

Universal Periodic Review 39th session – Stakeholders Report

SUDAN: Freedom of Religion or Belief and Women's Rights

Joint Submission to the 39th Session of the Human Rights Council's

Universal Periodic Review Working Group

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Report submitted by:

- **World Evangelical Alliance (WEA).** The WEA was founded in 1846 in London and has special ECOSOC Consultative Status since 1997. Today, the WEA is a network of churches in 134 nations that have each formed an evangelical alliance and over 150 international organizations joining together to give a world-wide identity, voice, and platform to more than 600 million evangelical Christians worldwide.
- **Open Doors International (ODI).** ODI supports Christians in more than 60 countries, where their fundamental rights are violated because of their faith.
- **Middle East Concern (MEC).** Middle East Concern seeks to promote freedom of religion and belief within the Middle East and North Africa, with a special focus on the Christian communities.

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I. Freedom of Religion or Belief after the change of government in 2019

1. In August 2019, the Sudanese Transitional Military Council (TMC) and the Forces of Freedom and Change, the movement leading the protests that resulted in removing from power President Omar Al-Bashir, signed a Constitutional Declaration. These developments paved the way for the formation of a civilian transitional government for the new Sudan and were seen by many as a new opening for the Sudan's transition from a dictatorial regime to a democratic republic integrated into the international community of states.

2. Article 55 of the 2019 Constitutional Declaration recognizes freedom of belief and worship, and the "right to profess or express their religion or belief through worship, education, practice, performance of rituals, or celebrations, in accordance with the requirements of the law and public order."¹ However, the wording of Article 55 raises concern regarding implementation, given past governmental abuses carried out under the same language found in Article 38 of the 2005 Constitution.² Historically, the terms "law and public order" have been extended in practice far beyond the narrow limitations permitted under international human rights standards. Maintaining the wording of Article 55 in force, contributes to preserving the flawed legal foundation that promotes discrimination, repression and persecution of religious minorities.

3. On 9 July 2020, the Sudan's Sovereign Council endorsed the Miscellaneous Amendments Act with a series of revisions to discriminatory provisions contained in the Criminal Code of 1991. With reference to the recommendations made to the Sudan by the Human Rights Committee and the Working Group on the Universal Periodic Review with regard to amending the national legislation to align it with international human rights instruments, in their July 2020 Report³ on the situation of human rights in the Sudan, the UN Independent Expert welcomed the endorsement of the Miscellaneous Amendments Act. With passing this Act, the Transitional Government has shown commitment to improving freedom of religion or belief conditions in the country by repealing, among others, Article 126 (apostasy law, prescribing death sentence for those who abandon Islam) of the 1991 Criminal Code.

4. These reforms, however, did not repeal Article 125 of the Criminal Code, which prescribes blasphemy as a criminal offense, but only amended this provision by abolishing flogging as a punishment for insulting religious beliefs, retaining imprisonment and a fine. Flogging was also abolished for crimes prescribed in Article 152 (public decency law) of the Criminal Code, used by authorities to target Christian women and girls for alleged indecent clothing (on the basis of not covering their head or wearing trousers) and other offenses based on state interpretation of Islamic precepts. Freedom of religion or belief cannot be ensured nor fully guaranteed until all these provisions are repealed in full.

¹ Draft Constitutional Charter for the 2019 Transitional Period, Art. 55. Available at: <http://sudanreeves.org/2019/08/06/sudan-draft-constitutional-charter-for-the-2019-transitional-period/>

²Sudan's Constitution of 2005, Art 38. Available at: https://www.constituteproject.org/constitution/Sudan_2005.pdf?lang=en.

³<https://undocs.org/en/A/HRC/45/53>

5. Historically, the Christian minority in Sudan has been particularly targeted by the Government, National Intelligence and Security Services (NISS) and law enforcement officers through monitoring, harassment, and arrests for allegations of proselytization, alleged criminal activities and actions against the Government. Faith leaders and churches of the Sudanese Church of Christ (SCOC), predominantly Nuba denomination, and of the Sudanese Presbyterian Evangelical Church (SPEC) have been uniquely targeted. The former-Sudanese Government demolished and destroyed a number of churches of different denominations throughout the years under the premises that they were illegally constructed, and confiscated church properties.

6. Church leaders in Sudan report that both Coptic and evangelical churches continue to face difficulty in obtaining permission to acquire land on which to build places of worship. As part of the application process, the government still requires congregations to present letters of agreement signed by residents in the area they intend to build. Residents often refuse to agree to the construction of new churches. The current legal framework is still not compliant to international religious freedom standards, serious restrictions against church property, construction and permits still exist, and harassment and discrimination against faith communities is still a reoccurring issue.

