

Shadow report for the third Universal Periodic Review of the Republic of Sudan

Human rights violations based on SOGIESC in Sudan

Sudan SOGI Coalition (SSC)

Summary and General framework

Sudan accepted the vast majority of recommendations under the last Universal Periodic Review (UPR) cycle in 2016, however recommendations on the elimination of discriminatory provisions affecting lesbian, gay, bisexual, transgender and intersex persons were marked as noted. During the 2016 UPR, Sudan received the following recommendations:

142.17 Adopt measures in the legislative and political spheres, including appropriate budget allocation, to guarantee, prevent and eradicate discrimination on religious grounds, ethnic composition, gender, or sexual orientation. (Honduras)

142.21 Push forward for the elimination of discriminatory provisions affecting lesbian, gay, bisexual, transgender, and intersex persons. (Chile)

Since Sudan's last review in (2016) till present, Sudan has not enacted any legal or policy steps towards implementing these recommendations. Furthermore, there has been no efforts to address the issues of discrimination and violence against LGBTQI+ people on the grounds of sexual orientation stand/or gender identity/expression; on the contrary, the respect for the human rights of LGBTQI+ people in Sudan has been worsening.

Sudan is currently entering its second year in what has been already a challenging transition. After three decades of authoritarian oppression, masses of Sudanese citizens put an end to Omer al-Bashir's regime in April 2019. The events that followed were marred by violent phases, perpetrated by the defunct Transitional Military Council (TMC). In August 2019, representatives of the civilian political parties and military commanders signed a power-sharing agreement, charting Sudan's transitional path.¹ Since then, numerous key transitional tasks are awaiting to be fulfilled with the protest movement mounting its criticism on the delays.

¹ <https://www.vox.com/2019/8/19/20812054/sudan-power-sharing-deal-al-bashir-trial>

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Demands from the masses on expediting reform and accountability remain largely unanswered. Lack of critical legal and institutional reform, continuation of abuse by security apparatuses all signals concerning possibility of an authoritarian relapse.

The situation of the LGBTQI+ persons in Sudan still did not progress and remains dire. It compounds multiple factors that also correspond to the overall concerns, such as failure to reform security forces; lack of protection against non-discrimination; and de-prioritization of progressive legal reform. Abuses against members of the community continue, whether by third parties or state actors.

Under this report, SSC aims to reflect how challenges to the human rights framework to LGBTQI+ people are organically connected to the overall lack of integrating human rights standards in law, policy, and practice. The attitude of state apparatuses, shaped by the former regime, primarily presents a patriarchal and non-inclusive character in which people are hierarchized and accordingly LGBTQI+ people are the ones who are most vulnerable.

The report, in addition to highlighting the national legal framework and its shortcomings, also documents cases of abuses by the state and third parties. The documented abuses show the striking realities of the everyday challenges that members of the LGBTQI+ community struggle with.

This report finds that the Government of Sudan remains failing to protect and respect rights and freedoms of LGBTQI+ people in multiple dimensions, including the failure to take legislative measures to ensure equality and non-discrimination; failing to reform abusive security forces; as well as lack of positive steps to safeguard inclusivity in the public and private spaces.

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A. Right to life, liberty, and security of person

1. LGBTQI+ individuals are constantly harassed, beaten up, and in some cases killed because of their sexual orientation or gender identity. These acts of hostilities are perpetrated by members of the society and state actors directly and indirectly by not providing necessary protection to the community and enshrined laws criminalizing same sex activity which reinforces prejudice against LGBTQI+ people.
2. The UN Human Rights Committee adopted an inclusive approach in emphasizing protection under ICCPR to cover LGBTQI+ community. The Committee noted in its General Comment no.36 that the right to life also includes “the duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence.” The Committee explicitly included lesbian, gay, bisexual, transgender, and intersex persons as part of that scope. A similar approach was also adopted in General Comment No.35 on the right to liberty and security.²
3. SSC documented events that took place on the 6th and 7th of March 2020 at ‘Tawaheen Al-Dahab market, Abu Hamad, River Nile State, north of Khartoum, Sudan’, where a Sudanese citizen was killed because of his perceived sexual orientation, several shops and cafes were damaged and burned, and approximately 80 persons were arrested. The incidents escalated after hundreds of citizens of this area gathered and demanded the Sudanese authorities to impose security control on mining sites according to a statement issued by the Executive Director of Abu Hamad

² UN Human Rights Committee, General Comment no.35, Article 9, para.3

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district, Yahya Khaled Abdel Baset.³ The citizens also demanded to deport whom 'Yahya Khaled' called as the 'persons of bad behaviors' from the district hereby indirectly referring to LGBTQI+ persons. The statement also indicated that the killed citizen has been transferred to Atbara city, due to the refusal of the locals to bury him in the district's graves⁴.

