰ Interview 9, 2015-05-11, Khartoum.

²⁶¹ Interview 9, 2015-05-11, Khartoum.

²⁶² Interview 8, 2015-04-27, Khartoum; ; Interview 9, 2015-05-11, Khartoum; Interview 6, 2015-04-20, Khartoum.

international instruments. As one NGO worker expressed it, “This document is [the government’s] own.”²⁶³ This makes it undeniably more effective as a tool of advocacy and also for rights-based service to victims of violence. When it comes to using the Constitution on ground level, this was also deemed useful. However, one NGO expressed the need to raise awareness among the public of what a Constitution is and that it should guide all other laws.²⁶⁴ Without this understanding being spread to a broader group, there is a risk that this modern and potentially effective instrument loses some of its influence.

This concludes the findings of the interviews conducted. With these in mind, the results will be concluded and further analyzed in the following section.

²⁶³ Interview 5, 2015-04-16, Khartoum.

²⁶⁴ Interview 7, 2015-04-25, Khartoum.

5 Conclusions

5.1 Answering the research questions

In the outset of this study, the following research questions were posed:

- **How** and to what extent do local NGOs in Khartoum employ international human rights law (IHRL) in their work of addressing GBV?
- **What** is the available IHRL framework for addressing GBV in Sudan?
- **Why** is the IHRL framework being used/not being used by local NGO's?

Firstly, the study has identified a number of regional and international human rights law instruments that relate to GBV in Sudan. Most importantly, the ICCPR, ICESCR and the ACHPR have all been signed and ratified by Sudan and relate directly to issues of violence and discrimination. These instruments are also connected to international treaty bodies and regional bodies such as the African Commission, meaning that NGOs are able to submit shadow reports on the activities within Sudan as well as use available complaint mechanisms. There are also important non-binding instruments such as the DEVAW and the Goma Declaration that clearly define violence against women and call upon states to take action in a highly detailed way. Although these instruments are not binding, they can be used as powerful advocacy tools and for raising awareness. This shows us that, even without the ratification of CEDAW, a number of possibilities are open to NGOs that wish to utilize IHRL in their work, be it through advocacy or in individual cases.

The more compelling question has been *do they* use IHRL in their work – and why or why not? We have seen throughout the study that the Sudanese civil society is diverse and often split into opposing teams – secularists or Islamists; pro-governmental NGOs or those in opposition. The NGOs interviewed have accordingly been split between those that vigorously employ IHRL in their work and those that avoid it or use it merely as an entryway to speak about women's rights in more general terms. Those organizations that do use IHRL have been found to have a more strained relationship with government and be more likely to be targeted by the HAC or NISS. They are also more likely to be involved in advocacy toward the government and society, striving for structural change rather than for providing service in individual cases.

As for the organizations that do not employ IHRL in their work to any great extent, the reasons behind this can be summarized in the following three points:

- 1) The usage of IHRL (especially in relation to GBV) is so politicized that they do not want to risk the consequences of employing it.
- 2) There is a capacity gap in terms of knowing about the relevant IHRL instruments and how to relate them to their work.
- 3) They find that IHRL is not useful to them, seeing as it is too far away from the local context and the communities that they are reaching out to.

Although these are all answers that can stand on their own, and that are worth learning from, it is important to also note how they may relate to each other. The fact that NGOs do not find IHRL useful when working on a ground level may be in part because the conventions are not particularly adept to dealing with the Sudanese context (which is presumably the same reason that many of the interviewees prefer regional instruments to international ones). It can however also be traced back to a capacity gap within the NGOs themselves. A number of the interviewed NGOs showed a very limited understanding of how the international conventions relate directly to concrete cases. Perhaps targeted capacity building could show some of the NGOs how IHRL could in fact be somewhat useful in the field and when they are working on a ground level. Although IHRL is most likely still not perfectly adept to dealing with the local Sudanese context, a bridged capacity gap may increase the usage of IHRL to a certain extent, which would likely be beneficial both to the NGOs and their target populations.

In addition, this capacity gap is in turn linked with the politicization of GBV. The current social and political environment that the NGOs are working in can be discouraging from working directly with IHRL, to say the least. This means that NGOs are rarely given the opportunity or encouragement to develop a deeper understanding of IHRL and learn how to apply them to individual cases. In this respect, actors working with the NGOs of Khartoum, most importantly the UN and the government, have an important task ahead of them. A curbing of the politicization of GBV – leaving the issue on the political agenda but lessening the extreme controversy of it – would likely create an environment where NGOs can work more freely and build their capacity in IHRL and GBV in a more stable pace. In essence, the

politicization of GBV is hindering the usage of IHRL and the NGOs' development and exploration to find the most effective tools in addressing GBV.

As we have seen throughout the interviews, this politicization is no longer limited to rape but has spilled over to all forms of GBV. The effect is a slightly absurd one where even work addressing domestic violence is connected, almost instantaneously, to these broader issues of international relations, resistance to postcolonial structures and the controversial position of women's bodies within the debate. It also has the effect of further polarizing the actors in the field, the political nature of the work complicating or obstructing the NGOs' relationship with government, and sometimes also the UN. It is clear from this study, that the politicized situation of GBV and IHRL in Khartoum is obstructive to the work that NGOs undertake to address GBV and has a negative effect on their freedom of association, on their ability to build capacity in international law, and ultimately on the human rights of the women that they are trying to serve.

