

Human Rights Council

Decision 6/102. Follow-up to Human Rights Council resolution 5/1

At its 20th meeting, on 27 September 2007, the Human Rights Council decided to adopt, without a vote:

“I. GENERAL GUIDELINES FOR THE PREPARATION OF INFORMATION UNDER THE UNIVERSAL PERIODIC REVIEW

“Reaffirming the relevant provisions, related to the universal periodic review, of General Assembly resolution 60/251 of 15 March 2006 and of Human Rights Council resolution 5/1 of 18 June 2007 containing the institution-building package, the Council adopts the following General Guidelines for UPR:

UPR – Sudan – May 2011- Women and Child Rights

Organizations involved:

- SABA Organization for Child/Mother best Interest Action
established 1998 – women empowerment, women maternal and child health promotion - contact person Ms. Elnageea Alwasila, Chair person
- Asmaa Society for Development
Established 2001- Women Rights, women empowerment – with special focus on literacy - contact person Ms. Sawsan Elshowaya, Director
- SEEMA Centre for Training and Protection of Women and child Rights
Established 2008- women and child rights with special focus on GBV and violence against children- contact person- Ms. Nahid Gabralla , Director
- Sudanese Organization for Research and Development (SORD)
established 2008 – women rights, training, research contact person Dr. Asha Elkarib, Director.

A. Methodology:

Based on the principles of participation and continuous consultation, team work and inclusivity, a group of activists and actors in the field of Human Rights attended orientation session which cover the conceptual frame and technical aspects of UPR organized by UNMIS. Followed by coordination meetings including many NGO's, then tasks were assigned for each group to prepare part of the report.

B. Institutional framework:

Some of the International and Regional Human Rights treaties which were already signed or ratified by Sudan and which have relevance to this report could be summarized as follows: International Covenant on Economic, Social and cultural Rights acceded 1986, International Covenant on Civil and political rights acceded 1986, Convention on the rights of Child signed and ratified 1990, and its two optional protocol signed and ratified in 2005, Convention concerning Forced or Compulsory Labour 1957, International Convention on the Elimination of All Forms of Discrimination 1977, Convention on the Rights of Persons with Disabilities, African

Charter on Human and Peoples Rights 1986, African Charter on the Rights and Welfare of the Child 2008.

According to Sudan Interim National Constitution (INC) and the bill of rights article 27 (3) INC states that (All rights and freedom enshrined in the international human rights treaties, covenants and instruments ratified by the Republic of Sudan shall be an integral part of this bill). This constitution was drafted in line with Comprehensive Peace Agreement (CPA). The core of this agreement is the democratic transformation and law reform and harmonization of the national laws, policies, strategies and mechanisms with INC and international and regional treaties. Hence all what have been mentioned above constitute the minimum standard and frame for protection and promotion of human rights in Sudan.

Regarding African Charter on the Rights and Welfare of the Child 2008, Sudan has made three reservations on the charter, article (10), (11-6), (21-2). These articles commit the state parties to ban early marriage, allow for protection for the privacy of the child, not to deprive pregnant girls from education. These reservations contradict with the spirit of both the signed CRC and the African charter

Some of the laws as press, trade unions, security, voluntary work, criminal law, family law have some articles that contradict with the Interim Constitution and the international treaties signed.

Sudan still didn't ratify main Human Rights conventions as CEDAW and African protocol for Protection of Women rights (Mopto Protocol).

C. Implementation of international human rights obligations

C-1 Maternal and reproductive Health:

Availability and delivery of service and Information is weak, in the following there is some statistics:

- Maternal mortality rate is 1107 for 100,000
- The anti natal care is 69.6%
- Skilled labour attendant 49.2%
- Primary health basic needs centres 58%
- FGM prevalence 69.4%
- Referral system very poor and weak
- Anti Tetanus vaccination is only for pregnant women and with low coverage
- Knowledge on family planning is only 7.6%

Government expenditure on Health services generally is very low, leaving the low income groups without health services.

Strategies need to be consolidated and adopted widely

Discriminatory laws and practices against women and children in Sudan includes:

C-2 Public Order Laws

Two articles, 151 and 152 referring to “public order”, of the 1991 Criminal Act. The Public Order Act is state legislation.

Article 151:

(1) There shall be deemed to commit the offence of gross indecency, whoever commits any act contrary to another person’s modesty, or does any sexual act, with another person not amounting to adultery, or sodomy, and he/she shall be punished, with whipping not exceeding forty lashes and he/she may also be punished with imprisonment for a term not exceeding one year or with a fine.

(2) Where the offence of gross indecency is committed in a public place without the consent of the victim the offender shall be punished with imprisonment for a term not exceeding 2 years or with a fine.

Article 152 states:

(1) Whoever commits, in public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent or immoral dress, which causes annoyance public feelings, shall be punished, with whipping not exceeding forty lashes, or a fine or both.

(2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.

The 1991 Criminal Code provisions relating to public order offences has enforced through the public order policy and special police unit widely as to constitute harassment and public humiliation for women.

From a legal and practical perspective, the Public Order articles relied upon in this context are problematic for three reasons:

1- Their application is inconsistent and considered discriminatory.

- 2- The special courts which enforce these laws lack due process guarantees.
- 3- The punishments enforced for these crimes violate international standards relations to torture and cruel, inhuman or degrading treatment or punishment.

