

Submission for the UN Universal Periodic Review (UPR) of Sudan

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Sudanese human rights initiative(SHRI)

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Summary

This submission highlights key area of concern regarding Sudan's compliance with its international human rights obligations. In particular, this submission focuses on the situation of freedom of religion and belief in Sudan, particularly the lack of registration and legal status of non-Muslim in Sudan and how this results in restrictions on their freedom of assembly and expression, arbitrary arrests and detentions, and restrictions on their religious and cultural rights.

Methodology

The information contained in this report was gathered through desk research as well as interviews conducted with SHRI contacts and members of the many religious bodies inside Sudan between 2011 and September 2015

Follow up to the previous review

During the first Universal Periodic Review (UPR) of Sudan in 2011, different States made a total many recommendations on the situation of human rights in Sudan

Our organisation regret to note that SUDAN rejected all of these recommendation.

Background and framework

1. State religion

In the run-up to the April 2015 election, President Bashir stated that sharia would be the basis of a new constitution in Sudan, thus eliminating references to Sudan being a multi-ethnic, multi-religious and multi-cultural state. This announcement was promptly criticized by opposition and civil society leaders, who are calling for an inclusive and transparent constitution-drafting process.

The government enforces religiously-based morality laws and imposes corporal punishments on both non-Muslims and Muslims through the Public Order Regime, despite provisions in the CPA and the Interim National Constitution that non-Muslims be provided alternatives to the punishments prescribed for Muslims.

2. Sudan's laws violates the right to enjoy freedom of religion and belief

On March 22, 1991 the Sudanese government introduced a new penal code, based upon an interpretation of Shari'a (Islamic Law). The code applies in all Sudan, including the capital, Khartoum. The code is based upon a penal code drafted by Dr Hassan al Turabi, leader of the Moslem Brothers and then-Attorney General, in 1988. In the criminal law of the year 1991, we find the text of Article 125 and 126 thereof, relating to the protection of religious beliefs and apostasy in the range of renouncing Islamic religion only, in the sense that renouncing or apostasy from other religions is a crime punishable by law, as there is no crime or punishment except by law. A substantial minority of Sudanese are non-Moslems. This group includes Coptic Christians, followers of missionary Christianity in the South, the Nuba Mountains districts of Kordofan and the southernmost parts of Blue Nile, and followers of traditional religions

3. Freedom to worship

Holding open air meetings is not permitted. In order to assemble legally in public, permission must be obtained from the government. This permission is often denied. Furthermore, in April 2013 it was announced that no new permits would be issued for the construction of Christian churches. Consequently, the Christian community finds itself unable to express its faith publicly, or to construct new houses of worship. Several existing churches have also been destroyed, either by the state or during mob violence sanctioned by local officials.

4. RESTRICTIONS ON RELIGIOUS PRACTICE

The Interim National Constitution guarantees the freedoms to worship and assemble, establish and maintain places of worship. Despite these protections, severe violations of freedom of religion or belief persist in areas in Sudan. The government of Sudan normally grants permits to

construct and operate mosques and supports mosque construction and even the Sudan government provides funds for them however the government does not give a permission to build churches.¹

In many times, The Sudan Council of Churches criticized the authorities for banning the construction of new churches. For instance Sudanese government minister said there were already enough churches to provide for Christians.² Shalil Abdullah, a minister of Guidance and Endowments, was quoted as saying on Saturday that the remaining churches were enough for those Christians who stayed in Sudan. In the past years, there are many cases of churches been demolished near the capital, Khartoum

Recently, On 2 December 2014, Christians gathered inside Evangelical church in Khartoum North for prayers to protest against illegal evictions made by some investors who alleged that they have bought the land from an unauthorized committee which was unconstitutionally appointed by the Ministry of Guidance and Endowments.

CPA's signing in 2005, only three churches have received building permits and are reportedly under construction. Churches built without official permission, by owners who register land for personal rather than church use, exist at the authorities' sufferance. Even legally recognized church-owned properties are vulnerable to official harassment.³

Schools Confiscated, On June 14, the Jebel Aulia Locality Committee in south Khartoum confiscated three schools belonging to the Catholic Church, two in the Mayo area and one in nearby Omdurman.

5. Ministry of Guidance and Endowments

The Awqaf and Religious Affairs Act 1980 is the body that religious organizations are under supervision of the council, which was created by the Awqaf and Religious Affairs Act 1980. However the point is a non-Christian council is entrusted with wide powers over its religious institutions among them: The council established a section for Churches affairs in the Ministry that limited its activity in the beginning to helping churches in their dealings with other governmental departments. However, that changed lately when the section was flooded with security officers who turned its main concern to monitoring and supervising the Christian institutions. The general atmosphere now is that of suspicion.

