

# COMMITTEE OF THE CIVIL PROJECT

## ISSUE PAPER F-1

### FREEDOM OF ASSOCIATION

This issue paper will address the human rights questions that arise in the light of the current Sudan Government laws on political parties, the NDA draft law on political parties, the SPLM position on political parties in ‘New Sudan’, and related issues concerning trade unions, professional associations, citizens’ associations, NGOs etc.

#### **Government of Sudan’s Laws on Political Parties**

The Government of Sudan has claimed to have liberalised the political life of the country, allowing free expression and free association. In 1999 this was enacted under the banner of ‘tawali,’ and in 2000 complete freedom of association for political parties was proclaimed. Both the 1999 Tawali laws and the March 2000 party law need close scrutiny.

##### *The March 2000 Party Law*

The new party law promulgated in March 2000 permits political parties to function inside Sudan with no need for registration. However, if these parties want to participate in any general or local elections, they have to register under the conditions set down in the tawali law. Hence it can be said that the new law has recognised the existence of the parties that have been active in a clandestine or semi-clandestine way, sometimes entering into an open public political arena and addressing the government through memoranda. But if these parties want to participate in any formal elections they must submit to the tawali set of rules. In other words, the political establishment remains restricted to those who conform to the tawali, while those who dispute the principles of tawali are denied the right to contest.

##### *The Tawali Laws*

The tawali system was not abolished by the 2000 party law. Most of the jurisprudence of tawali remains on the statute books. In fact the March 2000 law reinforced the primacy of tawali when it comes to elections.

In reality the tawali only allows a very limited right of association—confined to those organisations that support the project for an Islamic State of the current government, it is deeply ambiguous, and has various fundamental and other flaws.

The law governing the ‘tawali’ was issued in accordance with Article 26 of the Salvation Constitution, which stipulated that:<sup>1</sup>

1. People have the right for ‘Tawali’ and organising themselves for cultural, social, economic, professional or trade union purposes, and there is no restriction for such organisations insofar as it is in accordance with the law.
2. People have the right of organising ‘political Tawali’ on the condition that they must adhere to Shura (consultation) and democracy in leading the organisation. Persuasion should be used, not financial power, in competition and commitment to the principles of the constitution as regulated by that law.

The word ‘tawali’ does not have a clear meaning. Its literal meaning is ‘continuous succession’, but exactly how that should be interpreted is not at all clear. It is an ambiguous term that has not been used before in either Sudanese political literature or in previous constitutions, nor in any modern Arab or Islamic constitutions. The UN Human Rights Special Rapporteur for Sudan noted in his report, ‘The term tawali is extremely ambiguous, at no point is the term defined, either in the constitution or in the newly enacted legislation.’

The word ‘tawali’ does *not* mean ‘the right to organise’ or ‘freedom of assembly’ or anything similar. However, Article 26 uses the word ‘organisation’ when it refers to cultural, social, economic, professional or trade union activities. In the second part of the Article, however, the phrase ‘political tawali’ (*al tawali al siyasi*) is used. This implies that there is some form of distinction between ‘political’ and ‘non-political’ tawali. This only adds to the confusion. Extreme caution should therefore be used when trying to define the word ‘tawali’ or translate it into English.

Many people believe that the ambiguity and confusion around the word ‘tawali’ is deliberate. The ambiguity can allow the Sudan Government to take arbitrary action to restrict freedom of association or freedom of expression, but still maintain that it is acting in accordance with the spirit of tawali.

The ambiguity is reflected in the law for organising tawali, which repeats the content of Article 26(2) and goes on to detail articles that assure that tawali cannot mean the right of establishing multiple political parties that practice the right of freedom of association.

Article 2 describes ‘the organisation’ as ‘a group organising political tawali, togetherness and voluntary association for political expression for the purposes of campaigning and competing in elections to maintain public authority, in accordance with the law.’ Neither the Constitution nor the tawali law use the word ‘party’ at all. The concept of ‘organisation’ seems to fall short of permitting political parties. The fact that some organisations have been registered with the name ‘party’ does not make them parties under the law: the leaders of these organisations may want to establish political parties, but according to the law they have only established ‘organisations’, irrespective of the name.

