

13

ACTIVISM FROM THE CLOSET: FEAR OF A DOUBLE BACKLASH AGAINST A NASCENT QUEER MOVEMENT IN SUDAN

Liv Tønnessen, Samia al-Nagar** &
Samah Khalaf Allah****

1 Introduction

Sodomy (*liwat*), in Sudan, is a crime according to the 1991 Criminal Code. However, there is no history of widespread enforcement of the sodomy article. The law is completely silent on the status and protection of other sexual and gender minorities. However, queer persons have faced risk of arrest and harassment by public order police especially under a vaguely defined so-called Public Morality Law. Although it is popularly known as the public order laws, it is in reality a mix of different types of legal sources, including the state level public order laws and several articles within the 1991 Criminal Code under the section on honour and public morality. These laws, embodying patriarchal heteronormative ideals, were codified during the dictatorship of Omar al-Bashir (1989-2019) and were introduced as part of larger calls for Islamisation. Sodomy was even branded as a crime against God.

This chapter explores queer lawfare, or rather a lack of lawfare, in Sudan which recently introduced modest, yet significant legal changes to the rights and status of LGBTQ+ persons in the country. The changes were introduced by the transitional government led by Abdallah Hamdok which came into office after a popular uprising ousted Bashir and his Islamist supporters in April 2019. Although the Hamdok government did not make any clear stance on LGBTQ+ rights, their mission to respond to the demands of the revolutionary slogan ‘freedom, peace and justice’, culminated in the announcement of a series of legal reforms and amendments. The following legal changes were introduced:

* Senior researcher at Chr.Michelsen Institute (CMI) and Co-Director of Center on Law and Social Transformation, University of Bergen

** Independent researcher Sudan.

*** PhD candidate, University of Bayreuth.

- (1) As part of the Miscellaneous Amendments Law of 2020 (Repeal or amend the provisions restricting freedoms) changes were introduced with regards to the crime of sodomy (article 148) of the 1991 Criminal Code. Although sodomy remains a crime, the penalties of flogging and death were removed. Now the act is punished by imprisonment not exceeding 5 years upon first offence and 7 years upon second offence, and life imprisonment upon third offence.
- (2) One of the first acts of the Hamdok government was the repeal of the state level public order laws and the specialised public order police. As part of the Miscellaneous Amendments Law of 2020, the articles under the section on honour and public morality were reformed. The latter has, however, been critiqued as replacing vague definitions with new vague definitions of what constitutes public morality. Although on paper the 'public order law' has been repealed, the police can in principle still make arrests based on their perception of 'obscene acts' defined ambiguously as 'act of a sexual nature in a public place or issues signals with sexual meanings that cause harassment of the public's feeling or public modesty'.¹

Since the political environment has been hostile and homophobia widespread, the queer community has been largely invisible in domestic political and public discourses including during the recent and short-lived transitional period.

The legal reforms, therefore, did not come about because of queer lawfare as the queer organisations are fearful of a double backlash which is defined in this chapter as a violent retrograde response or reaction aiming to revert to an imagined heteronormative social order. Still in their nascent stage after decades of political oppression, they have engaged in what El Menyawi has termed 'activism from the closet' by supporting women's groups particularly in their efforts to repeal the public order laws.² This involves the strategy of not explicitly advocating for queer rights, but rather advocating for human rights that will greatly benefit LGBT+ persons. In addition, they are working within the queer community to create self-acceptance in a context of widespread (and internalised) homophobia where queerness is religiously rejected and culturally tabooed. The few organisations which are active are unregistered and operate largely in Khartoum only and to a great extent (but not exclusively) online with no physical office buildings.

1 Miscellaneous Amendments Law of 2020.

2 H El-Menyawi 'Activism from the closet: Gay rights strategising in Egypt' (2006) 7 *Melbourne Journal of International Law* 28.

2 Fieldwork in Khartoum

There is scarce information available about queer rights and organisations in Sudan. There is no scholarly work published on this issue and very few media articles and reports to retrieve. There is one article published by queer activists in the *LGBT Policy Journal* which rely on 'a series of anecdotes'.³ The queer community remains largely hidden and the organisations have worked clandestinely, especially during the Bashir regime. In the words of a queer individual in Khartoum 'we live inside the closet. No one knows anything about us. We live two different lives. We are actors'.⁴ One of few international organisations that have interviewed queer persons (specifically lesbians, gays and bisexuals) and published some information as part of a larger report on human rights state that 'almost no such research exists, reflecting the extreme difficulty of access to the deeply clandestine existence of LGB networks in Sudan'.⁵ However, queer organisations in Sudan are increasingly documenting the history of discrimination and gendered violence which LGBT+ persons face in the country.⁶ But as they themselves write, they have to do so with great care without putting participants or themselves at risk. In a recent report by the Arab Foundation for Freedoms and Equality in collaboration with queer organisations in Sudan it is stated:

Researchers who have conducted the interviews for this report will not be mentioned. The reason is that activists documenting violations and helping abuse victims are also at risk of being prosecuted under anti-LGBTQ+ laws, imprisoned, harassed, or socially stigmatized.⁷

The topic is not only politically sensitive, but largely religiously rejected, and culturally tabooed. As such gaining access to the queer community is not only difficult, but great care has to be taken not to put interlocutors at risk. Despite the challenging context, we were able to conduct 22 individual interviews and two group interviews with queer activists during May-August 2018 before the popular uprising against the dictatorship

3 S Berkouwer, A Sultan & S Yehia 'Homosexuality in Sudan and Egypt: Stories of the struggle for survival' (2015) *LGBT Policy Journal*.

4 A quote from a participant in the film produced by Mesahat Foundation for Sexual and Gender Diversity 'Queer Voices From Sudan ... What is it like to be Queer in Khartoum?' (2017).

5 The Equal Rights Trust 'In search of confluence: Addressing discrimination and inequality in Sudan' (2014) 148.

6 See for example Mesahat Foundation (n 4).

7 The Arab Foundation for Freedoms and Equality 'Human rights violations against the LGBTQI+ Communities in Egypt and Sudan' (2021) 11.

of Omar al-Bashir started in December 2018. We were able to conduct an additional 18 interviews after the 2019 revolution, in February and April 2020. In addition, we rely on ten interviews with young feminist activists who have emerged as strategic allies of the queer movement after the 2019 revolution. Ethical approval for this research was obtained from the Norwegian Center for Research Data (approval number 456175). The interviews were conducted with the informed consent of the interviewees and due care has been taken to ensure their anonymity.

Those queer activists we interviewed were between 25-45 years of age; had higher education; resided in Khartoum and a few abroad. They were recruited through two research assistants who are also queer activists themselves.⁸ The two queer activists reached out to their networks within the two main queer organisations active in Sudan today. These are Shades of Ebony and Mesahat Foundation for Sexual and Gender Diversity.⁹ These organisations are not officially registered as NGOs and have no physical presence in the country. The only 'public' traces of them are online, where the Sudanese activists' identities are never exposed. The individual interviews included questions related to gender-based violence and discrimination, the history and current organisation of the queer movement in Sudan, and mobilisation for legal and social change under shifting political circumstances, including their participation in the 2019 revolution. The two group interviews discussed particularly organisations' history and current activities and future goals and aspirations. As there is a chronic lack of data on this politically sensitive and cultural and religious taboo topic, we rely heavily on this unique and original interview material. But we also include the few media reports that are available on the topic as well as material from the queer organisations themselves.

It is a considerable weakness that only queer voices from Khartoum with higher education from the middle class were reached. The sample was also skewed towards the main queer organisations in which an educated middle class in Khartoum is over-represented. As such other voices, especially from lower socio-economic and uneducated backgrounds outside the capital, were not represented in this piece. However, although the interview material can hardly represent the queer community in Sudan, it allows us to explore queer lawfare, or rather lack of lawfare, in a Sudanese context in which there is currently virtually no scholarly work.

8 Because of the volatile context these research assistants/queer activists cannot be named. One of them asked us to acknowledge him by his activist name Hamada and as the founder and leader of Shades of Ebony.

9 Mesahat Foundation covers both Sudan and Egypt, and the majority of postings on their websites are concerned with Egypt.