6. Registration

¹ Interview

² <http://www.bbc.com/news/world-africa-28291001>

³ US report

SHRI notes the measures to ease restrictions on the travel of Sudanese and foreign religious officials and on the distribution of religious publications. SHRI encourages the extension of these positive measures in order to enable non-Muslim Sudanese to avail themselves of all the rights and freedoms associated with citizenship. There are no prohibitions or limitations imposed on the places of worship of Muslims, and the Government is protecting such places from political tensions and controversy.

7. DUE PROCESS (Fair trial)

Defendants are in most cases related to freedom of religion tried by public order courts where due process is not adhered to, including the right to a lawyer and a fair trial. These courts do not meet Sudanese or international fair trial standards. Defendants are often tried immediately or within a few days of being arrested. Judges issue summary rulings and women are often flogged on the spot and are frequently denied the right to appeal the decision. Amnesty International has documented cases where defendants are lashed within hours of their arrest. Defendants have limited access to defence counsel. In many cases contact with friends or relatives is prevented. Judges also do not inform the accused about the appeals process. 4

A 39 people who were arrested appeared before different public order courts, on the same day, all charged with causing a public disturbance. The judges in one of the courts did not allow lawyers to represent the defendants. The trial lasted less than an hour.

In recent apostasy caase the Right to a fair trial in meraim ibarham . The UN experts said that “her trial did not comply with basic fair trial and due process guarantees. In particular, she was unable to effectively challenge witnesses and call on witnesses to present her defence in violation of the right to a fair hearing⁵., in many cases the Commissions Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provides that: “the essential elements of a fair trial include adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence.”⁶

8. Right to life, right to liberty

On May 8,2012 Sudanese intelligence officers arrested Hawa Abdulla Muhammad Saleh, a Christian, for apostasy, proselytizing, “Christianization of minors,” and other crimes. Upon her arrest, the government posted a picture of Hawa holding a Bible in her hand, putting her life in danger. She was later released and remains in the country

9. Establish and maintain charitable and humanitarian institutions/solicit and receive funding.

⁴ <http://www.amnesty.org/en/library/asset/AFR54/005/2010/en/6652ea12-7bbb-498f-b09e-ab27ef8d7e9b/afr540052010en.pdf>

⁵ The UN experts press statement on meriam case

⁶ Commissions Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

The Organization of Voluntary and Humanitarian Work Act was passed by the National Assembly on 21 February 2006. The NGO Act came into force on 16 March 2006 upon signature by the President.⁷ The NGO Act controls and restricts NGO activity rather than facilitate freedom of association. Key problems with the NGO Act include: Excessive executive control over NGO funding. All NGO funding must be approved by the Humanitarian Aid Commission (HAC) and foreign funding must be approved by the Minister of Humanitarian Affairs. This constitutes an unreasonable interference in the activities of NGOs and donors by the Executive. It is also practicably unworkable.

10. Discrimination.

There is discrimination in granting governmental approvals required for the construction and use of places of worship. Although permits are routinely granted to build mosques, permission to build churches is usually withheld. Churches built without such official permission exist at the authorities' sufferance. Church-owned properties that are legally recognized are nevertheless vulnerable to seizure in a legal atmosphere in which government action is not constrained by an independent judiciary. Sudanese Authorities Demolish Church Building While Leaving Mosque Standing.

11. Discrimination on the basis of religion or belief/inter-religious discrimination/tolerance.....

Islamic Daawa Organization Act 1990 was promulgated to shower the organization with immunities and privileges. The Act gives to the premises of the Organization inviolable immunity so it is not permissible for anyone to enter its headquarters unless he has previously obtained a written permission of the organization's executive director or his designee⁸. Organization's buildings and real estate are not subject to nationalization, seizure or search, except with its consent⁹. The organization's archives, correspondence, and parcels enjoys immunity from being searched, opened or confiscated except with the permission of the organization.

12. children

In Sudan, The domestic adoption is one of this practices, it has been enforced that no single male permitted to adopt and the practice allows single female to adopt, the age requirement for adopting parents age 30 to 50 years¹⁰ however one of the discriminatory methods in domestic child adoption which is based on religion where non Muslim female is not allowed to adopt a child as the adoption is only allowed for the Muslim female and it should be noted that this is discriminatory practice has been enforced in Sudan¹¹.

⁷ *The Organization of Voluntary and Humanitarian Work Act 2006*

⁸ Daawa Act section 7(1)

⁹ Daawa Act section 7(2)

¹⁰ United nations department of economic and social affairs population division 33 child adoption, trends and policies

¹¹ Interview with a government social worker Maygoma Institution

SHRI has found the Maygoma Institution which the region's largest institution for babies has this condition and no non-muslim is allowed to adopt child . 12 children born out of wedlock should not be made to suffer the consequences of this discriminatory practices and which will let people to persuade the children born out of wedlock and accept and to raise them.