The Sudan Government has started to try to explain the meaning of ‘tawali’, using different forums and gatherings. It has used different linguistic interpretations aimed at establishing its origin in Arabic philosophy, claiming that the term is no different from political pluralism. However, if the term really *does* mean multi-party democracy and freedom of

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<sup>1</sup> This is a translation of the Arabic text of the Constitution. The English language text has a slightly different meaning.

association, why did not the government use those terms in the constitution? The National Committee for Drafting the Constitution—set up by the Sudan Government itself—recommended respect for freedom of association along these lines. Its draft Article 41 read:

People have the right to organise themselves for political, cultural, trade union and academic purposes, and that should be done through proper legal regulations.

This article echoed all previous Sudanese constitutions, save the 1973 Constitution that reserved political organisation to a single party, the Sudan Socialist Union. By specifying the right to organise, this draft is superior to the final version—it is much clearer and upholds a higher standard of human rights. The fact that the recommendation of the National Committee for Drafting the Constitution was overruled suggests that a partisan political agenda was at work.

The Steering Committee believes that any terms in a national constitution—and particularly any terms as important as ‘tawali’—must be strictly defined, or they should not be used at all. Any term used in a constitution must be easily understood by ordinary citizens. A term subject to controversy among scholars of philosophy is not a suitable foundation for a basic constitutional principle.

The tawali law, Article 3(2) states that ‘every organisation should abide, in its political actions, by the principles and rules of the constitution.’ Therefore we must investigate what the Sudan Government means by tawali more closely by looking at the Constitution as a whole.

Article 139(a) of the Constitution states that Sharia is the first and core element of the Constitution and Article 139(b) states that political organisations should be established in accordance with tawali.

Throughout the Constitution, it is clear that Sharia is the primary and constant element, in addition to some constitutional rules. Article 4 states that law derives from God, and sovereignty is for the people, the worshippers of God. Article 65 makes Sharia the first source of legislation. Article 7 states that Jihad for defending the country is a duty for everybody. Article 18 states that people in government institutions and the private sector should devote their work to the worship of God. Article 10 states that zakat should be paid by every citizen, whether Moslem or non-Moslem.

It is clear that the basic constitutional rules have established a theological Islamic state. It follows that when organisations registered under the tawali are asked to commit themselves to the rules and regulations of tawali, this means acting in conformity with a set of clear and precise political prescriptions. In effect, all tawali organisations become part of the National Congress, and subscribe to the government’s ‘civilisation project’ (*el mashru’ el hadhari*).

In the political philosophy of Hassan al Turabi, the Islamic state necessarily differentiates between people on the basis of religion and language. According to the law, a tawali organisation cannot distinguish between people on the basis of colour of skin, ethnic origin, inheritance, gender, class or locality. Missing from this list are religion, language and culture. It is therefore implicit that tawali organisations *can* organise on the basis of religion, language and culture.

The tawali law is careful to block all the means whereby a tawali organisation might deviate from the principles of the Islamic State. At the end of Article 3 of the Constitution, it is stated:

An organisation should not look for any ways or means in order to change the principles of the Constitution or to stop them from being conveyed, unless through ways and procedures agreed upon by the Constitution and law.

The only procedure for changing the Constitution is laid down in Article 139, that specifies means of amendment and gives authority to the National Assembly and the Head of State, and if necessary a referendum if the issue is about basic principles.

The implication of this is that no party is allowed to call, even peacefully, for abolishing the Islamic State, or to stop the Sharia being the prime source of legislation, or to abolish the definition of tawali in the Constitution.

This article also prohibits pluralism of opinions, programmes, plans and policies. Instead, all tawali organisations are obliged to fit the same mould and support the existing Constitution, tawali law and Islamic State. It is evident that this will only permit the free expression of pro-NIF political views, while critical voices are outlawed.

Another, related shortcoming of the tawali law is Article 7, which gives the task of registering tawali organisations to a registrar appointed by the Head of State with the approval of the National Assembly. This leaves the parties at the mercy of the executive decisions of the registrar, who is a political appointee. Article 9 gives the registrar the right to investigate whether an applicant organisation has fulfilled the conditions of registration, or not. If the registrar decides there is a shortcoming, he can refuse registration. He can also cancel the registration altogether, if he is convinced that the organisation did not show adequate commitment to the Constitution and the law, or the applicants did not fulfil the necessary characteristics of those who have the right to register, or there was something incorrect in the basic rules of the applicant organisation. Finally, according to Article 10, the registrar is the person who has the right to decide against any appeal concerning the registration.