3 Queer rights in Sudan before and after the revolution

An overview of queer rights in Sudan, necessitates an introduction to the recent political changes and turmoil in the country. The COVID-19 pandemic has taken a backseat to politics. Within the space of the three years Sudan has gone from being ruled by the military-Islamist regime of Omar al-Bashir (1989-April 2019) to a transitional government (August 2019-October 2021), and lastly the military regime of Abdel Fattah al-Burhan (October 2021-present). It was after what is now known as the December revolution and during the short transitional period that legal reforms under the banner of 'freedom' were introduced.

After ruling Sudan with an iron fist for three decades, the Islamist arm of the military regime of Omar al-Bashir was ousted by a popular uprising in April 2019 under the slogan 'freedom, peace and justice'. After eight months of street protests since December 2018, a hybrid solution was negotiated between the transitional military council (consisting of Bashir's old supporters) and the civilian coalition of forces of freedom and change. The National Congress Party, the ruling Islamist party during Bashir's era, was dissolved and banned and many leading figures, including the President himself, arrested.¹⁰ A transitional and civilian government was appointed with Abdallah Hamdok acting as prime minister in August 2019. The acting head of state was, however, a Sovereign Council which included both military and civilian actors and was chaired by Abdel Fattah al-Burhan (the leader of the Sudan Armed Forces). This hybrid solution has been disputed as the military represent the old regime and are responsible for war crimes and crimes against humanity (especially related to the Darfur conflict). In addition, the security and military forces attacked a peaceful protest outside military headquarters in Khartoum on 3 June 2019, killing at least 127 people.¹¹ The military forces responsible for the massacre later became part of the of the transitional government and this caused popular outcry as 'justice' was one of the important slogans of the revolution.

The short-lived transitional period was guided by the Constitutional Declaration. This document was a negotiated result between the military and the civilian coalition of forces of freedom and change. The transitional

10 'Sudan dissolves National Congress Party, repeals Public Order Bill' *Radio Dabanga* 29 November 2019.

11 'They were shouting "kill them": Sudan's violent crackdown on protesters in Khartoum' *Human Rights Watch* (2019).

government was mandated, according to the Constitutional Declaration, to 'repeal laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender'.¹² Legal reforms were introduced whereby the death penalty for sodomy was removed and the notorious public order laws repealed.¹³ Until that point in time, Sudan was one of six countries, including Iran, Saudi Arabia, Yemen, Nigeria, and Somalia, that imposed the death penalty for sodomy.

The military led by Abdel Fattah al-Burhan hijacked the transition in October 2021 at a time when there was increasing dissatisfaction with the progress made by the Hamdok government and furthermore fractionalisation within the civilian coalition. At first the ideological orientation of the coup makers was unclear, but now Islamists are re-entering the political landscape with full force, including in government posts.¹⁴ This means that the supporters of the old Bashir regime are basically back in the driving seat. And as such, the legal changes introduced under the banner of freedom might be at risk as they contradict the Islamist gender ideology. Since their enactment, Islamists and religious leaders have deemed them in contradiction with Islamic law.¹⁵ Seen as creating moral chaos and an attempt to secularise Sudan, the transitional government came under increased pressure. One of the main critiques against the laws has been that increasing personal freedoms will create *fitna* which is the Arabic word for moral chaos. The logic is as follows: If citizens sexuality, movement and dress are not controlled, it will lead to sexual temptation which inevitably will lead to immoral acts such as sodomy and *zina* (sexual relations before and outside of marriage). In addition, the reform process has been criticised as the legal changes were initiated before the National Assembly was appointed. Immediately after the military coup, a new wave of peaceful protests started. Six months later approaching summer 2022, protests are still on-going. This time the protestors demand a transition to a civil and democratic government without any presence of military actors.¹⁶

12 Constitutional Declaration of 2019, chap 2, sec 7(2).

13 K Hamad 'Sudan uprising: Sweeping reforms usher in justice and freedom' *Global Voices* 14 July 2020.

14 Bedayaa 'Needs assessment report: LGBTQI+ in Sudan' (2020) 9.

15 As above.

16 M Osman 'Sudan's military is brutally suppressing protests – Global action is needed' *The Guardian* 22 March 2022.

3.1 In the name of Islam: Criminalising queerness under the Al-Bashir regime

Before the Revolution and during the military-Islamist regime of Omar al-Bashir (1989-2019), Sudan's stance on queer rights had been made abundantly clear on the international arena. The Sudanese government in 2002 voted against the application by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) for consultative status with the United Nations Economic and Social Council. In 2008, Sudan did not endorse the UN Declaration on Sexual Orientation and Gender Identity. About 60 countries signed the declaration at the time, but others and especially countries associated with the Organisation of Islamic Cooperation objected to it because it contradicted 'Islamic family values'.¹⁷ And in 2016, Sudan voted against the UN Human Rights Council Resolution for appointment of an independent expert to help protect queer individuals from discrimination and violence.¹⁸

The Al-Bashir regime came to power through a *coup d'état* in 1989 and in 1991 it codified a new Criminal Code as part of larger efforts to Islamise state and society, including the law.¹⁹ *Hudud* (singular, *hadd*, meaning limit, restriction, or prohibition) form a central part of the 1991 Criminal Code. Criminal justice in Islamic law covers three main areas: *qisas*, *tazir*, and *hudud*. *Qisas* refers to retribution and covers offences such as bodily harm and homicide. *Tazir* refers to offences for which punishments are not stipulated in the Quran or Sunna and are therefore left to the discretion of judges. *Hudud* (singular, *hadd*, meaning limit, restriction, or prohibition) are regarded as the ordinances of Allah, and they have fixed punishments derived from the Islamic sources.

Sodomy is codified as a *hadd* crime and thereby considered a crime against God. In terms of direct references to sodomy or *liwat* in Arabic in the Qur'an, it is identified with the 'sin of Lot's people'. Lot was commissioned as a prophet to the cities of Sodom and Gomorrah. His story is used to demonstrate Islam's disapproval of homosexuality.²⁰ He was commanded by God to preach and to stop them from their lustful

17 R Blitt 'The Organization of Islamic Cooperation's (OIC) response to sexual orientation and gender identity rights: A challenge to equality and nondiscrimination under international law' (2018) *UTK Law Faculty Publications* 173.

18 Berkouwer, Sultan & Samar Yehia (n 3).

19 O Kondgen *The codification of Islamic criminal law in Sudan: Penal codes and supreme court case law under Numayrī and Bashīr* (2017).

20 The story of Lot is told or alluded to in at least 14 chapters or *suras* of the Qur'an. See for example Qur'an the heights 7:80-84, Qur'an Hud 11:77-83, and Qur'an the poets 26: 160-175.

and immoral acts. Article 148 of the 1991 Criminal Code under the *hudud* section, criminalises sodomy (*liwat*) and stipulates the following:

- (1) There shall be deemed to commit sodomy, every man who penetrates his glans, or the equivalent thereof, in the anus of ... another man's, or permits another man to penetrate his glans, or its equivalent, in his anus.
- (2)(a) whoever commits the offence of sodomy, shall be punished, with 100 lashes, and he may also be punished with imprisonment for a term, not exceeding five years;
- (b) where the offender is convicted for the second time, he shall be punished, with 100 lashes, and with imprisonment, for a term, not exceeding five years;
- (c) where the offender is convicted for the third time, he shall be punished, with death, or with life imprisonment.²¹

It is important to note that previous criminal codes in the country did not criminalise sodomy, but did criminalise 'unnatural' crimes or 'crimes against nature'. In the 1925 Penalty Code article 318, states that whoever has sex with another person in an *unnatural* way and without consent is subject to imprisonment for 14 years and a fine; the consent of any person, less than 16 years of age, would not be considered if the offender is a teacher or guardian. The penetration is evidence of the crime. The 1974 Penalty Code article 318, titled 'crimes against nature' stipulates that whoever has sex with another person in an *unnatural* way is subject to punishment of two years' imprisonment and a fine. If that is done without consent the punishment is 14 years and a fine. Any person under 18 years of age cannot be considered as consenting to the act. These laws were mainly a colonial import from Britain. Sudan until 1956 was under an Anglo-Egyptian condominium. These laws were replaced with Islamic law as part of a military regime with an Islamising political project.²² President Omar al-Bashir and his circle of supporters instigated a process of comprehensive Islamisation based on the assumption that Islam represented the foundation of the country's national identity and should define its legal, political, cultural, and economic systems. The Islamists introduced what they called the 'civilization project' (*al-Mashru al-Hadari*). An intrinsic part of this project was the Islamisation of Sudanese law, with the *hudud* penalties incorporated in the Criminal Code.²³

