Civil Society and Law Reform

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Introduction

Human rights experts believe that the principles of human rights originate from religion and human traditions. Throughout the history of mankind many a wars and revolutions rose to ensure the safety and security of humanity, ultimately reaching covenants and conventions that aim to protect and respect human beings, their dignity and their value such as the Magna Carta in 13th century Britain and the French revolution and finally the 1948 United Nation's Universal Declaration of Human Rights that was followed in 1966 by two covenants namely: The International Covenant on Civil and Political Rights and the International Covenant on Civil Human Rights.

It is essential for Sudan to join and ratify international covenants and conventions as well as applying them in its constitution. However, up to this date, the government of Sudan refuses to join and ratify conventions of outmost importance such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against torture and the Statute of the International Criminal Court.

It is important to note that article 27(3) of the transitional constitution of Sudan states clearly that all the covenants and conventions that are ratified by Sudan are considered a part of the constitution and should therefore be applied by Sudanese courts. Consequently any failure to apply these conventions basically indicates that the decisions made by the court are unconstitutional.

In order to achieve democratic transformation and national unity in Sudan, legal reform regarding both the judicial institutions and the current legislations including the constitution is needed. This is an immense effort that requires a general national committee and sub-committees representing all the political parties, Civil Society Organizations (CSOs) and legal, social, scientific and economical experts in order to reach a thorough and just constitution. However, the present situation in Sudan does not permit this kind of mission to transpire; hence any effort should focus on reforming laws related to democratic transformation and good governance in addition to reinforcing human rights and freedom. It is therefore fundamental to define what CSOs refer to. They are independent non-governmental, non-profitable organizations which aspire to serve and develop the community through reinforcing basic social, economical, cultural, civil and political rights including women's and child's rights. In addition to providing the community with essential needs that the government fails to provide due to the unavailability of resources, lack of human resources and or the corruption of totalitarian regimes. This definition of CSOs includes labour unions and associations but does not include organizations known as GONGOs or government NGOs that exists solely for the benefit of governments and for the protection of government's policies and practices.

It is crucial to establish a possible role for independent CSOs in an attempt to face the many challenges in the country caused by 20 years plus of government legislations and regulations designed to support and strengthen its power and its discriminative and exclusive policies while falsely using Arabism and Islam to commit horrific violations against humanity; violations which

have been classified by the international community as crimes against humanity and ethnic genocide. All of this is done under the umbrella of protecting the country from rebels belonging to an alleged imperial, Zionist plot. These practices have led to the separation of Sudan and to the rise of several conflicts across the country. Moreover, the policies of the government of Sudan is characterised by avoiding accountability for its actions which has been the case not only in Darfur but in Port-Sudan, Merawi, Kagbar, South of Kordofan to name the least.

CSOs have the right to work independently under the protection of the law, in all the areas of human rights included in the 1948 Universal Declaration of Human Rights which has been activated and made legally binding in the 1966 covenants, both ratified by Sudan.

The 2006 Regulatory Act of Voluntary Work of Sudan denies CSOs the right to work independently and subjects it to the executive authority of HAC which is the body responsible for registering organizations. The law comprises of many regulations designed to limit and hinder CSOs such as not having the right to apply for foreign funding if not approved first by the minister. Furthermore, registration of CSOs can be cancelled if HAC's terms are not met and or if the organization supposedly violated the law as was the case with the Khartoum Centre for Human rights and Amal Organization. These regulations are in total violation of article 20 of the International Covenant on Civil and Political Rights which Sudan ratified since 1986. Moreover, article 27 (3) of the transitional constitution clearly illustrates that all the articles that are part of the conventions and covenants ratified by Sudan are also a part of the constitution.

Conclusively, in order for CSOs to be able to conduct its work efficiently in respect to law reform, hinders and limitations should be eliminated. Additionally a thorough understanding of the existing laws and their defects is requisite. Below follows an explanation of some of these laws:

1991 Criminal Law

The 1991 criminal law maintained all the *hodod* penalties of the Shari`ah (hand amputation, amputation of the right hand and left foot, death by stoning or crucifixion, lashing) that were part of the 1974 penalty law. The regime in Sudan seems to intend keeping these laws especially after the separation of the South and the declaration made by the officials concerning the identity of Sudan which they claim to be purely Arabic and Islamic. Many experts including some Islamic scholars find these penalties to be extremely harsh and cruel and not suitable for today's world especially after the development of many new alternative forms of punishments such as imprisonment. Moreover, the whole philosophy of punishment has changed drastically from being just sheer punishment to rehabilitation of criminals back to the society. Therefore, most of the Islamic countries have altered their position and cancelled the *hodod* penalties. It is observed that even though Sudan has signed the 1984 Convention against Torture, it has not ratified it yet. This is because the convention prohibits any form of torture whatsoever, whereas the government of Sudan prohibits torture as a practice but not as a form of punishment since this would mean, as the government claims, a direct violation of the Shari`ah laws. Nevertheless, the Contemporary Peace Agreement (CPA) prohibits in its article 1-6-2-4

subjecting any individual to any form of torture or degrading treatment, as does article 33 of the transitional constitution.