A final element worthy of attention concerns financing of tawali organisations, in the light of the fact that much of the NIF's party finance is obtained from external sources. In almost every democratic system in the world there are major restrictions on foreign organisations and individuals financing domestic political organisations. However the tawali law does not prevent or limit any registered organisation from obtaining funds from foreigners. This is cleverly presented in Article 12(1), which states that 'An organisation can obtain financial resources from any source inside Sudan.' This leaves open the option for a foreign financier to *first* transfer money to an individual, company or institution inside Sudan, and *then* legitimately pay it to a tawali organisation.

It can be seen that the tawali is deeply and fundamentally flawed. It has nothing that guarantees basic freedoms of association and expression. In fact it places tight limits on the ability to organise and is designed to protect and push forward the NIF project of an Islamic State.

The Sudan Government is signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and is therefore bound by commitments to uphold the rights of freedom of association and freedom of expression. Article 22/1 of this Covenant states, 'Every individual has the right of associating with others, including the right of establishing trade unions and joining them for the protection of his or her interests.' The Sudanese constitution should not define any civil and political rights that circumscribe these fundamental rights. The Committee of the Civil Project firmly believes that the Government of Sudan is obliged to grant full rights of political organisation.

## **NDA's Draft Law on Political Parties**

Sudan has never experienced a law to regulate and restrict the political parties. During parliamentary periods, Sudanese parties enjoyed wide freedom, while during military regimes they were subjected to a total ban. The parliamentary government of 1965-69 enacted a ban on the Sudan Communist Party, but this did not prevent the election of its secretary general to the Constituent Assembly in 1967. The main parties were noticeable in the resistance each of Sudan's military regimes, thereby retaining their organisational capacities. A few months after the fall of the first dictatorship in 1964, after a six-year ban, the parties were able to contest nationwide general elections. A year after the fall of the second dictatorship in 1985, they were again able to organise for elections. There is little doubt that the major political parties in Sudan would be able to organise for elections within a few months of the present, given the right political circumstances.

The situation in Sudan therefore contrasts with that in countries like Egypt. In Egypt, political parties were banned for thirty years, and had actually disappeared with the exceptions of radical left and right wing organisations, which meant that the limited freedom brought by the parties law in the 1970s was seen as a step forward. In Sudan, however, restricting the freedom of forming political parties will be a step backward and it will not work. The enactment of the 'Tawali' law by the government and the drafting of parties law by the NDA, though very different in terms of the extent and nature of the restriction, both spring from the same presumption that the State has the final say in the right of individuals to form political parties. Both the 'Tawali' and the NDA Party Law presume that freedom of the association is the exception and the restrictions are the rule.

Historically, Sudanese parties' existence and activities have been controlled by a much more effective law than any government legislation—namely the law of natural political selection. According to this law, the parties that come into existence and prosper are those that are able to appeal to a wide constituency, gaining a significant measure of popular support. This was clearly illustrated by the events following the Popular Uprising of April 1985 and the subsequent lifting of restrictions on political activity.

Between the Popular Uprising and the formation of the transitional government, the Trade Unions Alliance/National Alliance represented a major power in Sudan alongside the generals in the Transitional Military Council. Those unions and parties that had not joined the Alliance already began to register with the Alliance which was based in the premises of Khartoum University staff club. These parties and the unions were trying to assert that they had participated in Uprising itself and some were convinced that was the right way to gain legitimacy. The Alliance was encouraged to register as many organisations as possible. Meanwhile the Islamists attempted to form their own alliance based in the residence of the Teachers' Union. During this period many new political parties appeared, including the Party of Pleasure. At the time, several of the major parties called for regulating political parties, and the issuing of a law on parties. However, in fact, the law of the natural political selection was the only law in force and it proved both effective and sufficient. The Party of Pleasure remained as joke. A total of 46 parties were formed but only ten actually succeeded in returning members of parliament. Six of these parties formed a bloc—the Union of Sudan African Parties—which acted in a way similar to a single party in parliament. The majority disappeared from the political scene after failing to have MPs elected.

The NDA's draft Law on Political Parties has to be seen in this historical context. The draft law is one of many prepared by the NDA, with the anticipation that it will take effect once the NDA takes power in Sudan. The NDA is principally composed of political parties which existed before the 1989 coup and were active with no need for any act to organise or regulate them. Those parties same resisted the ban imposed on them by three military governments. Therefore the drafting of the parties law is in fact a step backward from the legitimacy that these parties had upheld as one of the enduring principles of Sudanese political life.

