

The Criminalisation of Apostasy in Sudan – A Serious Violation of Human Rights

Anna Chisholm, Research Assistant – *Human Security Centre*

Human Rights and Conflict Resolution, Issue 3, No. 5.

The Sudanese Legal System

Adopted by the Bashir government and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A), the Comprehensive Peace Agreement (CPA) was signed in 2005 to end the North-South conflict.¹ Resultantly, Sudanese constitutional law was codified in the Interim National Constitution of the Republic of Sudan 2005 (INC).² Indeed, the human rights commitments expressed in the CPA went on to form the basis of the Bill of Rights (part two of the INC).³ It is significant to note that the INC was intended to be a transitional tool at a time of political unrest, not a permanent constitution. Despite this, the INC currently remains in force.

Concurrently, the Criminal Act 1991, and the Criminal Procedure Act 1991, formalise provisions pertaining to Sudanese criminal law.⁴ Owing to its historical roots, Sudanese criminal law can be described as Anglo-Egyptian styled, permeated by elements of *Shari'a* (Islamic law). *Shari'a* influences were first introduced, in a formal sense, by then-President Nimeiri in the form of the "September Laws" of 1983. The Criminal Act 1991, brought into force by the National Islamic Front, sought to further strengthen *Shari'a* in Sudan. For example, *hudud*, *Qisas* and *Ta'azir* offences and punishments were included. Additionally, apostasy (renouncing Islam) was criminalised under Section 126.⁵

Following the secession of South Sudan, a new (and permanent) constitution has yet to be adopted, although a constitutional review has been underway since 2011.⁶ Talk of law reform more generally is omnipresent, and much public debate has ensued regarding the role for *Shari'a* in the future governance of the country.⁷ On one hand, there is a broad consensus that the aforementioned *Shari'a* provisions are tantamount to the denial of human rights. Moreover, the lack of adequate protection for victims of rape under Section 149 of the Criminal Act 1991 is an additional cause for concern. Indeed, the current law leaves the door open for said victims to be prosecuted for adultery via Section 145. It should be observed that this is far from an exhaustive list of potential sources of

¹ <http://www.refworld.org/docid/4c0377872.html>

² <http://www.refworld.org/docid/4ba749762.html>

³ "The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives", January 2014, page 4, <http://www.redress.org/africa/sudan>

⁴ "Priorities for Criminal Law Reform in Sudan: Substance and process, An options paper prepared by REDRESS and KCHRED", January 2008, page 1, <http://www.redress.org/africa/sudan>

⁵ "History of Law Reform in Sudan", February 2008, page 6, <http://www.redress.org/africa/sudan>

⁶ "The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives", January 2014, page 4, <http://www.redress.org/africa/sudan>

⁷ "Report of the Independent Expert on the situation of human rights in the Sudan", (A/HRC/24/31), September 2013, paragraph 12, <http://www.ohchr.org/EN/countries/AfricaRegion/Pages/SDIndex.aspx>

violations. Conversely, there is extreme reluctance on the part of the Sudanese government to move away from a *Shari'a*-inspired criminal law system. Further to this, in December 2010, with the secession of South Sudan imminent, Omar al-Bashir announced an intention to form a new Sudanese constitution based on entirely on *Shari'a*.⁸ It is thus inferred that in this case *Shari'a* would continue to apply in criminal law also.

Apostasy under the Criminal Act 1991

The intention is not to propose that all *Shari'a* is problematic. Rather, it is to highlight that certain *Shari'a* provisions contained in the Criminal Act 1991 violate internationally guaranteed human rights standards. It is such provisions that should be carefully considered during this time of potential reform. Henceforth, particular attention shall be given to the criminalisation of apostasy under Section 126 of the Criminal Act 1991, which is punishable by death. The criminalisation of apostasy is far more than an empty threat or a nod to an ideal. In fact, there are worrying examples of this provision being enforced. Indeed, in May 2014, Al Gadarif Criminal Court dropped apostasy charges against a woman only after she had renounced her Christian faith in favour of Islam. In doing so she avoided a death sentence.⁹ Shortly thereafter, international headlines were made when Al-Haj Yousef Criminal Court in Khartoum handed down a sentence for Meriam Yahia Ibrahim, a Christian woman convicted for adultery and apostasy. Mrs Ibrahim's father was Muslim and so under Sudanese law, she too is considered Muslim and therefore cannot convert. As such, she was sentenced to 100 lashes and to death by hanging for her 'crimes'.¹⁰ Mrs Ibrahim refused to renounce her Christian faith and her conviction was only quashed under intense international pressure. She was freed from prison in June and has since arrived in the US.

It is evident that the apostasy provision contained in the Criminal Act 1991 facilitates the violation of human rights. Indeed, human rights groups such as Amnesty International have described this case as "abhorrent", stating that:

"'adultery' and 'apostasy' are acts which should not be considered crimes at all, let alone meet the international standard of "most serious crimes" in relation to the death penalty. It is a flagrant breach of international human rights law."¹¹

Human Rights under the Interim National Constitution of the Republic of Sudan (2005)

Under international law, States are obligated to respect, protect and fulfil human rights obligations.