21 The Criminal Code of 1991.

22 Kondgen (n 19).

23 AA Ibrahim *Manichean delirium: Decolonizing the judiciary and Islamic renewal in the Sudan, 1898-1985* (2008) 392.

The gender ideology of the Al-Bashir regime builds on the idea that your biological gender is God-given and it determines what rights you are entitled to and what responsibilities you are expected to fulfil. Only sodomy is explicitly criminalised. The law remains silent on the status and protection of other sexual and gender minorities. However, the building block of an Islamic state is clearly the patriarchal heteronormative Muslim family where biologically defined men are expected to provide financial support and to be the guardians and decision-makers of the family and where biologically defined women are expected to reproduce and care for the children and the husband.²⁴ If you do not fulfil patriarchal heteronormative expectations, then you are not a proper Muslim. The religious discourse propagated has a rigid understanding of what is defined as proper Muslim masculinities and femininities. Anyone who does not fit the heteronormative mould is a potential threat to Islam and the state and may create moral chaos (*fitna*). In the words of queer activists, the Islamists have fortified the idea that being queer is against religion:²⁵

In an Islamic regime they follow the teachings of Islam where it gives men and women specific roles and forbid any of them to cross to the other side. Being part of the LGBT community is forbidden by Islam.

Based on the Islamic principle of ‘prescribing the good and prohibiting the evil’ (*amr bi al-maruf wa al-nahy an al-munkar*), the Al-Bashir regime introduced what is popularly known as public order laws which largely policed how citizens dress and behave in public spaces under the pretext of preventing *fitna*. In a Sudanese context, *fitna* is understood as moral chaos caused by sexual temptation. This chaos can manifest itself in the shape of prostitution, and unlawful sexual acts. The Islamist state, therefore, saw it as its mission to control sexuality and ensure public order in order to avoid such societal chaos. The foremost risk of prosecution for sexual orientation or gender identity was under the public order laws. In the words of one of our interlocutors: ‘Mostly the law applied against us is the public order law and the arrests happen by the public order police’.²⁶ These laws were built on an entire infrastructure from specialised courts to a designated public order police force spread out across the country.²⁷ The laws were two-fold: there were state level public order laws and several

24 L Tønnessen ‘The many faces of political Islam in Sudan: Muslim women’s activism for and against the state’ PhD thesis, University of Bergen, 2011.

25 Interview with queer activist, 24 years of age, Khartoum, July 2018.

26 Interview with queer activist, 26 years of age, Khartoum, April 2018.

27 SIHA Network ‘Beyond Trousers: The Public Order Regime and the Human Rights of Women and Girls in Sudan’ Submission to the 46th Ordinary Session of the African Commission on Human and Peoples’ Rights, Banjul, The Gambia (12 November 2009).

articles within the Criminal Code under the title 'Honor, Reputation and Public Morality'.

In Khartoum, the Public Order Act of 1998 introduces several regulations aiming to reduce gender mixing in public spaces to avoid the 'moral chaos' which may arise when unrelated men and women get tempted to commit immoral acts. For example, the belief that dancing may create sexual temptation and should be avoided is codified in article 7(b) states that 'there shall be no dancing between men and women and women shall not dance in front of men'. Another example is the potential temptation that can be caused by unrelated women and men sitting next to each other in public transportation. The intentional or unintentional rubbing of legs in a crowded bus must therefore be avoided. Article 9(1) (a) and (b) stipulates that:

Each vehicle used for public transportation within the state shall specify a door to be used by women and reserve ten seats for women ... men may not sit in the seats reserved for women

In a similar vein, article 20 regulates how men and women should queue: 'every authority requiring citizens to queue must separate between men and women and the public must adhere to this provision'. Penalties are imprisonment not exceeding 5 years, a fine or whipping.

As part of the Criminal Code, there are various articles related to seduction,²⁸ gross indecency,²⁹ prostitution,³⁰ and indecent and immoral acts which constitute the articles defining 'public morality'. Article 152 on indecent and immoral acts has been widely enforced, especially in

28 Article 156: 'Whoever seduces any person by inducing, taking or assists in the taking or abduction of such a person, or hires him to commit the offence of adultery or sodomy or practicing prostitution or gross indecency or obscene acts or acts contrary to public morality, shall be punished with whipping not exceeding 100 lashes or with the imprisonment not exceeding five years'.

29 Article 151(1): 'There shall be deemed to commit the offence of gross indecency, whoever does any sexual act, with another person not amounting to adultery or sodomy, and he shall be punished, with whipping, not exceeding forty lashes, and he may also be punished, with imprisonment, for a term, not exceeding one year, or with fine.'

30 Article 154(1): 'There shall be deemed to commit the offence of practicing prostitution whoever is found in a place of prostitution so that it is likely that he may exercise sexual acts or earn therefrom, and shall be punished with whipping not exceeding 100 lashes or with imprisonment for a term not exceeding three years. (2) Place of prostitution means any place designated for the meeting of men or women and men and women between whom there is no marital relationship or kinship in circumstances in which the exercise of sexual acts is probable to occur.'

targeting women's dress. The stipulations in article 152 illustrate well how vaguely 'public morality' was defined:

- (1) Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes, or with fine, or with both.

By vaguely defining what constitutes (in)decent and (im)moral behaviour, great discretionary power is given to the public order police. It facilitates the disciplining of gendered moral bodies by the state in a fashion that normalises and naturalises particular ways of being. There is thereby repression of those who do not subscribe to state-definitions of the norms of the idealised Muslim woman or man through various methods of control, marginalisation, silencing and abuse.³¹ Although the public order police have been first and foremost notorious for targeting women, queer persons who act and dress outside of heteronormative social and political expectations have been similarly at risk. According to a queer activist:³²

There is always risk of harassment and arrest specifically for some persons within the LGBT community; for example, homosexual men who have a very feminine behavior in the way they dress or walk. They always face harassment from the public order police.

This risk is compounded by ethnicity and class, whereby women of African descent from lower socio-economic backgrounds are considered more vulnerable.³³ Although we do not have access to concrete numbers, The Equal Rights Trust estimated around 5 000 cases throughout the country in 2013 based on interviews with lawyers.³⁴ A range of women's groups have advocated against these laws since their codification, but there has not been a particular focus on how they have affected the queer community. The queer organisations believe that the number may be much higher as many cases go unreported because 'most victims were too afraid to speak up for fear of social marginalization and/or renewed security forces crackdown'.³⁵

31 S Nugdalla 'The revolution continues: Sudanese women's activism' in A Okech (ed) *Gender, protests and political change in Africa* (2020) 81.

32 Interview with queer activist, 26 years of age, Khartoum, July 2018.

33 Hamada 'Blog from Sudan: The Sudanese Revolution: A fight for LGBTQI+ rights?' CMI Chr.Michelsen Institute (2019).

34 The Equal Rights Trust (n 5) 251.

35 The Arab Foundation for Freedoms and Equality (n 7) 31.

There have only been a handful of encounters that have spilled out into the mainstream media. A well-known incident took place in August 2010, when the Sudanese public order police, raided a private party celebrating the informal wedding of two homosexual men in Khartoum, where several attendees were reportedly cross-dressing. They were charged with breaking public morality (article 152) by wearing feminine clothes, applying makeup, and dancing 'in a womanly fashion'. Nineteen of the attendees were flogged publicly with 30 lashes and fined.³⁶ In 2013, Sudanese police arrested and beat up nine gay men who were accused of indecency and prostitution.³⁷

3.2 Legal changes after the 2019 revolution

After the revolution, the transitional government under Prime Minister Abdallah Hamdok took a clear stance against Islamism. However, the government did not make any public statements with regards to LGBT+ rights. Nonetheless several legal changes which improve the rights and protection of queer persons were introduced.

