

Submission to the United Nations Universal Periodic Review of Sudan

Submitted by

Rights for Peace & TASAMI
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Rights for Peace is a non-profit that seeks to prevent mass atrocity crimes in fragile States, by collaborating with local organisations. Addressing the drivers of mass atrocities, particularly prejudiced or hate-based ideology, and strengthening local capacities and resilience.

The Organization of Sudanese Solidarity for Elimination of Racial Discrimination (TASAMI) is committed to resisting and combatting all forms of racism and discrimination in Sudan through monitoring, initiatives and coordination between different groups and institutions actively working on the fields of justice, equality, human rights and citizens.

A. Executive Summary

1. Rights for Peace welcomes the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Sudan. In this submission, we address developments in relation to prejudice and hate speech which are fuelling mass atrocities in Sudan. In particular, the submission details concerns relating to:
 - Anti-Discrimination and Equality
 - Hate Speech and Freedom of Expression
 - Prevention of Mass Atrocities
2. The information in this submission is drawn from a series of trainings and interviews held by Rights for Peace with activists, human rights defenders and civil society representatives from Khartoum, Port Sudan, Darfur's five regions as well as Kassala, Gadarif, South Kordofan and Blue Nile states. The trainings had the aim of strengthening capacities to identify, monitor and collect evidence of hate speech and incitement to violence; interviews were conducted to gather further evidence and data. Follow-up meetings have also been held with Sudanese civil society regarding recent anti-discrimination draft laws, which will be elaborated on further in this submission.
3. In the period under review, hate-based violence has continued in Sudan in conflict areas such as West Darfur, South Kordofan and Blue Nile. New and escalating violence is also being witnessed in eastern Sudan, in Port Sudan and Kassala. Genocidal language such as "we need to clean up the black plastic bags", referring to black (non-Arab) ethnic minorities have been recorded in the past and have not entirely dissipated.
4. In Kassala, 2020 saw protests and clashes between the Hadendawa and the Beni Amer communities. These were ignited by the appointment of Saleh Ammar - an ethnic Beni Amer – as a provincial governor, which was rejected by members of the Hadendawa. Leaders of the Hadendawa are reported to have allegedly stated that "the Beni Amer are a cancer that needs to be cut off".¹
5. In Port Sudan in August 2019, clashes between the Beni Amer and Nuba tribes allegedly ignited after an incident of abuse by two Beni Amer young men towards a Nuba woman, who allegedly spat on her face, tore up her clothes and beat her.² According to one source, both groups used insulting words against each other such as 'Khasa' and 'Abeed' during the clashes – 'Khasa' being an insulting term used against the Beni Amer to imply that they are not truly Sudanese, and 'Abeed' is an insulting and racist phrase similar to "slave" or "negro", and is a demeaning term used against dark- skinned people in Sudan.

¹ Reported in a Rights for Peace training in October 2020.

² Rights for Peace interviews with civil society leaders of the Nuba and the Beni Amer communities, in July and August 2020 and February 2021.

6. In West Darfur, recent intercommunal clashes have taken place between the Masalit and Arab communities, representing a worrying escalation of tensions and violence. For example, an attack occurred on 16 January 2021, in the Krinding Internally Displaced Persons (IDP) camps in El-Geneina, where more than 160 people were reportedly killed – the majority ethnic Masalit.³

B. Anti-Discrimination and Equality

7. In the second cycle, Sudan accepted a recommendation to strengthen initiatives to promote equality and fight against discrimination.⁴ The recent progress Sudan has made towards improving equality provisions is praised. For example, improvements have been made in repealing several discriminatory Public Order Laws.⁵ In July 2020, Sudan also repealed its Apostasy Law, thereby abolishing the death penalty for apostasy. It also approved wide-ranging amendments to its Penal Code⁶ including:
 - no longer requiring women to obtain permission from a male relative to travel with their children,
 - allowing non-Muslims to consume alcohol in private,
 - ending public flogging, and
 - criminalising female genital mutilation (FGM).⁷
8. During the second cycle, Sudan accepted a recommendation to introduce a comprehensive definition of racial discrimination.⁸ It also accepted to adopt legislation prohibiting the dissemination of ideas based on racial and ethnic hatred and incitement to racial discrimination and violence in line with international human rights law.⁹
9. Whilst Sudan has not yet introduced legislation on anti-discrimination and equality, it is welcomed that in response to call by civil society and the Sudanese Congress Party¹⁰ in 2019, the transitional government's Ministry of Justice and Congress Party have recently prepared draft Bills, seen by Rights for Peace.