Several sections of the draft law place restrictions on the right of free association and represent a retreat from the high standard of political pluralism formerly upheld in Sudan.

1. Article 3/1: 'Sudanese People have the right to form political parties and organisations and any Sudanese has the right to join them *according to the provisions of the this law*'. This article is actually initiating a new phase in Sudanese parties' history in which the right to form a political party is established by the proposed legislation and in accordance with its provisions. Up to now this right has been exercised by the Sudanese people and parties for more than sixty years, either in an open or a clandestine manner, without need of any law.
2. Article 3/2 states that 'Any political party and organisation that signed the Charter of the NDA and remained committed to it and struggled in its ranks, and also any party and organisation that struggled against the regime of the 30 June coup and signed the Charter before the fall of the regime, shall be considered a legitimate party according to the provisions of this law and shall continue its activities until it adjusts its state of affairs within six month of the validation of this law.' This provision confines the right to form a political party to the parties of the NDA, provided that they adjust to requirements of the act within six months of the presumed NDA victory. Other parties have to meet the requirements and to wait for decision from the proposed Council of Organising Political Parties, before it is allowed to exist or become active.
3. Article 4/6 reads: 'The party should not be formed upon a religious, tribal, regional programme or on the basis of discrimination according to gender, race, ethnicity, or religion.' It is evident that the uneven development and the grievances resulting from ethnic and cultural inequalities have pushed ethnic and regional politics to centre of the political stage in Sudan. To forbid parties to be formed on ethnic or regional bases is to forbid these grievances to be redressed and makes organisations like the Beja Congress illegitimate—even though it is part of the NDA. The Committee for the Civil Project in Sudan believes that while calling for a theocratic state is unacceptable, the right to organise along ethnic, cultural or religious lines is a fundamental right and a political necessity. However, parties should not be permitted to promote programmes that are contrary to fundamental human rights. But other provisions in the Constitution and Penal Code, such as laws prohibiting the incitement of racial hatred or religious intolerance, should be sufficient to prevent such parties from promoting divisive or intolerant programmes. It is not necessary to have a party law to prohibit such activities.
4. Articles 6 and 7 of the draft impose unnecessary restrictions on the formation of political parties. For example the registration of a political party is precondition for it to exist. Article 6 defines the components of a registration application as a 'written application to be

submitted to the national council to regulate the political parties, by group or organisation of not less than one thousand persons to be called the founders'. Many Sudanese political parties are elitist parties which might fail to have one thousand founders but which may succeed to gain tens of thousands of votes and have seats in parliament.

5. Article 7/4 raises a controversial issue in Sudanese politics, namely the ban on parties which are considered as branches of parties exist outside Sudan. Although the issue currently concerns Arab nationalist organisations, it might involve pan-African organisations in the future. Arab Unity was historically part of the programmes of many Sudanese parties, including not just Arab Nationalists but parties like the DUP and the Communist Party. The fact that Sudan joined the Arab league immediately after independence is clear indication of that inclination in the Sudanese politics. The Ba'ath Party, which is a branch of party headed by the leadership resident in Iraq, is one the founders of the NDA and has recently reactivated its membership. Under the draft law, the Ba'ath will be obliged to make changes which will totally transform its identity within six months of NDA rule, if they wish to continue as a legitimate party.
6. The draft places the National Council for Organising Political Parties in charge of political parties. The Council has the authority to register political parties, to examine the register of the political parties, to investigate and decide on any violations of the law and to take all the necessary steps including issuing bylaws, taking disciplinary actions and all the steps necessary to the implementation of the law. As a way of justifying the above-mentioned wide powers the draft tried to put some guarantees into the appointments to the council. The draft states that the President of the Council and the deputy president should have the experience and the qualification of a supreme court judge. It also proposed the appointment of the president and the deputy by the Head of State, based on a nomination by the Chief Justice. The three members should be suggested by the Supreme Council of Judiciary. All these conditions are not going to change the Council from a executive body to judicial body.