One of the first acts of the Hamdok government was the repeal of the state level public order laws and the demobilisation of the specialised public order police. In July 2020, several amendments were made to the 1991 Criminal Code as part of the Miscellaneous Amendments Law of 2020 under the title 'Repeal or amend the provisions restricting freedoms'. The Minister of Justice, Nasredeen Abdulbari, stated that the reforms aimed to bring Sudanese laws 'in line with the principle of human rights and fundamental freedoms' which are seen as pillars of the 2019 revolution. Laws perceived by citizens specifically women and youth including queer to be particularly strict and prohibiting personal freedoms were reformed. As the death penalty and flogging were regarded as Islamic punishments, they were removed as part of the 2020 Miscellaneous Act. The death penalty for sodomy, apostasy and all crimes committed by minors, was removed, however, both sodomy and apostasy remained crimes under the law. Flogging as a punishment was removed for a number of crimes.³⁸ The following amendments were made for the sodomy article:³⁹

36 'Sudan flogs 19 men in public for cross-dressing' *Sudan Tribune* 4 August 2010

37 The Arab Foundation for Freedoms and Equality (n 7) 32.

38 The new law does not change the penalty of flogging under the penal code for the crimes of drinking alcohol, adultery committed by an unmarried person, and falsely accusing another person of committing adultery.

39 Miscellaneous Amendments Law of 2020, amendment 24.

In article 148, paragraph 2(a), the punishment of 100 lashes have been removed; paragraph (b) shall be deleted and replaced by the following paragraph: 'If the perpetrator is convicted for the second time, he/she shall be punished with imprisonment for a prison term not exceeding seven years'; in paragraph (c) the death penalty is deleted.

This means that sodomy remains a crime, but that the penalties of flogging and death were removed. Now the act is punished by imprisonment not exceeding five years upon first offence and seven years upon second offence, and life imprisonment upon third offence.

The punishment of flogging was removed throughout, including for most crimes under the heading 'Honor, Reputation and Public Morality' of the Criminal Code.⁴⁰ These punishments are seen as particularly strict and as Islamic forms of punishments.⁴¹ Article 152 was repealed and replaced by the following new article on 'obscene acts':⁴²

Anyone who commits an act of a sexual nature in a public place or issues signals with sexual meanings that cause harassment of the public's feeling or public modesty, shall be punished with imprisonment for a period not exceeding six months, or with a fine or with both penalties.

In addition, a significant change was made to article 154 on prostitution. Specifically, the definition of place of prostitution was changed from any meeting place where men and women who were not married to each other interacted (which could be anywhere) to any place specifically intended to engage in prostitution.⁴³

Article 152 on obscene acts has been critiqued as replacing vague definitions with new vague definitions of what constitutes public morality. This has been pointed out by civil society in a collective statement. The amended article is still wide open to interpretation, something which gives law enforcement discretionary powers to assess what contradicts public modesty, which allows for the continued interference in personal freedoms by policemen who have the right to assess the matter according

40 The new law does not change the penalty of flogging under the penal code for the crimes of drinking alcohol, adultery committed by an unmarried person, and falsely accusing another person of committing adultery.

41 'Sudan abolishes strict Islamic legislation' *Radio Dabanga* 13 July 2020.

42 Miscellaneous Amendments Law of 2020, amendment 27.

43 The Miscellaneous Amendments Law of 2020, amendment 29.

to what they deem to be a breach of modesty, without the protections of an objective standard.⁴⁴

Although these are positive developments, they are quite modest steps towards the recognition of queer rights. Vague articles within the Criminal Code can still be interpreted in ways to suppress LGBT+ persons. Presently, queer individuals have no legal protection against gender-based violence and discrimination in a country with widespread homophobia.

4 A trajectory of queer activism in Sudan

The history of queer activism in Sudan is rather short as the first organisation, or rather social media forum, dates back to 2006. Queer activism and Sudanese civil society more generally were severely restricted under Al-Bashir's authoritarian regime. Legal requirements were put in place which mandated all NGOs to register under the Humanitarian Aid Commission (HAC); a condition to receive international funding.⁴⁵ HAC, which was led by a commissioner with security rather than civil society background, was given government excessive discretionary and regulatory powers over NGO work to curb what was perceived as any international or national threat to the Al-Bashir regime.⁴⁶ Many international NGOs were expelled from the country and several national NGOs closed down.⁴⁷ Particularly after anti-government demonstrations in 2011 in the wake of the Arab spring and again in 2013, any organisations perceived as threatening the regime and its Islamic base were severely clamped down on.⁴⁸ This made it difficult for queer organisations to work as they were unable to register, given the criminalisation of sodomy and the patriarchal and heteronormative gender ideology of the Bashir regime, and thereby receive funding from abroad.

44 'A collaborative civil society statement in response to the law of various amendments (abolishing and amending provisions restricting freedom) – Exposing "a wolf in sheep's clothing"' *SIHA Network*, (August 2020).

45 The Voluntary and Humanitarian Work Act of 2006.

46 L Tønnessen 'Enemies of the state: Curbing women activists advocating rape reform in Sudan' (2017) 18 *Journal of International Women's Studies* 151.

47 Among those closed down was Salmamah Women's Resource Centre, which was shut down after its leader, Fahima Hashim, appeared as a speaker at the Global Summit to End Sexual Violence in Conflict in London. Several other civil society organisations were closed by the HAC and a literary forum was closed by the Ministry of Culture and Media. These were Beit al Finoon, the Sudanese Studies Center, the African Center for Justice and Peace Studies, Arry Organization, The Narrative and Criticism Forum, the Khatim Adlan Center for Enlightenment and Human Development, and The Mahmoud Mohammed Taha Centre.

48 Tønnessen (n 46) 144.

Nonetheless, there have been several unregistered queer organisations operating although many of them are no longer active. In 2006 Freedom Sudan, the first queer social media forum (which is no longer active) was established to be ‘a source of hope, courage and advice for LGBTs in Sudan’.⁴⁹ The initiator of this forum described the political space for queer activism as limited and their work as clandestine. In an interview in *Global Voices* in 2010 he said:

Our status is illegal. Homosexual behavior is illegal in Sudan and homosexuals facing the death penalty. That’s why our organization was formed in secret and all our activities are carried out in secret ...⁵⁰

In 2011, Rainbow Sudan, another queer social media forum, was established with similar aims. The leader of the group, which is no longer active, described the political and social context as not ready to openly discuss queer rights. He said in an interview that:

In Sudan, we are just at the very first steps to start discussing about homosexuality. We move at the pace of a baby ... Currently the country is not ready to open up to LGBTQI+ issues.⁵¹

In terms of organisations, there are only traces of three. Although they are not registered NGOs and do not have any physical presence (in terms of office space etc), they are not completely ‘hidden’ as they have some degree of online presence. These are Bedayaa (2010) and Mesahat Foundation for Sexual and Gender Diversity (2015) and Shades of Ebony (2017). Two of these, Bedayaa and Meshahat, have been operating both in Egypt and Sudan.⁵² However, the Bedayaa organisation was never particularly active in Sudan due to the lack of funding and the overall security situation.⁵³ On their websites, only one project is listed, starting in 2020, which includes Sudan and in that project Shades of Ebony and Meshahat are listed as Sudanese partners.⁵⁴ Operating mainly in Khartoum, Shades of Ebony and Meshahat have focused largely on documenting the discrimination and

49 ‘Sudan votes: Quietly, Sudan’s underground gay movement grows online’ *Queer Muslims* 29 November 2011.