The following is reported by Amnesty International as illustrated downwards:

- Sudanese women face a daily risk of being arbitrarily arrested in public or private places for "indecent or immoral behavior or dress." Public Order Police Officers in Sudan have the power to decide what is decent and what is not. In most cases women are arrested for wearing trousers or knee length skirts.
- Such behavior can be punishable by up to 40 lashes according to article 152 of the Sudanese Criminal Act of 1991. Judges have even exceeded the legal limit in some instances and punished women and girls by up to 50 lashes. These punishments amount to cruel, inhuman and degrading treatment and affect women as well as girls under 18 in Sudan.
- In July 2009, Lubna Hussein, broke the silence around these laws. Lubna, a Sudanese journalist with the UN, was arrested with 12 other women for wearing trousers. She chose to challenge her arrest in court and launch a public campaign calling for the abolishment of article 152 of the 1991 Criminal Act.
- Article 152 is part of a broader set of laws and practices, known as the public order regime, which allow the imposition of corporal punishment for what is seen as immoral behavior in public or private sometimes, affecting a wide range of men and particularly women throughout Sudan.
- The media attention Lubna Hussein's case obtained brought the punishment of flogging into the public spotlight. Large numbers of women are regularly arrested under these laws, but many remain silent because of the trauma of their arrest and punishment and/ or out of fear of the social stigma they would suffer from if people heard of their arrest(Amesty¹)

C-3 Rape Law:

The problem with the rape articles in the criminal Act 1991 is that rape is defined through using the phrases *adultery and sodomy*. *This has created confusion in the application of the law*. A woman alleging someone raping her may end up being implicated for adultery. According to this definition women above puberty age or adolescence may not allege to be victims of rape!!!

¹ [Read Amnesty International's campaign digest on the issue and take action to ask the Sudanese government to repeal article 152 »](#)

C-4 Child Death Penalty:

The application of the death penalty to a child is forbidden by Article 37 of the Convention on the Rights of the Child, to which Sudan is a state party. Notwithstanding its international commitments, domestic law in Sudan continues to make provisions for the application of capital punishment for children. Although Article 36 of the Interim National Constitution (INC) of 2005 restricts the use of the death penalty for individuals under the age of 18, it does not exempt children from application of the death penalty in the event of “serious offences”, namely *hudud* crimes. Under the 1991 Sudanese Penal Code, certain *hudud* offences, including armed robbery, are capital crimes. And according to child act 2010 it is not allowed to apply death penalty on children

On 21 October, Judge Shegifa Ali Eshag of the Special Court in Nyala, South Darfur, sentenced a group of nine individuals allegedly affiliated with the Justice and Equality Movement (JEM) to death for a carjacking in Khour Baskawit, near Selia and Yaseen in South Darfur on 13 May 2010. Four members of the group are under the age of 18. The group was convicted under Articles 50 (offences against the state), 51 (fomenting war against the state), 168 (armed robbery), and 182 (criminal damage) under the Sudanese Penal Code of 1991.

The names of the four children are:

- ♣ Ibrahim Shrief Yousef, 17 years old, Birged Tribe
- ♣ Altyeb Mohamed Yagoup, 16 years old, Zagawa Tribe
- ♣ Abdalla Abdalla Doud, 16 years old, Gimr Tribe
- ♣ Abdarazig Daoud Abdelseed, 15 years, Birged Tribe

C- 5 Withdrawal of criminalization of FGM from Child act 2010:

Although we state endorsement of Child Law as positive but it has a drawback in the resolution issued by the Council of Ministers, dated 05/02/2009, withdrawing article (13) of the draft Child Act, which prohibits and criminalizes FGM. This contravenes the state strategy and its national, regional and international obligations to eliminate the FGM, in its all forms. The decision of withdrawing article (13) is an abortion of the national formal and informal efforts which have been solidly exerted to affirm the need for a legislation that prohibits and criminalizes FGM in its all forms and with no exception in order to protect the health and integrity of the Sudanese women and girls.

C - 6 Child Law Enforcement problems:

- Low capacity of the law enforcement people
- Weak mechanisms for monitoring
- Low resources allocated for the enforcement process

- The Child Law established specialized courts and juvenile detention centres, but due to many factors as lack of resources, weak mechanisms of law enforcement and weak political will, the minors were generally trailed in the same court as the adults, violating their right to have a fair trial under Article 34 of the INC.

C – 7 Early marriage

Family Law article 40 allows child marriage from age Ten years. Early marriage amounts to 36% according to Sudan household survey (2006). Child Law neglects this problem. This situation opens the door for child rights violation.

D. Achievements and best practices

- Establishment of Family and Child Protection Police Unit 2007
- National Policy for Women Empowerment endorsed March 2007
- National Strategy for Abolition for FGM endorsed February 2008
- Women movement lobby for attaining Quota in elections law. The quota system in the election law, 25% of proportional representation, party lists was allocated for women which are a step forward to increase political participation of women in legislation.
- Endorsement of Child law 2010 in harmony with CRC and INC
- Different women groups and networks supporting peace in and democratic transformation in all parts of Sudan
- Establishment of big campaign or movement against public order law (No for Women Subordination Initiative)
- Establishment of campaigns for Law reform (family law-early marriage- rape – FGM)

Challenges and Constraints

- Political environment (actually no democracy)
- The state ideology (religious state/Sharia)

- Human rights commission never materialised
- Power of the discriminatory laws and regulations
- Little support from donors and UN

E. General Recommendations and Comments:

1- Increase health expenditure to 15% from GDP.

2-Harmonization between Sudan international commitments and the national laws is a priority.

3-Review the national laws

4-Ensure the protective role of the law

5 Engagement of women and gender focus NGOs in the law reform process

6-Enclusing the issues of Harassment, Trafficking, Domestic violence and FGM in the law as crime that should be criminalized

7- Training of law enforcement people on women human rights

8-Gender sensitization for political parties

9-Enhance legal aid services and link it with psychosocial services