It could be argued that the draft law guarantees the commitment of the political parties to accountability, transparency and internal democracy. The Committee for the Civil Project argues that the accountability of the party's leadership, the transparency of its financial dealings and the internal democracy within a given party is the responsibility of the party's membership. If the membership is not capable of defending it, no set of laws or regulations will make it happen. In other words, all provisions of law and regulations can be manipulated by the leaders if the basic membership of the party is too weak and submissive for reasons of sectarian and ethnic loyalties, revolutionary discipline or any other reason.

However appropriate regulations for parties' transparency can be introduced by a parliamentary committee that imposes certain accountability on the parties that have representatives in parliament. It could also be obligatory for parties that, when their membership exceeds a certain number, to register as a non-profit company and be subjected to the general conditions of companies, which of course include submitting accounts. Privileges could be confined to the parties registered as companies or those who have parliamentary representation.

## ‘Civil Society’ Organisations

In any modern, democratic country, ‘civil society’ is the foundation of a truly pluralistic and participatory political society. This includes NGOs, community organisations, trade unions and professional associations, independent newspapers, human rights organisations, and other independent organisations. The independent media has been discussed in issue paper C2 and will not be analysed further here.

The multiplicity of forms of organisation allows citizens to mobilise to promote their rights and interests, and to protect themselves from the arbitrary actions of government. In the last ten years, since the demise of Communism, civil society has flourished to an unprecedented degree across the world. In Eastern Europe, Asia, the Middle East and Africa, there has been a massive expansion of NGOs, human rights organisations, independent newspapers, professional organisations, community organisations, etc. The growth of telecommunications, especially satellite TV and the internet, have made possible new forms of transmission of information and organisation. States can no longer enforce the same forms of control and censorship as in earlier decades.

Sudan has one of the richest traditions of civil society organisation of any country in Africa or the Middle East. Even during colonial days, there were strong and independent social and political organisations in the country—notably the Ansar and Khatmiya. After independence, trade unions and professional organisations have played vital roles in the struggle for peace, human rights and democracy, most notably in the non-violent civil uprisings that brought down military regimes in 1964 and 1985. The future of human rights and democracy in Sudan will be closely tied in with the vigour and independence of civil society organisations. The freedom to organise will also be essential to Sudan’s future economic prosperity. Community organisations and NGOs will play a leading role in the struggle to overcome poverty.

### *NGOs and Community Organisations under the NIF*

The Government of Sudan has sought alternative forms of organisation to supplant political parties, trade unions and NGOs. Most of these are based on trying to build up alternative power structures, appealing to Islam and tribal identity, and also taking away responsibility for basic services from the state. This has led to a range of new community organisations and NGOs that exist under NIF. However, only certain sorts of organisations have been allowed to exist.

1. *‘Peace from Within.’* This programme was launched in the wake of the SPLA split of 1991, aimed at bringing over individual SPLA leaders to the government side. By extension, any authorities among the Southerners, Nuba or Southern Blue Nile people were invited to become part of government structures. The main motivation of Peace from Within was to establish defence pacts with elements previously aligned with the SPLA. But one of the outcomes was to recognise and legitimise tribal authorities in the South, Nuba Mountains and Southern Blue Nile, and among displaced people in Northern Sudan.
2. *‘Return to the roots’.* This programme was aimed at stimulating Arab orientation in education and culture, by stressing traditions in Sudanese communities that were aligned with the Arabian peninsular. As with the Peace from Within programme, it also had the



effect of helping to rehabilitate tribal structures, especially among migrants. One of the unforeseen consequences of these policies has been to strengthen support for Christian churches and church-related organisations. When the Sudan Government gave people a limited right to organise, on the basis of tribe or religion, many Southerners and some Nuba began to organise around their churches.

3. *'Islamic social planning.'* Along with its counterpart 'the comprehensive call to God,' (*Da'awa al Shamla*) this helped to support and legitimise a wide variety of Islamic organisations, including Islamic missionary agencies, philanthropic organisations, etc. Some Da'awa-ist organisations pursue their activities in a peaceful and transparent manner, but others have become closely embroiled in support for the NIF's Jihad programme and other forcible measures of social transformation.

Unlimited freedom of association would permit all organisations established under the NIF, including the Da'awa-ist organisations, to continue their activities. Granting freedom of association to community organisations established under 'return to the roots' programmes should pose no problems. But allowing some of the major Da'awa-ist agencies to function, with their existing sources of funding and close links to the security services and Jihadist ideology, could pose major problems.