50 Hamad (n 13).

51 PC Notaro ‘LGBT rights in Sudan: Someone fights for the rainbow’ *Il Grande Colibri* 13 January 2013.

52 These two organisations have websites, but the majority of publications and information are from Egypt.

53 Interview with queer activist, 30 years of age, Khartoum, August 2018.

54 ‘The Life for All project’ aims to document the violations faced by members of the LGBTIQ community in Sudan. See more about the project at <https://www.bedayaa.org/research-and-documentation> (accessed 18 July 2022).

homophobic violence faced by the queer community in Sudan in tandem with creating safe spaces of the community. Such oral narratives have been published online for example in a report titled *LGBT voices from Sudan: Recording a past, building a future*.⁵⁵ The films titled *Queer Voices from Sudan* and *Art of Sin* have the same intent: to document stories of discrimination and homophobic violence highlighting not only the suppression of the Bashir regime, but also homophobic attitudes in society.⁵⁶ By naming these experiences as violence, it is the first step in countering internalised homophobia (which is widespread) and empowering the queer community from *within*. They are still at the start of a conversation, mostly in social media platforms such as in the Facebook group Rainbow Sudan which emerged after the revolution. In the words of a queer activist:⁵⁷

The society and its negative projections have effected LGBTQI+ matters, but there is a limited social tolerance on social media platforms and there is groups includes members who identify themselves as LGBTQI+ allies.

However, the visibility of queer individuals and organisations is actively debated.⁵⁸ Some visibility at the individual level is desired as it may open up space for dialogue and provides an understanding of societal norms and potential for change.⁵⁹ The viewing of the film *Art of Sin* in Khartoum in 2019 is seen against this backdrop. However, most of these conversations take place online and as such are not available to many Sudanese queer individuals especially outside of Khartoum due to Sudan's relatively low digital literacy. The online activism is also challenging for the queer activists as they are also facing backlash in those fora. For example when Rainbow Sudan promoted the trailer of the *Art of Sin* documentary featuring the Norwegian-Sudanese artist Ahmed Umar, it was according to the Arab Foundation report met with responses such as 'he should be slaughtered at the airport', and 'look how you destroyed Sudan's reputation'.⁶⁰

The projects initiated by these queer organisations also reflect the hostile political and social environment. Without access to major international funding (except some embassies that creatively find way of

55 Mesahat Foundation (n 4).

56 The film is directed by Ibrahim Mursal Warsame and is a documentary about the Norwegian-Sudanese artist Ahmed Umar who is known for being Sudan's first openly gay man. The film was made in collaboration with Shades of Ebony. Mesahat Foundation (n 4).

57 Interview with a queer activist, 27 years of age, Khartoum, April 2020.

58 Hamada (n 33).

59 Bedayaa (n 14) 13.

60 The Arab Foundation for Freedoms and Equality (n 7) 134.

supporting them), it has been difficult to initiate much needed projects or programmes for the queer community. A recent survey as part of Bedayaa's 'The Life for All project' found that queer persons in Khartoum are in desperate need of psychosocial support, but also within other areas they face discrimination and homophobic violence.⁶¹ The survey also noted that there was little awareness about organisations and agencies working on queer issues in the country.⁶² The only national strategy that acknowledges the LGBT+ community has been programmes on HIV/AIDS prevention focusing on the health risk caused by men who have sex with men. Because of the unregistered status of queer organisations, they have not been involved as partners in this work.

Queerness is not only legally restricted, but also religiously rejected and culturally tabooed. Homophobia is widespread. Violence based on sexual orientation and/or gender identity is described as 'extreme' and put in the context of traditional gender roles and rigid perceptions of femininity and masculinity; 'Almost anyone who doesn't fit into these stereotyped perceptions [is] seen as a threat to the security and safety of the society as a whole'.⁶³ Queerness is largely seen as socially unacceptable to the point where it is regarded as an illness. It is associated with social stigma and shame and is seldom talked about in public.⁶⁴ It is also put in a religious context and as such queerness is seen as both a sinful and immoral act. In an oral testimony collected by Meshahat, a Sudanese gay man, put it like this:⁶⁵

Gay men are perceived as failed men. Homosexuality is rejected both culturally and religiously. From early age, I have been taught that being gay is wrong and shameful; It's against nature and God will since Quran says that homosexuality is a sin. I have learned that homosexuals are going to hell and they should be stoned to death.

Based on the prevailing information gathered by the queer organisations themselves, LGBT+ persons face discrimination and gendered violence especially from the family and community at large.⁶⁶ There are documented examples of religious conversion therapy, forced marriage,

61 Bedayaa (n 14) 18. In the 'Life for All Project' Bedayaa collaborates with Meshahat and Shades of Ebony.

62 According to a survey by Bedayaa, 75 per cent of a sample of 169 queer individuals did not know of any organisation or agency working on queer issues. Bedayaa (n 14) 20.

63 Mesahat Foundation (n 4).

64 Berkouwer, Sultan & Samar Yehia (n 3).

65 Mesahat Foundation (n 4).

66 See for example Mesahat Foundation (n 4).

forced heteronormative dress codes, discrimination in the workplace and health system and various forms of physical and mental violence and discrimination.⁶⁷ Among our interlocutors, one gay man was expelled from the family home,⁶⁸ another underwent conversion treatment by a religious sheikh.⁶⁹ A young lesbian woman was forced to marry and has two children;⁷⁰ another fled abroad as a result of family harassment but came back when her parents promised to accept her identity.⁷¹ The case of Abu Hamad aptly illustrates the level of societal prejudice. A rumour spread in the mining town Abu Hamad in the River Nile State in 2020 that gay miners practiced sodomy and that a gay marriage was expected to be celebrated. A farewell party for one of the miners was mistaken for the expected gay marriage celebration and a mob appeared with sticks beating gay suspects; one of whom was beaten to death and later denied a burial in the town cemetery.⁷² If families accept queerness, it is often under the condition that it is not publicly known as this would create stigma and dishonour.⁷³

For these reasons, queer organisations are not only fearing political backlash, but even more so they fear social backlash. With reference to the experiences of Egypt and the Cairo 52 or the Queen Boat incident there is a fear among queer activists that it will cause more harm than good to the community as it may cause a more severe crackdown, including on their families. Cairo 52 refers to the number of Egyptian men arrested in May 2001 aboard a floating gay nightclub called the Queen Boat. The gay men's families in the *Queen Boat* case were subject to harassment and humiliation. For example, the press was allowed to take photographs of the men in detention. The names and workplace addresses of the accused were published in the media. Although many of those interviewed exposed cases of gendered violence within the family, they still wanted to protect their relatives from the stigma and shame. One queer activist interviewed says it like this:⁷⁴

67 These are documented in the oral histories of queer persons collected by Meshahat, but also in more recent reports and surveys conducted by the Arab foundation and Bedayaa.

68 Interview with a queer activist, 45 years of age, Khartoum, August 2018.

69 Interview with a queer activist, 23 years of age, Khartoum, February 2018.

70 Interview with a queer activist, age not known, Khartoum, August 2018.

71 Interview with a queer activist, 28 years of age, Khartoum, August 2018.

72 MA Kabashi 'Gay practices in Abu Hamad' *Alintibaha* March 2020 (in Arabic).

73 Interview with a queer activist, 29 years of age, Khartoum, February 2020.

74 Interview with a queer activist, 31 years of age, Khartoum, July 2018.

No, there are no voices in Sudan fighting for the LGBT community because there is fear of being known by the society. It is not only us that we are fearing to be harmed, but also our families.

The fear of a double backlash has made it difficult to be open about one's sexual and gender identify, even more so to collectively and openly mobilise for queer rights. In an interview with a queer activist, she put it like this:⁷⁵

[T]here are many challenges and risks like the threat of the safety of the activists and the social stigma. That is why we are taking small steps to ensure the safety of ourselves and movement.

The threat to the activists is real and may manifest in harassment, arrest and even torture. The leader of Sudan's first queer organisation, Freedom Sudan, was arrested, kept in solitary confinement and interrogated together with 11 of his friends (nine men and two women) in 2009. His narration of the experience was published on the organisation's website which was later closed. However, it remained in an article posted on Bedayaa's website. It said:⁷⁶

They stripped me naked and they started to interrogate me. They asked me about everything: if I'm a gay, friends, family, political and LGBT association activities. They started to hit me. Some one of them put a pistol to my head and said 'I wish I can kill you right now'. They dragged me by my legs and they tied me upside down, and they started hitting me with a metal stick all over my body, they grabbed my organ and hit me there too, and they sticked that stick in my ass and they were laughing out loud about it and asked me: 'Do you like it, do you want more?' I was screaming from pain and I was bleeding from everywhere, urine came out. They kept doing that until I lost my consciousness.