4. It is claimed by another statement issued by the Sudanese Mineral Resources Company in the River Nile State that the incidents happened because of holding a party "gay marriage" ceremony in one of the cafes in Abu Hamad. This led to a security chaos that was fueled by incitement from some individuals at the market. The statement concluded that all the necessary legal measures have been taken to impose the security control and evacuate what is called "persons with bad behaviors" from all mining sites.
5. Although Sudan's constitutional charter⁵ recognizes the right to life and human dignity and personal freedom and security, yet the constitutional charter does not offer explicit guarantees and leaves the regulation of restrictions to the law.
6. The Sudanese transitional government took steps to enhance the protection and promotion of human rights in the country. Lately, In February 2021, Sudan's Sovereign Council has approved the ratification of the International Convention on the protection of all persons from enforced disappearances and international convention against torture, this is an incredibly positive step towards a real change in Sudan. However, up to date, the Sudanese authorities failed to show it carried out a thorough, effective, and independent investigation into the matter of Abu Hamad incident. Under international human rights law, failure to investigate violations to the right to life is considered a violation.⁶

³ <https://tinyurl.com/p4d9xtek>
<https://tinyurl.com/t4jdwps>

⁴ <https://twitter.com/goldfacemask/status/1236426207870271491>

⁵ <https://constitutionnet.org/vl/item/sudan-constitutional-declaration-august-2019>

⁶ <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-life/positive-obligations-imposed-by-the-right-to-life>

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Recommendations:

1. Carry out prompt, impartial, and effective investigations into all allegations of ill-treatment, persecution and extrajudicial killings based on sexual orientation or gender identity and punish all those responsible, including law enforcement and prison officials.
2. The Sudanese government should fulfil its duty by protecting LGBTQI+ individuals from any form of discrimination and abuse due to their actual or perceived sexual orientation and or gender identity.
3. We welcome Sudan's positive steps of ratification of conventions against torture and enforced disappearances and urge the government to fulfil its duty by ensuring protection of LGBTQI+ persons from torture and force disappearance.

B. Administration of Justice: Unlawful detention, Policing "Behavior", and Impunity

7. Sudanese legal system, as mentioned, does not offer adequate safeguards and remedies in connection to unlawful detention by security forces. The ousted regime often relied on its security apparatuses to oppress and silence dissents. In doing so, state actors were given a carte blanche with no proper oversight. Members of the LGBTQI+ community in Sudan have been a target of violations by security apparatuses. Documented cases show that the sexual orientation or gender identity were a trigger for the arrests themselves or at a later stage, it exacerbates abuse.
8. Security forces in Sudan, and since the ousted regime came to power, were empowered to police behavior whether in public or private spaces. Members of the LGBTQI+ community are more vulnerable to these transgressions than others. Access to justice is hindered by social barriers, fears of repercussions, while the complex legal immunities protect perpetrators from security personnel under the legal

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system.

9. The blanket nature of immunities was noted by the UN Human Rights Committee in 2018 concluding observations which stated: “the legal framework governing the security services and armed forces appears to guarantee impunity to perpetrators.”⁷ The African Commission for People’s and Human Rights also discussed this issue in a case against Sudan: “police officers in Sudan generally enjoy immunity which can only be lifted after a preliminary investigation. There is no established procedure or right to compel the Prosecution Attorney to commence an investigation where there is an allegation of wrongdoing by the police. The Commission considers the granting of such blanket immunities to police officers as an impediment to the exhaustion of local remedies since it is not disputed that there is no legal obligation on the part of the police hierarchy to lift the immunities of these officers on demand.”⁸
10. On July 9, 2020, Sudan’s Sovereign Council approved new laws, and passed a package of amendments to the existing laws. The law reform included a change to **Article 148 of the 1991 Criminal Code**⁹ that describes the so-called “**Sodomy Law**”. The amendments abolished the death penalty and flogging for the same-sex act but added imprisonment for seven years up to life which clearly increase the risk of prosecution and torture.
11. Alongside the amended laws, the Sudanese law and judicial system today has a major gap that allows for the judges to assign punishments arbitrarily. These punishments include the death penalty or corporal punishment such as ‘flogging’. Additionally, according to the current law of evidence, also known as the rules of evidence, proving the charge has become easier. Courts can simply use digital evidence such as private chats or pictures on mobile phones as the basis for a

⁷ Concluding observations on the fifth periodic report of the Sudan, CCPR/C/SDN/CO/5, 19 November 2018, para.37

⁸ **HADI AND ORS. V REPUBLIC OF SUDAN (COMMUNICATION NO. 368/09) [2014] ACHPR 3; (4 JUNE 2014)**

⁹ <https://www.refworld.org/docid/5a8433274.html>

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conviction for homosexuality. (This contrasts with the law before the amendment, where witness testimony was required.) The new rules of evidence might make the possibility of applying the sodomy law more frequent and far-reaching in the future. Moreover, it is important to mention that using digital evidence without official search warrants and legal bases conflicts with the most basic human rights to privacy. Besides, the digital evidence finds its way into use as forensic evidence merely when it comes to cases related to sexuality and bodily rights.