### *NGO Policy Options*

The main challenge for NGO policy in a democratic Sudan is how to enable citizens to organise freely, to fulfil their potential and exercise their rights, while preventing intolerant or chauvinistic organisations from taking a leading role.

One option would be to prohibit the formation of organisations based on religious or ethnic affiliation. This is superficially attractive, but it would almost certainly prove to be a futile means of achieving a worthwhile aim. Legislation of this kind would run the risk that it would merely suppress genuine local community organisations, while the major targets would escape by re-registering as non-religious or non-ethnic organisations. In fact, any systematic attempt to restrict freedom of association is unlikely to be effective.

A better approach is to insist on certain procedures that any organisations should follow if they are to be registered and allowed to operate as NGOs, with the tax breaks and exemptions that NGO status entails. These include the following:

1. Transparency. All organisations above a certain size should be required to publish their accounts and annual reports of activities. Accounts should include the identities of large donors and all foreign donors.
2. Non-violence. No organisation should in any way give material or moral support to any cause or programme that entails violence or coercion. There must be a thorough demilitarisation of the NGO sector.
3. Tolerance. While an organisation may promote the activities of one religion, by means of proselytisation or support to mosques or churches, it should not attempt to undermine or

demean the status of other religions in any way. Similarly, while an NGO may be set up to serve the members of a particular ethnic or tribal group, it cannot do so at the expense of members of other ethnic or tribal groups.

4. Separation of philanthropic and commercial activities. Any registered NGO should not be able to conduct commercial business and retain the tax privileges of NGO status.

Sudan can learn from the experience of other African and Middle Eastern countries in their experience of the NGO sector.

Simpler procedures for the registration of small, grass-roots community organisations will be required. (Along with sports clubs, school societies, etc.)

One of the dilemmas to be faced in NGO policy is the status of human rights organisations. In many countries, human rights organisations enjoy NGO status. This has obvious financial advantages, but it has the disadvantage that most NGO laws require organisations to be 'non-political', and human rights activism is by its nature a political activity. British law by contrast does not allow human rights organisations to register as charities. A possible solution to this problem is to have a double system for NGO registration, dividing between 'charities' (which must be strictly non-political) and 'non-profit organisations' (that can engage in politically-related campaigning). Charities would have full tax-exempt status, while non-profit organisations would be exempt from business taxes and rates but otherwise have no special privileges.

### *Trade Unions and Professional Associations*

Before the 30 June coup d'état, Sudan possessed one of the most vibrant organised labour movements in Africa and the Middle East, which was a strong force for protecting the rights of workers and professionals, and also supporting democracy and human rights. In the year after the coup, trade unions and professional associations were comprehensively and severely crushed, with leading unionist activists being imprisoned, tortured and threatened with execution. Thereafter, the NIF imposed its own leaders on the remaining trade unions. Not only have many union leaders been detained, tortured and dismissed from their jobs, but very large numbers have been driven to leave the country. It will be a major challenge to reconstitute Sudan's labour unions as the strong and progressive force that they once were.

There are three important challenges.

1. A law regulating and enabling trade unions and professional associations is required. Before 1989, Sudan possessed excellent labour legislation, and much of this can be re-enacted. The NDA Legal Secretariat has prepared a draft trade union law. The Committee for the Civil Project believes that there is a need for revision of this in respect of the judicial powers of the registrar, in the light of changes in the nature of the labour force, as explained in the following point.
2. The nature of employment and the workforce has changed substantially in recent decades. These changes had already occurred before 1989 and have been intensified since. The large, centralised industries have declined and instead there is a boom in the informal sector and a

proliferation of smaller employers. This phenomenon is common across the world. This makes it intrinsically more difficult to mobilise organised labour. But means can still be sought to protect labour rights in the informal and small-business sector.

3. The main challenge falls upon the labour union activists and professional association leaders themselves. No amount of legislation will succeed in reinvigorating organisations if their most dynamic leaders are not ready to become re-engaged. The responsibility for building up trade unions and professional associations ultimately falls upon Sudanese workers and professionals themselves.

## **Freedom of Association in the SPLM's New Sudan**

The SPLM/SPLA was founded as an army conjoined to a vanguard Marxist-Leninist movement dedicated to the revolutionary transformation of Sudan. Its original 1983 Manifesto did not provide for freedom of association, neither within the Movement during its revolutionary armed struggle, nor subsequent to the achievement of its political-military goals. However, throughout its history the SPLM has also attracted support from a wide range of Sudanese citizens who see it as the strongest line of defence against oppression and dictatorship. In joining the SPLM, many individuals are seeking to protect their individual and collective rights. As a result, there is a persistent ambiguity in the SPLM's attitude towards freedom of association.