5.2 Highlighted findings

Many findings are listed throughout Section 4, however in the following those which are found to be the most interesting and conclusive are highlighted.

NGOs do not find IHRL particularly useful when working on ground level, while giving service and legal advice to victims and other concerned parties. They tend to instead rely completely on domestic legislation and other alternative tools such as training and education.

One of the most important contributions of IHRL for NGOs working with GBV in Khartoum is to serve as an entryway to speak in terms of rights. Many NGOs use conventions in a seemingly shallow way, but one which is of great importance – they quote articles from the conventions as a way of establishing the existence of an individual's rights and then use this as an entryway to discuss e.g. GBV (without further elaborating on the meaning and legal obligations of the said article).

A significant number of NGOs view IHRL as "the government's thing" and not something within the working capacity of civil society. Many of the interviewed NGOs did not feel that IHRL was within their immediate area of work. They tended to think of IHRL as something

that the government or the UN works with, but that did not bear significant relevance to their own organizations.

NGOs prefer conventions with a clear and simple wording that give clear, unambiguous rights to the individual. The perfect example of this is the CRC, which contains such clear provisions as Art 28(1)(a) that states “Make primary education compulsory and available free to all”. This is a clear, unambiguous right and responsibility, phrased in a way that every NGO worker and also the target population can grasp the meaning of it. In contrast, the CEDAW was seen as difficult to use and ambiguous in its wording.

Knowledge gaps within NGOs and over-politicization of GBV interact and strengthen each other. Knowledge gaps within NGOs relate directly to their limited possibility of building capacity due to an over-politicized environment surrounding GBV and IHRL. In addition, NGOs that have low capacity in relation to IHRL have a difficult time working with the issue and curbing the politicization, allowing IHRL to remain within the working sphere of the government and the UN.

The politicization of rape and sexual violence in conflict has had a spill-over effect onto all forms of GBV. The politicization is no longer limited to issues of rape and sexual violence in conflict, but has spilled over to include all forms of GBV due to the issue’s placement in the heated intersection of postcolonial and patriarchal structures, which make it particularly prone to becoming controversial.

Regional IHRL instruments are seen by NGOs as more adept to dealing with the Sudanese context. NGOs preferred working with regional instruments rather than international ones, stating that they were more adept to the local context and addressed issues that were important to African countries.

5.3 The way forward

This study has aimed at examining how NGOs in Khartoum work to address GBV and what their relationship is to IHRL. The result has shown how complex and politicized the working environment for these NGOs is, and how GBV has become particularly controversial. It is my firm conviction that the over-politicization of GBV hinders NGOs from building capacity in IHRL and in furthering the efficiency of their work. NGOs that are not able to work freely with acute societal issues such as GBV, cannot develop their strategies and understanding to

a great enough extent. Thus, the curbing of the politicization by concerned actors – and as an extension, greater capacity building for NGOs – can vastly benefit the NGO workers and of course their target population.

Based on this study and its conclusions, the following recommendations are made:

- UN agencies working with GBV should train and encourage NGOs to work with IHRL also on a ground level.
- NGOs should be trained in writing shadow reports and encouraged to do so as a group. Lessons learned can be taken from the abovementioned NGO that writes shadow reports to the CRC as part of a larger group in order to mitigate security risks.
- Efforts should be made to “soften” the politicization of GBV in Sudan. The issue needs to remain visible on a political and societal level, but a more constructive debate needs to be enabled. International actors, the government and also larger Sudanese NGOs, have the practical possibility to take steps toward this.
- NGOs should be encouraged by government and UN agencies to engage with issues of IHRL and see how it may apply to their work.
- The UN needs to continue highlighting the issue of GBV in Sudan through inter alia UPR recommendations and continuous visits by the Special Rapporteur on Violence Against Women. In doing so, however, attention needs to be put not only on the continued high prevalence of GBV, but also on the politicization of the issue. The Special Rapporteur’s statement after her last visit shows a welcome example of this, where she addressed the harsh and sometimes hostile working environment surrounding GBV and IHRL. This should continue to be highlighted and efforts made to address it.

The way forward for work addressing GBV in Sudan, must include the building of a strong and competent civil society. The NGOs are already numerous and active, and have a great deal of knowledge and experience of what strategies are efficient for addressing GBV in

Khartoum. However, as this study has shown, they continue to navigate a politically precarious field and need to find ways around the controversy in order to be able to work with GBV. This is not only a waste of their time and resources, it also has a negative effect on the strategies employed. NGOs that do incorporate a human rights based approach risk worsening their relationship with government, and others chose to not develop their knowledge in the area precisely for this reason. In order to see a positive development in relation to GBV in Sudan, NGOs need to be given the political space to work with whichever tools they deem most appropriate. Ensuring that this is the case should be the priority not only for the government but also for the UN, INGOs and larger NGOs working in Khartoum. With this development we can begin to see an active civil society that not only navigates the field of GBV in Khartoum, but can become a significant source of development, empowerment and advocacy.

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