12. Regardless of the frequency of the implementation of so-called sodomy laws and what the penalty is, their mere existence results in a more hostile social climate for LGBTIQ+ people. This legal gap has sadly taken its toll in the past few months. For example, on July 28, 2020, the Court of 24 al-Qurashi, headed by Judge Imad Ahmad Al-Tom, carried out the punishment of 40 lashes and a fine of 40,000 pounds as a discretionary judgment on two young men who were convicted of indecent acts and sodomy.¹⁰ The report indicates that an employee of the National Electricity Authority of al-Qurashi caught the young men and took legal measures against them. The young men were convicted and punished with flogging and a fine or imprisonment for two months as an alternative punishment in case of non-payment.

In the lead up to the Sudanese revolution, a 26-year bisexual woman survivor was arrested and detained by the National Intelligence and Security Service (NISS)-now reformed to be known as General Intelligence Service- in Khartoum. The arrest occurred in the context of political crackdown against protesters and activists. While the survivor does not have a

¹⁰ "Execution of the punishment of flogging of two gay men caught during the practice of fornication in Khartoum", SudanAkhbar, 28 July 2020.
<https://www.sudanakhbar.com/791256>

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political activism background, she was taken by security officials to a detention facility in Khartoum. There, she had her phone searched and private messages and pictures were read. The interrogators then threatened her with conducting virginity test and rape. At some point, interrogators said to her: you are “homosexual”, after going through her private data in her phone which appeared to be triggering further intimidation and harassment from their end.¹¹

Recommendations:

1. Repeal article 148 of the Sudanese Criminal Act, ending the criminalization of consensual same-sex acts between adults.
2. The Sudanese government should include protection of LGBTQI+ people in its own envisioned framework of transitional justice.
3. Take the necessary steps to ensure that all the operations of intelligence agencies, Security and police forces are monitored by an independent oversight mechanism.

C. Right to Privacy

13. Cases documented by SSC show a pattern where privacy rights are disregarded. Often, this appears in the unchecked powers of the police to search phones and personal belongings of people without official warrant. Among the nine cases that were documented by the SSC, one of whom narrated that the police or security agents did so without consent or showing any legal warrant to conduct such action.

14. The nature of policing public and private behavior is connected to the violations of the right to privacy. The vague grounds of what to be considered “indecent materials” create an environment ripe for abuse. In cases documented by SSC, security officials considered having selfies or pictures of others, that appear to be “exposing” and not necessarily of

¹¹ <https://tinyurl.com/ryezr6ta>

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private parts, can be an indicator for an “indecent behavior.” When a photo or a text message that is perceived as intimate by officials, and the materials are exchanged between people of the same sex, homosexuality becomes an undeniable charge.

A gay man was arrested with his partner randomly while walking in Madani streets close to the International University of Africa neighborhood. He said: three police officers stopped them while walking and then forced them to accompany them to a nearby room. There, the police officers said that they were patrolling this specific area after reports of gay men having sex in the location. The officers separated the two. The police searched one’s phone saying if they found any photo of his private parts, this would be an evidence that he is “gay.” His partner later told him that in the separate room the police officers physically harassed him, touching his body, and told him that he has a beautiful face. After an hour, the police released them with no charges.¹²

Recommendation

1. Repeal Articles 151,152, 153 of Sudanese Criminal Act which violate basic personal freedoms and rights that have been used to control and punish women and LGBTQI+ persons using vague and broad wording, such as public indecency and morality.