Hodod Penalties and Retribution

As previously mentioned the present regime has maintained the 1985 *hodod* penalties when the law was modified in 1991 as well as adding apostasy as a crime (*rida* crime). Strangely enough, the courts in Sudan have discontinued practicing these penalties, during the last few years, with the exception of lashing, which is stated in more than 20 articles in the criminal law.

The purpose of applying the *hodod* penalties in the beginning of Islam was to punish criminals and law breakers whilst ensuring that the necessary needs of the people were provided in addition to implementing good governance. Unlike today alternative forms of punishment such as imprisonment and fines were not known. This could be one of the reasons behind the discontinuation of most of these penalties in the Sudanese courts.

Retribution penalty indicates punishing the accused with the same form of crime committed against the victim whether it be an eye, a nose, a tooth etc. This penalty was stated in the 1983 penalty law and maintained in the 1991 criminal law.

Freedom of Assembly

In democratic societies individuals are entitled to freedom of speech including peaceful assembly. Not only that, but they are also protected by the government when expressing this right. Article 21 of the International Covenant on Civil and Political Rights states that freedom of assembly is a right to be acknowledged and that no obstacles should be put to hinder such a right. Article 16-6-28 of the CPA gives Sudanese citizens the same rights. Nonetheless, the regime in Sudan rejects this proposal by defining the crime of riot or hooliganism as any assembly of five people or more resisting law application or committing criminal damage. Criminal damage is punished with a six month imprisonment period or twenty lashes. Article 69 defines public disturbance as any action that could disturb the general peace and security and is punished by three months of prison, a fine, or twenty lashes.

The government in Sudan exploits these two articles to limit any kind of demonstration even if the authorities have been notified. As a result demonstrators were and are subjected to the worst forms of violence.

Role of CSOs in the political situation in Sudan

CSOs played an important role in changing the political situation in Sudan starting with the elimination of colonism to the removal of dictatorship regimes. Thus, the question which needs

to be asked is why the current totalitarian regime has remained for such a long period of time without any success by CSOs or political parties to remove it?
The answer to this question may differ depending on how the situation is viewed and analysed. Nevertheless, one can state that it could be due to the policies that the Islamists adopted after they took power in 1989. The regime resolved the entire constitutional institutes, unions, societies, newspapers as well as abrogating the constitution. In addition to that, they let go of many workers in the army, judicial institutes, police and the public service whom they labelled as a threat to them.

All the articles that limit the work of CSOs should be cancelled and new alternative articles should be issued in order to allow citizens to freely express their views, protect their right to peaceful assembly and to be able to play an active role in developing the community, reforming laws, changing governments and restoring democracy.

State Security Law

Following the end of the emergency law period, more laws and procedures were released by the regime; the latest and currently used was released in December 2010. Conversely, article 2-7-2-4 from the CPA clearly states that the security agency should limit its services in collecting information and article 150(3) of the transitional constitution states that the agency should only collect and analyse information in addition to giving advice to relevant authorities. This evidently means that the state security law violates the CPA and the transitional constitution since the law states that security officials have the right to arrest whoever they suspect without having to offer any reasons for a period of 30 days which could be extended to 3 months. Article 52(4) gives security officials full immunity and thus they cannot be accused of any criminal act.
The security agency practices the worst forms of violations against human rights so it is therefore, critical to abolish the agency and limit its position to intelligence work and collecting information.

Community security laws

The community security laws are laws that the Khartoum legislature is about to release. The laws are supposedly designed to protect the society from non ethical and non religious traditions and practices whatever these may be. A police agency was designed with the help of the security agency to roam about in residential and leisure areas to arrest anyone who violates the law.

It is obvious that these laws are designed to intimidate and terrorise the public and to limit their freedom all the more. The law punishes the innocent and poor who try to make a living in the present difficult economical situation without giving any concern to the duties of the government in providing the public with their necessary needs and basic services.

Anti-Terrorism Act

Article 65 of the criminal law prohibits any organisation inside or outside Sudan to manage, perform or participate in any criminal act (the penalty of this crime can reach 5 years of imprisonment or even death) or any terror act that threatens the community (the penalty can reach up to 10 years of prison). Nevertheless, the government has released an anti-terrorism act in response to the American government's request after the 11th of September terrorist attack in 2001. The Justice and Equality Movement members who launched an attack in Omdurman in August 2010 were prosecuted using this act. The law states the following:

- The defendants are tried according to the law in ''special'' courts and not in front of the criminal courts.
- The courts are formed by the minister of justice and the chief of justice.
- Testimonies given under torture are accepted.
- A special court of appeal is formed that supports the death penalty.
- The appeal period is decreased from two weeks to one week.
- The defendants are not allowed to meet with their lawyers prior to the start of the trial.
- Testimony of the partner.
- Absentia trials are accepted.