5 Activism from the closet

The queer community has been largely invisible in domestic political and public discourses. There have been few traces of politicisation, especially compared to the hotspots of politicised homophobia in Africa and beyond like Uganda, Nigeria, Tanzania and Poland. Politicisation is here understood as 'the process by which a social phenomenon becomes the basis of mobilisation by societal and political actors, who turn it into

75 Interview with a queer activist, 31 years of age, Khartoum, July 2018.

76 The Arab Foundation for Freedoms and Equality (n 7) 31.

an issue of major political significance'.⁷⁷ The extent to which queerness appears in the public discourse, which has been rare, is through the use of homosexuality and lesbianism as negative and derogatory terms to target political opponents of the regime. For example, with the aim of smearing women's rights activists' reputation they have been labelled lesbians indicating a weak moral character. For example, in the Human Rights Watch report, *Good girls do not protest*, a women's rights activist of Nuba decent told a story where national security officials contacted her family in early 2013 and told them that she was lesbian and accused her of apostasy.⁷⁸ As such, homophobia has been employed as arsenals in the fight to maintain power, but the examples have not been frequent and labelling women's rights activists as prostitutes is a much more common approach. To a large extent queerness is ignored in political discourses making the group invisible or hidden. In the words of Mesahat Foundation for Sexual and Gender Diversity:

Given that most Sudanese do not accept homosexuality and transsexuality and deny its presence in Sudan, LGBTQ issues are not discussed in public or even private spaces, therefore LGBTQ people in Sudan remain invisible, and their voices are not heard.⁷⁹

The legal reforms introduced by the Hamdok government did not come about because the movement engaged in lawfare as defined in this book; that is when actors on different sides of long-term battles over heated social and political issues, use rights, law and courts as part of their strategy to advance their goal. Instead, they have engaged in what El Menyawi has termed 'activism from the closet' by supporting women's groups particularly in their efforts to repeal the public order laws.⁸⁰ 'Activism from the closet' involves the strategy of not explicitly advocating for queer rights, but rather supporting efforts to enhance human rights more generally as it is seen as something that will also benefit queer persons. This approach provides a model where the safety against backlash is built in, because such activism does not involve being 'out'. Thus, rather than becoming a target of double backlash, the closet becomes a safe locus for collective strategising.⁸¹ Instead of viewing the closet as a dominating symbol of oppression and suppression of one's true identity (and vice-versa

77 S Gloppen & L Rakner 'LGBT rights in Africa' in C Ashford & A Maine (eds) *Research handbook on gender, sexuality and the law* (2020) 194.

78 Human Rights Watch "'Good girls don't protest" Repression and abuse of women human rights defenders, activists, and protesters in Sudan' (2016) 30

79 Mesahat Foundation (n 4).

80 El-Menyawi (n 2) 28.

81 El-Menyawi (n 2) 44.

seeing coming out of the closet as the ultimate symbol of freedom and liberation), the closet is here seen as a protective space in an authoritarian and homophobic environment. This strategy did not change with the revolution, but the organisations had more online visibility than during the Al-Bashir era. However, there were no public calls for de-criminalising sodomy or for the enhancement of queer rights more generally during the transitional period. However, when the death penalty for sodomy, article 148 of the 1991 Criminal Code, was removed as part of a larger effort by the transitional government to conform Sudan's laws with the Constitutional Declaration, Meshahat posted on social media, with the hashtag #notenough.⁸² However, this was the only public response to the legal reform from Sudanese queer organisations. Beyond social media platforms, queer organisations did not speak out. As these legal reforms became increasingly scrutinised, civil society issued a collective statement which queer organisations did not openly endorse.

5.1 Strategic alliance with the women's movement

As pointed out earlier, the public order laws, were identified as the legal instrument most oppressive to the queer community. However, these laws got the most international and national attention for their strategic use to control women's dress and movement against the backdrop of an Islamising state. Women's rights had served as a symbolic political signifier of the Islamist political project in Sudan.⁸³ During the revolution the public order law became the symbol of the Islamists' wrongful interpretation of Islam to justify the oppression of women. Even Al-Bashir himself described the implementation of Sudan's public order law as conflicting with the Sharia just before he was ousted from the presidential palace.⁸⁴ The long-term head of the security forces, Salah Gosh, stated (before he fled the country) that the demonstrations erupted because the government was too strict with the implementation of Sharia laws in Sudan.⁸⁵ The oppressive nature of the public order laws, therefore, fuelled the revolution, especially among young women as they chanted for 'freedom, peace and justice'.⁸⁶ Queer persons interviewed for this study explained they also participated in the revolution motivated by their opposition to these public order laws and the

82 You can access the Facebook post here [نزع نالعلا هت... - Mesahat for Sexual and Gender Diversity | Facebook](#).

83 S Al-Nagar & L Tønnessen 'Sudanese women's demands for freedom, peace, and justice in the 2019 Revolution' in L Affi, L Tønnessen & AM Tripp (eds) *Women and peacebuilding in Africa* (2021) 110.

84 As above.

85 As above.

86 As above.

heteronormative ideals which it built on. According to a gay revolutionary in Sudan:⁸⁷

I have been subject to discrimination and harassment because of my sexual orientation. Because I am gay, the public order police have repeatedly targeted me. The last incident happened at the start of the uprising in December 2018. I was beaten badly by the public order police and with blood on my clothes I went straight to join the protests. What motivated me was that we have no rights in this country. We are really suffering.

The very first acts of the transitional government, therefore, was to repeal the public order law.⁸⁸ This was presented by Abdallah Hamdok as a tribute to women and youth ‘who have endured the atrocities that resulted from the implementation of this law’.⁸⁹ Many of the amendments of the Miscellaneous Amendments Law of 2020 catered to women’s demands, including the criminalisation of female genital mutilation and the reform of article 152 which had been widely used to arrest women for indecent dress. Now any reference to dress was removed, which was a huge win for the women’s movement. Women’s (in)decent dress has been particularly politicised during the Al-Bashir regime and women’s groups in the country have advocated against these laws for decades. Such laws were viewed by women’s rights activists as un-Islamic, but also as a tool of oppression and contrary to women’s dignity and the fundamental freedom to live their lives as they wish. Several cases of the arrest and flogging of women for indecent dress have prompted activism and received heightened attention by international media. The ‘No to Women’s Oppression’ initiative was established in 2009, in the aftermath of an incident of public order police forces arresting Sudanese female journalist Lubna Hussein for wearing trousers and accusing her of violating article 152. Lubna Hussein called these laws un-Islamic: ‘Show me what paragraph of the Qur’an, or quote me Prophet Muhammad saying it is the responsibility of the government to punish people in this way’. She stated further that:

Islam does not say whether a woman can wear trousers or not. The clothes I was wearing when the police caught me – I pray in them. I pray to my God in them. And neither does Islam flog women because of what they wear. If any Muslim in the world says Islamic law or sharia law flogs women for their clothes, let them show me what the Qur’an or Prophet Muhammad said on

87 Interview with a queer activist, age not known, Khartoum, January 2020.

88 *Radio Dabanga* (n 10).

