

Universal Periodic Review

This report is submitted by a group of non-governmental organizations in Sudan. The report was arranged after the consultation and the participation in several seminars and meetings that was held in Sudan for presenting a report on the comprehensive periodic review. The first seminar called organizations to identify the comprehensive periodic review and how to write it. Then five seminars were held regarding this report. Many non-governmental organizations held seminars to identify the importance of participating in writing the report on the comprehensive periodic review. These organizations share one common interest which is to enhance the human rights situation in their country, Sudan.

The organization initiating the meetings and report writing is: Mutawinat.
Contact person: Samia El-Hashimi

Tel.: 00249183778018/ 00249183595702

samiahashmi@gmail.com

Mutawinat@hotmail.com

www.mutawinat.org

Introduction:

Sudan is considered one of Africa's largest countries. It covers an area of about one million square miles. The Arabic language and English language are the official languages of government and teaching in schools and higher education in addition to the existence of other national languages. Sudan is considered among the countries that have cultural, social and religious diversity.

Institutional framework:

The Constitutional Court in accordance with the Article (1 \ 122) of the Interim Constitution of 2005 was established to protect human rights and fundamental freedoms and to be a guardian of the Constitution and the Constitution of Southern Sudan and the constitutions of the states, and also the court decides the constitutionality of laws in accordance with the Interim Constitution or the Constitution of Southern Sudan.

Despite all of that, the court didn't issue judgments in many of the cases before it or issued any resolutions consistent with the rights mentioned in the Constitution such as the right to freedom of expression. The court issued a decision including the approval of monitoring newspapers, as well as preventive detention without charge. And there are many cases that are still under

consideration for long periods of time.

National Commission for Human Rights:

We find that the Interim Constitution of 2005 stated the establishment of human rights commission among six other commissions to monitor the human rights, freedoms and to receive complaints of human rights violations.

But although five years passed since the validity of the Constitution, the commission was not established yet.

We find that the progress made in the field of child rights is the establishment of the family and child protection unit under the authority of the state police in Khartoum to protect children from any physical or sexual abuse. The unit also provides psychosocial support to children.

But we find the unit protects the child only and not the family, although this institution is vested with the protection of family and the child. The role played by the unit is not considered a part of the trial stage in the juvenile court. Also there are many cases that are opened in the police stations not in the unit and that the investigation is carried out by a police officer who has no experience in working with kids. So we believe that this mechanism needs to be more activated to play its main role in child protection.

Also one of the issues that could be considered a progress in the field of women's rights is the establishment of a unit that fights violence against women and children. This unit is under the authority of the Ministry of Justice.

There is a progress made in establishing a mechanism responsible for the protection of women against violence, but this mechanism is not activated sufficiently, as it doesn't introduce legislations to protect women from violence or cancel legislations which are dedicated to violence against women.

Constitutional and legislative framework:

We find that the issuance of the 2005 Interim Constitution was one of the benefits of the Comprehensive Peace Agreement, and for the first time in the history of the constitutions of Sudan, this constitution states the Bill of Rights, which is considered a covenant between the people of Sudan and between them and their government at all levels, and a commitment from them to respect human rights and fundamental freedoms enshrined in this Constitution and to work to enhance these rights. The Bill of Rights is considered the foundation stone of social justice and equality in Sudan.

And it is a progress that the Constitution considers all agreements, covenants and instruments of international human rights ratified by the Republic of Sudan an integral part of this document.

We find that this article in the constitution doesn't refer only to respect human rights, but explicitly refers to the mandatory reviewing laws to be compatible with the Constitution.

We find that despite the progress made in the texts contained in the Interim Constitution, which stresses the respect of human rights and reviewing the legislations to be in line with the Constitution, there are many laws that weren't reviewed, for example, the criminal law of 1991.

This law was issued in 1991 and remains in force until now, and this law is not compatible with the Constitution. We find that this law lacks the existence of an explanatory note that helps the judge in the interpretation of many texts that need to be interpreted. For example, we find in the Criminal Law Article (1 \ 149) of the crime of rape that anyone who commits adultery or sodomy with someone else without his / her consent is guilty of rape.

And we find in the article (3 \ 149) that who commits the crime of rape is punished by flogging one hundred lashes and imprisonment for a term not exceeding ten years, unless this rape is considered a crime of adultery or sodomy punishable by death.

We find that this article mixed the definition of the crime of adultery and sodomy, although the crime of adultery is a crime completely different from rape which appears clearly in evidence, and with this definition, we find it difficult to prove this crime. So we find that many of the cases of rape in the courts are being judged as a crime of obscene acts (Article 1 \ 151). This article states (any person who have sex with someone else, not reaching the degree of adultery or sodomy will be guilty of the crime of obscene acts, and is punishable by flogging forty lashes or imprisonment for a term not exceeding one year or fined.

We find there is a confusion in the definition as well as non-severe punishment. This confusion makes the same crime judged in a different way from one court to another, and plus the accused of a crime can go out of prison by ensuring a normal guarantee till the issuance of the verdict and So enabling the accused to escape and evade punishment.

We find that the mix in defining the crime of rape made the progress achieved in the Children's Act for the year 2010 in Article (45 \ b) and the punishment stipulated by the law of the child that sentences the guilty to death or imprisonment for not more than twenty years with a fine not effective due to the difficulty of proof as provided by law.

The progress made regarding the Children Act 2010 is that it ensures severe punishment for crimes of rape or sexual abuse, but it lacked the definition of these crimes leaving the definition provided in the Penal Code, which mixed the definitions and this makes the proof of such crimes difficult legally.

In addition, we find in the Criminal Law Article (1 \ 152) that anyone who commits an obscene act in public causing inconvenience to the general feeling is punished by flogging forty lashes or a fine or both.

There is no text in this Article defining the criterion that makes any behavior obscene or scandalous leaving the interpretation of the text to the policeman or the judge according to his understanding and his culture. The text did not take into account the cultural, social and religious diversity.

In addition, we find in the Code of Criminal Procedure of 1991, that no allegation can be made against a policeman unless his immunity is removed, and after the approval of his unit, and this is considered a breach of the principle of equality before the law.

Also we find in the Personal Status Law of 1991 many texts which violate the right of the girl child and women's rights which opposes the Constitution and the international conventions to which Sudan ratified. An example of that is the text of Article (1 \ 40), that says the mentally ill, insane or disabled cannot get married except with the approval of the guardian that the marriage is of clear benefit in her overriding interest.

And paragraph (2) of the same article states the age of discretion is to reach the age of ten and paragraph (3) of the same article states no guardian approves a girl's marriage at the age of discretion without the permission of the judge, for a clear benefit in her overriding interest, provided the efficiency of the husband and the dowry.

Recommendations:

- 1) Revising the laws and removing all the texts that violates the Constitution and the international conventions.
- 2) Activating the institutions concerned with the protection of human rights to play an active role and allocating budgets for them and stressing the mandatory involvement of civil society organizations specialized in different fields.
- 3) Ratification of the Convention against Torture and the Convention on the Prevention of Discrimination against Women (CEDAW).
- 4) Effective application of the Conventions endorsed by Sudan (the two Covenants and the Convention on the Rights of the Child)

Amal Taha Hussein
Mutawinat

Organizations involved in the preparation of the comprehensive periodic review:

- 1 \ Mutawinat Association
- 2 \ Legal Podium
- 3 \ Bles Center
- 4 \ El-Manar Association
- 5 \ El-Gandr Center

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