The law is an apparent violation of the Sudanese constitution and the criminal law. It deprives the defendants of their basic rights and their right to a free and just trial as well as supporting the death penalty which has reached 102 penalties in a period of few months.

Freedom of Association

The regime realised the role associations and unions played in the political situation in Sudan and has therefore abolished all unions and associations when it came to power in 1989 as well as arresting union leaders. Freedom of association is a right that was approved by the International Labour Organization (ILO) Convention number C.87 since 1948 (Sudan has not joined this convention to date) and was confirmed by the Universal Declaration of Human Rights the same year and in 1966. It was also confirmed in the CPA in article 1-6-2-9 and the transitional constitution in article 40(1).

Despites the principles and commitments in these conventions the regime released the Trade Unions Act in 2001. Article 5 of this law states that the objectives of these unions is to defend the rights of the members, build their technical and intellectual capacities, increase production, stability, economic and social growth and to collaborate with government agencies to strengthen national unity and to protect the independence and security of the country.
Article 6 of this law illustrates that unions should not break the law which consequently isolates unions from any political activities and thus distance them from any kind of legal or political reform. The law also gives the minister of labour and the general registrar who are both assigned by the president, the power to refuse any registration or to totally abolish any union. These decisions are binding and can only be appealed in the Supreme Court within 30 days. The law also states that building unions is determined by the place of work without any consideration to the qualifications and job grades of the labours in order to make it easier for the government to control all the workers by restricting them in small domains.

It is obvious that these articles are in violation of the ILO Convention and the CPA and should therefore be abolished and replaced by freedom of association.

Press and Publication Act of 2004

This act is executed by the government through the Press and Publication Council which is dominated by government officials who are accustomed to confiscating newspapers and arresting reporters.

The current press law violates article 19 of the International Covenant on Civil and Political Rights which Sudan has ratified. It is also in violation of article 27(3) of the transitional constitution which states that all the conventions that are ratified by Sudan are binding and are a part of the constitution. In addition to that, article 39(1) of the constitution clearly gives individuals and the press the freedom of speech. Contrarily to this many articles in the 1991 criminal law criminalises publication or writing that could affect the rights and reputations of other or the national security or system or public health.

Women's rights

Sudanese women played and still play a vital role in the national movement and have reached leadership positions in associations and student unions and in legislative and executive bodies. However, women still suffer from marginalization and inferiority in a masculine society governed by conservatism and traditionalism as well as the rule of orthodox religious thinking. This has been the general position of all the governments in Sudan which has to this date failed to ratify CEDAW and the additional protocol as well as the Declaration on the Elimination of Discrimination against Women of 1979 .This is because the declaration violates the Sudanese personal law concerning marriage, divorce, custody, domestic violence and circumcision which has been used to undermine and demean women and to remove their basic rights.

CSOs have been guilty of not giving gender issues their deserved time and effort. Although, some CSOs, such as SORD, have addressed gender issues and laws that discriminate women e g personal law.
The personal law violates article 32 of the transitional constitution which states that men and women have equal civil, political, social, cultural and economical rights. Below are some examples of the discriminative articles of the law:

Tutelage Sudanese women are not allowed to marry themselves without the approval of a guardian.
Obedience Women have to commit to obeying and caring for their husbands and his properties. Women are considered *nashiz* if they leave the house without any legal ground except when visiting their parents. If they do leave the house without permission then they lose their right to financial maintenance.

Polygamy Men are allowed to marry up to 4 women.
Divorce Only men have the right of divorce. Women can file for divorce in a court of law.
Child Custody Women have the right of custody for boys until the age of 7 and 12 or 15 years for girls.

Rape
In the criminal law the crime of adultery/fornication is proven if four terms are met; Recognition, four male witnesses and or pregnancy of an unmarried women. This creates a tricky situation when it comes to rape. If the victim cannot identify the criminal then her admission serves against her and she becomes the criminal instead as has been the case in Darfur where women have been raped, sometimes by more than one man.

Conclusively, the road towards gender justice in Sudan is long and has to be accompanied by legal reform and a new interpretation of Shari`ah laws.

Independency of the Judiciary System

Any legal reform towards a democratic change in Sudan cannot be achieved if the judiciary system is not independent. That is not the case today since the Chief Justice, the deputies, the judges of the Supreme Court and all the judges of Sudan can be assigned as well as dismissed by the president.

Conclusion

Legal reform in Sudan is a necessity in all aspects of public life in order to provide stability in the community in addition to reinforcing and respecting the basic rights and freedoms of citizens. As mentioned previously, this cannot be achieved without an independent judiciary system. The role of CSOs is essential in the matter of legal reform and in reinforcing the grounds for justice.