1. Reflecting its Marxist-Leninist roots, its current admiration for the 'Movement' model of democracy in Uganda, and the practical necessities of fighting a guerrilla war, the SPLM is engaged in a centralised, militaristic, single-party struggle that is antipathetic towards freedom of association.
2. Reflecting the diversity of Sudan, the commitment of many SPLM members to human rights, the SPLM's membership in the NDA and its signature on the 1995 Asmara Declaration, which includes commitments towards international human rights principles, the SPLM is supportive towards freedom of association.

This ambiguity is also reflected in current practices in the SPLA-controlled areas of the 'New Sudan' during the ongoing armed struggle:

1. The SPLM is the sole political organisation allowed to operate in the New Sudan. Dissident factions of the SPLA have been militarily crushed. There has been no attempt to form a broader coalition of anti-government armed groups.
2. The SPLM is a member of the NDA, which also includes civilian parties that represent Southern and Nuba constituencies (USAP, SNP). The SPLM has permitted churches to operate in the New Sudan with a high degree of independence, it has also allowed independent Southern NGOs, human rights organisations etc to operate, and it has established representative institutions such as Liberation Councils.

The situation is one in which the optimist will argue that the glass is half-full, and the pessimist will argue that it is half-empty. Interpreting the SPLM's commitment to freedom of association depends on reading the mind of the leadership: is it 'genuinely' committed to full civil and political rights including freedom to form political parties, or is it determined to retain power in its own hands?

This question cannot be definitively answered. Instead, civil society organisations should press for a set of common aims that can be achieved, that are consonant with the wider aims and ideals of the SPLM, and that are compatible with respect for all civil and political rights. Most of these aims can only be achieved during a future transition to peace; but some can be at least acknowledge while the armed struggle continues.

While the war continues, the SPLM/SPLA has a right to impose a de facto state of emergency inside the areas it controls in Sudan, restricting civil and political rights in order to maintain security. But the SPLM/SPLA must also recognise that its emergency powers are limited:

1. By international humanitarian law, which requires guarantees basic rights.
2. By its signature of the Asmara Declaration, which commits it to respecting the rights of its alliance partners in the NDA.
3. By the practical and political consideration that it needs the willing support of the populace. This entails allowing representative structures to exist, dissenting opinions to be expressed, and independent civil organisations such as NGOs to function.

During a future transition to peace and democracy, the following basic principles should be asserted by civil society organisations in Sudan, with respect to the areas controlled by the SPLA:

1. The transitional period should see the demilitarisation of political parties. I.e., the unity of leadership and command between the SPLA and SPLM should not persist. (The same applies to other armed political factions including those aligned with the current government.) The SPLA should become part of a new non-political armed forces, while the SPLM should be registered as a political party equal to others. The SPLM will enjoy many advantages over other political parties because of its historical role in the armed struggle, the presence of its cadres in all areas of New Sudan, etc., but these advantages should not be formalised in law. Details of these transitions have been discussed elsewhere.
2. During the transitional period, all national legislation concerning freedom of association, including political parties, trade unions, professional associations, NGOs etc, must apply without discrimination in all parts of Sudan including the South, the Nuba Mountains and Southern Blue Nile.
3. During the transitional period and thereafter, all national electoral laws should similarly be applied in all areas of Sudan without discrimination. If there are multi-party elections in Sudan on a particular date, they must be held in both North and South under the same rules.
4. The Asmara Declaration places an obligation on all members of the NDA to campaign for the unity of Sudan. This is an agreement voluntarily entered into by independent parties. Other parties may be formed that do not wish to be bound by this commitment. It is essential that the transitional government, including the interim authority in Southern Sudan, recognise

the right of citizens to form parties to campaign on any position they like on the unity of Sudan.

## **Conclusion**

The Sudan Government is signatory to the International Covenant on Civil and Political Rights (ICCPR). Article 22/1 of the ICCPR states, 'Every individual has the right of associating with others, including the right of establishing trade unions and joining them for the protection of his or her interests.' This article should be the basis for any legislation concerning freedom of association.