The custody of the child in Sudan which is regulated by Article 114 of the Personal Status of Muslims Act of 1991 , This custody of the child in Sudan family law violates the children right where its against the best interest of the child where according to the General Principles Regarding the Rights of the Child The Best Interests of the Child and also against the principle no 9. No Discrimination. 18. Right of Religious Instruction

13. governing marriage

Sudanese legal provisions governing marriage and divorce do not apply to non-Muslims: in mixed marriages, the marriage contract is drawn up according to the national laws of each spouse. However, the effects of a marriage, such as child custody, are regulated by the laws of the husband's country; thus, a mixed marriage in which the husband is a Sudanese citizen would be governed by Sudanese personal status laws.¹³

It states that that the custody of the child has to be with the one who has better religion and it states that the best religion is the islam, there are many cases when the court ordered the child has to be with the muslim parent and it has been in the case 1992 when the supreme court issues judgment that Islam should be the best for the child,

his article will provide a brief overview of Sudan's political history and current Relevant formal laws include the Civil Transactions Act,

14. the Marriage contract ,

Marriage contract , marriage has been changed, and defined it as "a contract between a man and a woman on the intention of getting together, in legitimate manner in which they practice pleasure of intercourse." However, an adult woman is not entitled to marry by her own, and if she does, her legal guardian has the right to cancel the contract if he sees the husband lacking efficiency

Inheritance law

The Personal Status Law established the rules of inheritance according to Islamic law. The main violation of those rules to international legitimacy of human rights is that the law makes a no right for non-Muslim to inherit Muslim so in case of the one changed his religion from aslim to other religion that means will not inherit the muslim unlike the inheritance based on fixed proportions of the total inheritance [spouses, husbands and parents]). Also, in case the of heirs by fixed proportions, the husband inherits half the legacy of his wife in the absence of descendants at all, and a quarter of the legacy when there is entitled Islam belief is one of the

¹² Visti to Maygoma Institution

¹³ <http://sudan.usembassy.gov/marriage.html>

condition to Inheritance; the inherited has no right to change his islam belive completely due to his article 351

15. Temporary Restrictions on Marriage.

A woman is temporarily barred from marriage when she is in iddat, the waiting period following divorce or death of the husband. Iddat lasts four months and ten days for a widow and approximately three months for a divorcee, after which she may remarry. The iddat period is designed to ensure that a woman is not pregnant from her previous marriage

For a Muslim man, marriage is permissible only with an individual who practices one of the "religions of the Book" (Judaism, Christianity or Islam). A Muslim woman may not marry a non-Muslim unless he accepts Islam. Since it is the father who confers religion to children under Islamic practice, this means the children will automatically be Muslims. (S. 19-E)¹⁴

Recommendations for the Sudan authorities:

Cooperation with and respect for international human rights mechanisms. Extend a standing invitation to UN human rights special procedures to visit the country and assist the government with any necessary human rights reforms

Protect the rights of everyone to freedom of assembly and expression, regardless of their citizenship, in accordance with international human rights law

Cease and investigate the widespread practices of intimidation and harassment of non-Muslim , who, as a result, have refrained from organizing public political and cultural gathering

Immediately cease the practice of pre-emptive detention and the wide-scale use of security forces used to intimidate non-Muslim residing in Sudan

Ensure the rights of non-Muslim to practice and manifest their religion, and to participate in their cultural events

Ensure the compatibility of legislation on hudud offences with human rights and urges that hudud penalties, because they are of exclusively Islamic origin, should not be applied to persons who are not Muslims because haded penalties are of exclusively Islamic origin,

Respect internationally established norms in the field of human rights, including the freedom to change one's religion and the freedom to manifest one's religion of belief either individually or in community with others and in public or private, subject to any necessary restrictions provided by law

¹⁴ <http://sudan.usembassy.gov/marriage.html>

recommends the revision of the Organization of Prisoners and Treatment of Inmates Act (1992), so that any early release is not applied in a discriminatory manner

Recommends that all the limitations on the construction of new places of worship be abolished. As regards the destruction of places of worship in the context of urban development plans, it is essential that provision should systematically be made for measures of compensation, in particular by providing sites for the construction of places of worship
the State should exercise its responsibility with respect to the protection of places of worship, to ensure that such places are shielded from religious extremism, obscurantism and the consequences of the conflict in the south to the Sudan. The government removes the restrictions on the travel of Sudanese and foreign religious officials