It is asserted that the requirement to respect and protect can be found in Article 27(3) of the INC. This stipulates that international human rights treaties binding on Sudan are integral to its Bill of Rights. Sudan has ratified both the African Charter on Human and Peoples' Rights 1986 (ACHPR), and the International Covenant on Civil and Political Rights 1966 (ICCPR).¹² Therefore, under its national

⁸ <http://www.sudantribune.com/spip.php?article41745>

⁹ "Sudan's human rights crisis: High time to take article 2 of the Covenant seriously", June 2014, page 58, <http://www.redress.org/africa/sudan>

¹⁰ "Sudan's human rights crisis: High time to take article 2 of the Covenant seriously", June 2014, page 58, <http://www.redress.org/africa/sudan>

¹¹ <http://www.amnesty.org/en/news/sudan-woman-facing-death-sentence-grounds-her-religion-must-be-released-2014-05-14>

¹² <http://www.ohchr.org/EN/countries/AfricaRegion/Pages/SDIndex.aspx>

laws, Sudan must uphold the obligations contained in each of these treaties. These include the free practice of religion, found in Article 2 of the ACHPR and the prohibition of arbitrary arrest found in Article 8 ACHPR. Likewise, Article 18 of the ICCPR guarantees “freedom of thought, conscience and religion” while Article 6(a) of the INC itself makes explicit reference to the freedom to “worship or assemble in connection with any religion or belief”.

Furthermore, Article 27(2) of the INC stipulates that the State “shall protect, promote, guarantee and implement this Bill”. This obligation appears to entail additional positive measures regarding the prevention of human rights violations. It is hereby inferred that the Sudanese government must proactively push (to the maximum of its available resources) for change to those provisions of national law which contradict international human rights law. It has also been suggested there exists a requirement to enact laws criminalising human rights violations. The State must additionally provide victims with effective remedies.¹³

Human Rights as a Legitimate Standard in Sudan

Looking towards the impending legal reform in Sudan, it is proposed that considerations of human rights should guide the process. In order that this can be the case, it is of the utmost importance that the Sudanese government accept human rights as a legitimate standard. On a theoretical level, it is often asserted that human rights are universal. In other words, any given right applies equally to all people because universality is a characteristic inherent in all human rights. In theory we each, as human beings, have an equal and inalienable hold on all human rights. There is express reference to this concept in many international human rights documents. In addition to this theoretical understanding, universality must be applied in a practical sense. This is where issues of cultural relativity may impact on attempts to effectuate rights fully. Simply, this is the idea human values are not universal and as such can vary significantly depending on cultural background. It is essential that traditional practices and national and international legal requirements seek a common meeting point. This can be a tricky balancing act and it is not hard to envisage situations where conflict will arise, with *Shari’a* being a prime example. What is troublesome is that in a situation where universality is not applied as a check on custom, States are essentially handed free rein to continue with a given practice, regardless of the implications for human dignity. In extreme situations, it is possible to picture an unfettered discretion to deliberately mask oppressive practices with claims pertaining to culture.

Indeed, in the case of apostasy specifically, it is difficult to attribute its criminalisation wholly to Islamic cultural practice. Even within Islam debate exists as to whether apostasy should be considered a crime. In particular, liberal scholars are of the view that apostasy ought not to be criminalised and cite the Koranic verse which states that “there shall be no compulsion in religion.”¹⁴ While this is not the only view that exists, this is perhaps enough to demonstrate that, in the context of apostasy, Islamic custom is not so strong as to prevent human rights from being viewed as a legitimate standard for Sudanese law reform.

Recommendations

¹³ “Criminal Law and Human Rights in Sudan: A baseline study”, March 2008, page 2-3,
<http://www.redress.org/africa/sudan>

¹⁴ <http://www.bbc.co.uk/news/world-africa-27424064>

29th August 2014

The Criminal Act 1991 is a relic, left over from a time before the CPA and before the secession of South Sudan. Certain of its *Shari'a* provisions plainly serve as a major irritant to securing human rights standards in the country. This is highly troublesome. In particular, while the Sudanese government looks towards reform of the legal system, it is essential that Article 126 of the Criminal Act 1991 be abolished. Furthermore, all *Shari'a* provisions contained herein should be thoroughly assessed in light of whether they facilitate violations of human rights. Particular thought should be given to those international treaties that are already ratified by the Sudan. Possible means of harmonising these legal obligations with Sudanese culture should be explored and the outcome should be reflected in the law reform process.

Contactable at:

Anna.chisholm@hscentre.org

Please cite this article as:

Chisholm, A. (2014). 'The Criminalisation of Apostasy in Sudan – A Serious Violation of Human Rights'. *Human Security Centre [Human Rights and Conflict Resolution Group]*, Issue 3, No. 5.