7. The Ministry of Guidance and Endowments has continually and unduly interfered in church affairs since 2012 by confiscating church properties, commanding Christian leaders to hand over church properties to a government committee and arbitrarily replacing church leaders with government-chosen leaders. In 2013, The Sudanese Minister of Guidance and Endowments announced that no new licenses would be granted to build new churches in the country, explaining that there was no need for any new churches because many Christian South Sudanese refugees returned to South Sudan after the secession in 2011.

8. Harassment of faith leaders, pressure on minority faiths and Government interference continue under the new Government, as exemplified by the recent case against eight SCOC leaders who refused to hand over control over SCOC property to a government committee and were initially arrested in August 2017. Despite the court's dismissal of the case against them in August 2018, it was reopened in July 2019⁴. On October 7, 2019, the Sudanese Judiciary confirmed charges of criminal trespass and illegal possession of church properties against them. In October 2020 a criminal court in Omdurman finally acquitted the eight SCOC leaders of all the charges⁵. However, their waiting for a lawful outcome for more than three years had a heavy impact on their lives.

Recommendations:

9. Amend the current legal framework to permit registration of churches, lift government prohibitions on church construction and issue permits for the building of new churches; create a legal mechanism to provide compensation for destroyed churches and return confiscated church properties.

⁴ See <https://www.csw.org.uk/2019/10/15/press/4476/article.htm>, and <https://www.worldwatchmonitor.org/coe/who-owns-the-church-sudan-court-puts-elders-on-trial-for-trespass-and-theft>

⁵ <https://www.csw.org.uk/2020/10/20/press/4854/article.htm>

10. Amend Article 55 of the Constitutional Declaration in a way that any exception to freedom of religion or belief will be subject only to the narrow exceptions allowed by Article 18 of the ICCPR (public safety, order, health, or morals or the fundamental rights and freedoms of others), to which Sudan is a signatory.

11. Repeal Article 125 of the Criminal Code, which prescribes blasphemy as a criminal offense.

12. Allow representation of members of minority faiths, appointed by each faith community, in the Ministry of Religious Endowment.

II. Women's Rights after the Miscellaneous Amendments Act of 2020

13. In their July 2020 Report⁶ on the situation of human rights in the Sudan, the UN Independent Expert welcomed the amendments introduced by the July 2020 Miscellaneous Amendments Act that criminalized female genital mutilation (Art. 141); introduced life imprisonment for rape (Art. 149); deleted the offense of "immodest attire" that has been applied against women (Art. 152); and provided alternative penalty of community service to convicted pregnant women, lactating mothers and women accompanying children under 5 years of age (Art. 47). The Independent Expert noted those steps as implementing the recommendations made by the Special Rapporteur on violence against women, its causes and consequences on her mission to the Sudan⁷ and by the UN Human Rights Committee's Concluding observations on the fourth⁸ and fifth⁹ periodic reports of the Sudan.

14. The Miscellaneous Amendments Act abolished flogging for violation of the public decency law, envisaged by Article 152 of the Criminal Code, and removed the wording "wears an indecent or immoral dress". However, Article 152 can still be used, as it has been in its past form, by authorities to target Christian women and girls for indecent clothing (on the basis of not covering their head or wearing trousers) with reference to its legally vague language without a safeguard for an objective standard. The Article reads: "whoever commits in a public place an act of a sexual nature or emits signals with sexual meanings that cause harassment of public feeling or public modesty, shall be punished with imprisonment for a period of six months or a fine or with both," which leaves significant room for interpretation by law enforcement officers to assess what they deem to be a breach of modesty.

⁶<https://undocs.org/en/A/HRC/45/53>

⁷<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/079/16/PDF/G1607916.pdf?OpenElement>

⁸https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/SDN/CO/4&Lang=En

⁹https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/SDN/CO/5&Lang=En

15. In a joint public statement of August 2020¹⁰, nearly 30 civil society organizations and human rights NGOs, which criticized the Miscellaneous Amendments Act for insufficient and non-comprehensive measures taken to protect human rights and freedoms under the Sudan's international obligations, including women's rights. The statement also referred to problematic Article 152 of the Criminal Code and its arbitrary use by the law enforcement, allowing their "continued interference in personal freedoms". Notably, in the July 2020 Report, the UN Independent Expert made a recommendation to the government of the Sudan to "continue to promote women's rights and combat discrimination against women through legal reforms, including those of the Criminal Code of 1991 and the Personal Status Law, by consulting civil society, including women's organizations, and through the implementation of reformed laws"¹¹.

Recommendations:

16. Repeal Article 152 (public decency law) in the Criminal Code, used by authorities to target Christian women and girls for alleged indecent clothing.

17. Ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹² and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).

¹⁰<https://sihanet.org/a-collaborative-civil-society-statement-in-response-to-the-law-of-various-amendments-abolishing-and-amending-provisions-restricting-freedom-exposing-a-wolf-in-sheeps-clot/>

¹¹<https://undocs.org/en/A/HRC/45/53>

¹²Note: Also recommended in the UN Independent Expert's report on the situation of human rights in the Sudan of 30 July, 2020.