89 Quote from Abdallah Hamdok’s twitter. The tweet can be accessed here Abdalla Hamdok on Twitter: ‘I pay tribute to the women and youth of my country who have endured the atrocities that resulted from the implementation of this law.’ / Twitter

that issue. There is nothing. It is not about religion, it is about men treating women badly.⁹⁰

Since then, other cases, including those of the 'YouTube girl' (flogged in public by public order police in 2010) and Amira Osman (arrested in 2013 for refusing to cover her hair) have prompted renewed calls for abolishing these laws. For example, the Salmamah Women's Resource Centre had a special focus on law reform efforts dealing with violence against women before it was shut down in 2014. In conjunction with its membership, SIHA has undertaken research, capacity-building, sub-granting, and advocacy on women's human rights, especially in gender-based violence and the threats faced by female defenders of human rights.⁹¹ Among other things, SIHA submitted a call for urgent reform of Sudan's public order laws to the African Commission on Human and Peoples' Rights.⁹²

Joining forces with these women's groups in their efforts became the main strategy to change the public order law; something which queer activists believed would ultimately benefit them as well. This support is not made public as the activists fear backlash, but also because they were afraid that it can stain the reputation of the women's movement. One queer activist, Hamada, put it like this:

It is better to develop strong alliances with civil society organizations and political parties that can push to abolish the death penalty for homosexuality public order laws that target LGBTQI+ persons. Joining forces with for example the women's movement in demanding basic human rights could be a less risky approach in a society that is both socially, culturally, religiously and politically prejudiced against homosexuality. The women's movement share the same interest in eradicating the public order laws, and their cause is more easily acceptable for many Sudanese.⁹³

Creating strategic alliances with women's groups to support human rights reforms is key, but also a strategy fraught with challenges. According to our interlocutors, many women's rights defenders in Sudan are very conservative when it comes to queer rights, and homophobic attitudes are widespread even within those groups. Especially lesbian and bisexual female interlocutors, who are also fully engaged as members of women's

90 'Lubna Hussein: "I'm not afraid of being flogged. It doesn't hurt. But it is insulting" *Guardian* 2 August 2009

91 Established in 1995, SIHA Network is a regional network that works in Sudan, South Sudan, Eritrea, Ethiopia, Uganda, Kenya, Somalia, Somaliland and Djibouti.

92 SIHA Network (n 27).

93 Hamada (n 33).

rights organisations, were concerned about homophobic attitudes within these organisations which meant that they could not necessarily be open about their ‘authentic self’ as one interlocutor put it. One queer activist says it like this:

The individuals who are working in the women’s NGOs are homophobic and very aggressive, and LGBTQ+ persons are looked upon with hate and denial of their basic existence and the question here will always be; why are you like this? ... The movement for LGBTQ+ rights is completely marginalized on all levels, and that marginalization is deliberate ...⁹⁴

However, here there was a notable change with the 2019 revolution. Many new women’s groups led by younger activists were established in the wake of the revolution. Although some of these organisations have publicly announced their support for queer rights, we are hesitant to mention them by name in this paper as the military coup has dramatically restricted the civic space and activists, including both women’s rights activists and queer activists, are afraid. Some have fled the country. These organisations label themselves as feminist, which is a term often rejected in a Sudanese setting.⁹⁵ As part of the new conversations about feminism, intersectionality and sexual rights has become an important aspect.⁹⁶ In the words of one interlocutor, ‘I am part of the young feminist movement which believes in intersectionality and supports minorities like LGBTQI+’.⁹⁷ This is perhaps one of the major changes after the revolution; that fact that queer organisations are openly supported by a new generation of young feminists.

Because of widespread homophobia, the support of the women’s movement and even the transitional government has not been openly made. While the fear of double backlash is the main reason for the prevailing strategy of ‘activism from the closet’, an added element emerged in the wake of the revolution. Political space opened up for civil society generally and there was a potential window of opportunity for queer rights claims, considering that the Constitutional Declaration aimed to repeal discriminatory laws and provisions that restrict freedoms. However, queer activists feared that openly supporting the women’s movement or advocating for queer rights specifically would create a bad

94 Interview with a queer activist, 28 years of age, Khartoum, June 2018.

95 L Tønnessen ‘Feminist Interlegalities and Gender Justice in Sudan: The Debate on CEDAW and Islam’ (2011) 6 *Religion & Human Rights* 25

96 L Tønnessen & S al-Nagar ‘The politicization of abortion and hippocratic disobedience in Islamist Sudan’ (2019) 21 *Health and Human Rights Journal* 16.

97 Interview with a feminist activist, Khartoum, March 2022.

reputation for the transitional government as it 'might be used so serve other political agendas' and thereby serve as 'an excuse against the goals of the revolution'.⁹⁸ The political forces that the interlocutor is speaking about are the Islamists trying to smear the transitional government as a coalition of infidels spreading immorality and sexual chaos (*fitna*) in Sudan.

6 One step forward, two steps back?

The legal reforms have had some impact in the lives of queer persons we interviewed in Khartoum, but according to a recent survey (169 queer individuals) have not felt a significant change.⁹⁹ Among our interlocutors the feeling of change largely depends on their class position. The interlocutor from the upper middle class residing in areas of Khartoum like Riyadh and Amarat where new queer spaces emerged, noticed positive changes in their everyday lives. A gay man from one of these middle-class areas of Khartoum says that 'there has been positive change with the dismantling of the public order laws. Before, I would get harassed a lot and even arrested for my hairstyle and dress'.¹⁰⁰

Queer spaces emerged, such as cafes and restaurants, and there was a sense of newfound freedom in terms of dress and appearance. However, it seems that these changes were only felt among the upper middle class. Although our interview sample is small, it was a clear trend in the interview material. A lesbian woman from a socio-economic poorer neighbourhood in Omdurman, which is Sudan's most populated city and located within Khartoum state, says:

I do not trust the transitional government. I cannot come out. I cannot dress the way I want. We are still policed. My friend was stopped yesterday. The arresting officers told him they were the public order police. But they are supposed to be dismantled. The public order mentality is still there, but there are differences according to class and which area you live in, between Riyadh which is a middle-class area and Omdurman where I live¹⁰¹

The public order architecture is not easily dismantled.¹⁰² According to Reem Abbas (2021) 'the public order was transformed into a mentality that

98 Interview with a queer activist, 32 years old, April 2020.

99 Bedayaa (n 14) 26.

100 Interview with a queer activist, age not known, January 2020.

101 Interview with a queer activist, 31 years of age, Khartoum, February 2020.

102 'Sudan Public Order Law still being implemented: SIHA network' *Radio Dabanga* 3 September 2021.

is widespread across the society'.¹⁰³ What is clear is that legal reform is not sufficient and the amendments to the Criminal Code of 1991 continue to give the police discretionary powers to assess what is (in)decent, although the formulations about dress have been completely removed.

Since its abolishment, there have been calls to bring these laws back. The freedom enjoyed by their abolishment, although primarily in middle class neighbourhoods, is used by Islamists and others actively working against the revolution in an attempt to stain its reputation. That the revolution will bring moral chaos to the country, including prostitution and homosexuality. This is noticed by our interlocutors. A transman explains:

There is still public order harassment and violence, but from the community. When I wear trousers in public, even if I cover my hair which is expected since society sees me as a woman, the community calls me the 'civilian government' to indicate that the transitional government has caused moral chaos in our country.¹⁰⁴

The legal reforms, and especially the 2020 Miscellaneous Act, have been critiqued from two different angles. The reform took place before the National Assembly was appointed and as such many felt that it was not legitimate as the transitional government bypassed democratic institutions. Although many welcomed the reforms, they were highly critical of the process; a process which also largely excluded civil society input.¹⁰⁵ The biggest objections, however, came from the Islamist movements and religious clerics in the country. The legal reform, under the banner of personal freedom, was perceived as contrary to Islam. This sparked several protests against the transitional government.¹⁰⁶ Following the announcement of the legal changes, the cleric Abdul Hai Youssef accused the minister of justice of apostasy. One twitter account with 75 000 followers, he denounced the reforms, calling them a 'war against virtue, and an [act of] aggression against the nation'.¹⁰⁷ The National Congress Party, Al-Bashir's former ruling party, urged Sudanese to come down to the streets to bring down the transitional government, warning

103 R Abbas 'Bring back the public order lashings?' Chr.Michelsen Institute Sudan Blog (2021).

104 Interview with a queer activist, age not known, Khartoum, February 2020.

105 And some people created hashtag #ضيوفت_الب_عيرشت_ال which means: 'No legislation without a mandate.'

106 'Sudan: Thousands protest repeal of Islamic restrictions' *Middle East Monitor* 17 July 2020.