D. Right to freedom of opinion and expression

15. In June 2018, the National Assembly passed the Informatics Offenses Act of 2018 that introduced criminal penalties for the spread of fake news online.¹³ The law also penalizes criticizing foreigners with up to two years in prison. In an overall worrying sign, the transitional Sudanese government failed to reform¹⁴ provisions under Informatics Offenses Act, which carry a pattern of vagueness in defining criminalization grounds and do offer loose provisions for the authorities to infringe on freedom of expression, surveillance, and censorship. On 18 of July 2020, the Sudanese armed forces announced the appointment of a

¹² <https://tinyurl.com/ryezr6ta>

¹³ <https://smex.org/do-new-sudanese-laws-regulate-digital-space-or-limit-freedom-of-expression/>

¹⁴ <https://advoc.globalvoices.org/2021/03/04/sudans-revised-cybercrime-law-falls-short-on-its-promise/>

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special commissioner with an explicit task to follow and sue activists and journalists who insults or defames the army's reputation¹⁵. This statement is concerning the overall freedom of expression rights situation in the country and bears similarities to other surrounding countries who already experienced an authoritarian relapse.

Recommendation

1. Repeal Articles 19,20 and 21 of the Sudanese Informatics Offenses Act (Amendment) 2020.
2. Harmonize the domestic legislation on Informatics Offenses with international human rights standards.

E. Fundamental freedoms and the right to participate in public and political life

16. Sudan's transitional constitutional charter recognizes freedom of expression, association, and assembly. Article 3 of the charter states that "rights and duties are based on citizenship without discrimination due to race, religion, culture, sex, color, gender, social or economic status, political opinion, disability, regional affiliation or any other cause."

17. Nonetheless, Sudan continues to fail in ensuring inclusivity and non-discrimination in exercising those key freedoms with homosexuality remains criminalized. Protecting people from homophobic and transphobic violence, prevent torture and cruel, inhuman, and degrading treatment on the grounds of sexual orientation and gender identity and prohibit discrimination on those grounds, repealing laws criminalizing homosexuality, is essential to safeguarding equal exercise for the LGBTQI+ people for those freedoms, as previously noted by the former UN Special Rapporteur on the rights to freedom of peaceful assembly and expression.¹⁶

¹⁵ <https://cpj.org/2020/11/sudan-tightens-cybercrime-law-as-army-pursues-fake-news/>

¹⁶ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/26/29, 14 April 2014, para.18

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18. The transitional mandate, as stated under the charter, tasks the government to “repeal laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender” without explicit mention of sexual orientation. Sudan embarked on several legal reform steps, which while they are welcomed, they did not touch upon protecting LGBTQI+ people or ensure their equal participation in public and political life.

Recommendations

1. Ensure representation of LGBTQI+ people in public civil and political affairs.
2. Adopt legislative, administrative, judicial, and other measures necessary to curb violence against persons based on their real or imputed sexual orientation or gender identity.

F. Right of protection of all form of discrimination

19. It is imperative that national authorities have a duty to protect its citizens from third parties’ infringements. Documented cases reflect a serious level of social – third parties-discrimination and violence.¹⁷ The case of Abu Hamad highlights organized mob violence to a degree which turns the government's failure to adequately investigate and prosecute perpetrators to reach a level of complicity and violate its international obligations.

20. LGBTQI+ persons in Sudan face a significant level of societal and third-party abuse. For many, accessing a remedy or filing a case at the police was not an option. Reasonably, state apparatuses are not seen to be inclusive and often they are the threat to avoid. A video circulated on social media in September 2020 showed crowds of people in a bus station in Khartoum physically attacking two persons calling them homosexuals and voice their rejection to their appearance and dress style. As to date, none of the attacked persons felt reporting the case to the police is a safe option, nor the police acted on itself to investigate and hold perpetrators to account¹⁸.

¹⁷ <https://www.docdroid.net/bVm9M7E/lgbt-voices-from-sudan-pdf#page=9>

¹⁸ <https://www.youtube.com/watch?v=smPYufIODus>

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21. There is also no anti-discrimination or hate crime legislation that protects LGBTIQ+ persons from harassment and abuse based on their sexual orientation and/or gender identity in Sudan. There is also no legislation or policy on gender identity recognition or other rights for transgender or intersex people in the country.

Recommendations:

1. Formulate public policies and protocols for key institutions, from the chain of justice through public health or social services, to eradicate violence and discrimination based on sexual orientation and gender identity and
2. The Sudanese government should promote the social inclusion of LGBTIQ+ people.
3. Establish a national mechanism, in collaboration with civil society groups and representatives from the LGBTIQ+ community to oversee government's commitment to protect and ending the discrimination against LGBTIQ+ people.
4. Adopt a national inclusive anti-discrimination legislation that contains protection in the instances that discrimination occurs based on sexual orientation and gender identity, real or perceived.
5. Introduce a Gender Identity Recognition Law, that would guarantee non-conforming and trans persons to have documentation according to their gender identity, protecting their access to all their other rights with proper documents.
6. Ensure that law enforcement and prosecution are well trained and sensitized to receive claims from LGBTIQ+ persons and to adequately investigating and prosecuting cases of abuses.