107 Hamad (n 13).

that the ‘battle now is between the secularists and Islam’.¹⁰⁸ Secularism is in this context seen as basically international, western liberal values. At the heart of this battle, is public order and morality. Although queerness or homosexuality are not always explicitly mentioned, it is implied as it is seen as a sinful and immoral act. But there are also instances where homosexuality is explicitly mentioned. Some social media groups, especially on Facebook were formed to express rejection for the so-called leniency of the new transition government towards homosexuality after lifting the death penalty in July 2020. One group was called ‘fighting homosexuals and those who call for sex in Sudan on Facebook’ emerged. The group encouraged users to report the online queer fora with the intent to shut them down.¹⁰⁹

7 Conclusion

Although the transitional government ushered legal changes, albeit minor, with the potential to improve the situation for queer individuals in Sudan, it did not take a clear stance on LGBT+ rights. In the words of a queer activist, it was not ‘courageous enough to tackle the conservative Sudanese society due to the fear of resistance and rejection’.¹¹⁰ The lack of queer lawfare, therefore, continued to be a feature of queer activism going into the transitional period with ‘activism from the closet’ remaining the main strategy. However, the transitional period was short; perhaps too short and with time the movement might have strategised differently especially considering that the queer organisations have a new ally in feminist organisations. Although the fear of political backlash continued to be present, the fear of societal backlash in a country with widespread homophobia emerged as a prominent reason as to why queer organisations have not politicised LGBT+ rights after the 2019 revolution. In the words of a queer activist: ‘It’s the fear of the social backlash that is keeping us from claiming our rights’.¹¹¹ Another queer activist states:

We were used to being afraid of the society, but mainly from the former Islamist regime. Now we know that the former regime had gained it legitimacy from the homophobia of society. Therefore there is no significant change to be mentioned.¹¹²

108 ‘Sudan drops Islamic social laws in historic move sparking joy and fury’ *Middle East Monitor* 17 July 2020.

109 The Arab Foundation for Freedoms and Equality (n 7) 34.

110 Interview with a queer activist, 32 years of age, Khartoum, May 2020.

111 Interview with a queer activist, 24 years of age, Khartoum, May 2020.

112 Interview with a queer activist, 25 years of age, Khartoum, April 2020.

Although there is an important and growing discussion on LGBT+ rights mainly online among the educated middle class individuals on social media, queer organisations are still preparing the ground after decades of authoritarian and homophobic suppression. Still at the start of a conversation, the queer community in Sudan is now faced by a military coup which might jeopardise the few, yet significant, legal changes which materialised after the revolution. However, it is important to keep in mind that the benefits of these legal changes first and foremost seem to have benefitted queer individuals from certain class positions in Khartoum within which the queer organisations have their main support base.

References

Books and book chapters

- Al-Nagar, S & Tønnessen, L 'Sudanese women's demands for freedom, peace, and justice in the 2019 Revolution' in Affi, L; Tønnessen, L & Tripp, AM (eds) *Women and peacebuilding in Africa* (James Currey 2021)
- Gloppen, S & Rakner, L 'LGBT rights in Africa' in Ashford, C & Maine, A (eds) *Research handbook on gender, sexuality and the law* (Edward Elgar Publishing 2020)
- Ibrahim, AA *Manichean delirium: Decolonizing the judiciary and Islamic renewal in the Sudan, 1898-1985* (Brill 2008)
- Kondgen, O *The codification of Islamic criminal law in Sudan: Penal codes and supreme court case law under Numayrī and Bashīr* (International Institute of Islamic Thought 2017)
- Nugdalla, S 'The revolution continues: Sudanese women's activism' in A Okech (ed) *Gender, protests and political change in Africa* (Palgrave Macmillan 2020)

Journal articles

- Berkouwer, S; Sultan, A & Yehia, S 'Homosexuality in Sudan and Egypt: Stories of the struggle for survival' (2015) *LGBT Policy Journal*
- Blitt, R 'The Organization of Islamic Cooperation's (OIC) response to sexual orientation and gender identity rights: A challenge to equality and nondiscrimination under international law' (2018) *UTK Law Faculty Publications* 173
- El-Menyawi, H 'Activism from the closet: Gay rights strategising in Egypt' (2006) 7 *Melbourne Journal of International Law* 28
- Tønnessen, L 'Enemies of the state: Curbing women activists advocating rape reform in Sudan' (2017) 18 *Journal of International Women's Studies* 151
- Tønnessen, L 'Feminist Interlegalities and Gender Justice in Sudan: The Debate on CEDAW and Islam' (2011) 6 *Religion & Human Rights* 25
- Tønnessen, L & Al-Nagar, S 'The politicization of abortion and hippocratic disobedience in Islamist Sudan' (2019) 21 *Health and Human Rights Journal* 16

Dissertations and theses

Tønnessen, L 'The many faces of political Islam in Sudan: Muslim women's activism for and against the state' PhD thesis, University of Bergen, 2011

Articles/papers/reports/films

Abbas, R 'Bring back the public order lashings?' Chr.Michelsen Institute Sudan Blog (2021)

Abdalla Hamdok on Twitter: 'I pay tribute to the women and youth of my country who have endured the atrocities that resulted from the implementation of this law.' Twitter

'A Collaborative Civil Society Statement in Response to The Law of Various Amendments (Abolishing and Amending Provisions Restricting Freedom) – Exposing “a wolf in sheep's clothing”' SIHA Network (August 2020)

Bedayaa 'Needs Assessment Report: LGBTQI+ in Sudan' (2020)

Hamada 'Blog from Sudan: The Sudanese Revolution: A fight for LGBTQI+ rights?' CMI Chr.Michelsen Institute (2019)

Human Rights Watch "'Good girls don't protest" Repression and abuse of women human rights defenders, activists, and protesters in Sudan' (2016)

Mesahat Foundation for Sexual and Gender Diversity 'Queer Voices from Sudan ... What is it like to be Queer in Khartoum?' (2017)

SIHA Network 'Beyond trousers: The Public Order Regime and the Human Rights of Women and Girls in Sudan' Submission to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia (12 November 2009)

The Arab Foundation for Freedoms and Equality 'Human rights violations against the LGBTQI+ Communities in Egypt and Sudan' (2021)

The Equal Rights Trust 'In search of confluence: Addressing discrimination and inequality in Sudan' (2014)

News/online articles

Hamad, K 'Sudan uprising: Sweeping reforms usher in justice and freedom' *Global Voices* 14 July 2020

Kabashi, MA 'Gay practices in Abu Hamad' *Alintibaha* March 2020

‘Lubna Hussein: “I’m not afraid of being flogged. It doesn’t hurt. But it is insulting”’ *Guardian* 2 August 2009

منع نال عإلامت... - Mesahat for Sexual and Gender Diversity | Facebook

Notaro, PC ‘LGBT Rights in Sudan: Someone fights for the rainbow’ *Il Grande Colibri* 13 January 2013

Osman, M ‘Sudan’s military is brutally suppressing protests – Global action is needed’ *The Guardian* 22 March 2022

‘Sudan abolishes strict Islamic legislation’ *Radio Dabanga* 13 July 2020

‘Sudan dissolves National Congress Party, repeals Public Order Bill’ *Radio Dabanga* 29 November 2019

‘Sudan drops Islamic social laws in historic move sparking joy and fury’ *Middle East Monitor* 17 July 2020

‘Sudan flogs 19 men in public for cross-dressing’ *Sudan Tribune* 4 August 2010

‘Sudan Public Order Law still being implemented: SIHA network’ *Radio Dabanga* 3 September 2021

‘Sudan: Thousands protest repeal of Islamic restrictions’ *Middle East Monitor* 17 July 2020

‘Sudan votes: Quietly, Sudan’s underground gay movement grows online’ *Queer Muslims* 29 November 2011

‘They were shouting “kill them”’: Sudan’s violent crackdown on protesters in Khartoum’ *Human Rights Watch* (2019)

‘Sudan votes: Quietly, Sudan’s underground gay movement grows online’ *Queer Muslims* 29 November 2011

Legislation

Constitutional Declaration of 2019

Criminal Code of 1991

Miscellaneous Amendments Law of 2020

Voluntary and Humanitarian Work Act of 2006

Websites

‘The Life for All project’ <https://www.bedayaa.org/research-and-documentation> (accessed 18 July 2022)