³ Amnesty International, 'Sudan: Horrific attacks on displacement camps show UN peacekeepers still needed in Darfur' (2021), <https://www.amnesty.org/en/latest/campaigns/2021/03/sudan-horrific-attacks-on-displacement-camps-show-in-darfur/>.

⁴ 138.70.

⁵ Dabanga, 'Sudan dissolves National Congress Party, repeals Public Order Bill' (2019), <https://www.dabangasudan.org/en/all-news/article/sudan-dissolves-national-congress-party-repeals-public-order-bill>.

⁶ Library of Congress, 'Sudan: New Law Amending Penal Code Takes Effect' (2020), <https://www.loc.gov/law/foreign-news/article/sudan-new-law-amending-penal-code-takes-effect/>.

⁷ BBC News, 'Sudan scraps apostasy law and alcohol ban for non-Muslims' (2020), <https://www.bbc.co.uk/news/world-africa-53379733>.

⁸ 138.18.

⁹ 138.28.

¹⁰ The Sudanese Congress Party is a key member of the civilian arm of the government.

10. However, civil society in Sudan have expressed to Rights for Peace that the consultation process has been inadequate and has not included diverse groups or discriminated tribal leaders. It is essential that any anti-discrimination laws are developed via an inclusive process with minority groups and those who have been discriminated against.

The government of Sudan should:

- Adopt a comprehensive Anti-Discrimination or Equalities law, which should:
 - Protect more than racial discrimination: it should include race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, age, disability, health status or discrimination based on “any other status” (in accordance with Article 26 ICCPR);
 - Protect against gender discrimination or discrimination based on sexual orientation;
 - Not be criminalised nor lead to deprivation of liberty: challenging discrimination should be a *civil right*;
 - Provisions should aim to enable appropriate redress to be obtained by the victim (e.g. imposing equal employment rights, equal access to resources or services, etc.).
 - If discrimination includes *violence* (e.g. assault or torture), the violent act can become an aggravated criminal offense (e.g. a ‘hate crime’ which can carry a higher sentence because due to the bias intent of the underlying crime).
 - Promote equal treatment, imposing positive obligations to make reasonable adjustments. The rights of people with diverse characteristics must be protected equally;
- Enact separate Hate Speech and Anti-Discrimination or Equalities laws, which should complement each other;
- Ensure a comprehensive, meaningful and inclusive consultation process, not just with civil society in Khartoum but with minority groups and affected communities across the conflict regions;
 - Ensure ethnic and linguistic sensitivity and inclusive practice during the law formation process;
- Establish an Equality Commission or Commission Against Discrimination, and form a committee to work with grassroots in areas that suffer from discrimination, exclusion and hate speech;
- Review all laws and regulations in governmental institutions that conflict with the new Anti-Discrimination or Equality law.

C. Hate Speech and Freedom of Expression

11. During the second cycle, Sudan accepted a recommendation to consider the possibility of re-examining areas of its legislation that have led to restrict political freedom and freedom of expression, arbitrary arrests, detention, executions and torture, as part of

wider efforts to strengthen the rule of law.¹¹ It also accepted a recommendation to adopt legislation prohibiting the dissemination of ideas and expressions of racial hatred and violence against any group of persons.¹²

12. A new Fundamental Rights and Freedoms Act is due to replace Sudan's Apostasy Law.¹³ Whilst the full text of the legislation has not yet been made public, in July 2020 the Sudanese Congress Party stated that a law had been proposed to criminalise hate speech, under which the punishment for using racial slurs would be five years in jail.¹⁴
13. There are concerns that this may be excessive and severely impede free speech, which must be a key objective in the transition to democracy. Establishing a law against incitement to discrimination, hostility and violence, in accordance with ICCPR Article 20(2), would be an important step for Sudan towards combating identity-based discrimination and prejudice, as well as ensuring provision for incitement to genocide.

The government of Sudan should ensure that the new hate speech law includes the following provisions:

- An explicit recognition of the relationship between the rights to freedom of expression, non-discrimination and equality as positive and mutually reinforcing rather than contentious.¹⁵ This is to avoid broadly framed "hate speech" laws which can be easily misapplied to target minority and dissenting expression¹⁶,
- Prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence, in line with Articles 19(3) and 20(2) of the ICCPR and establishing a high threshold for limitations on free expression, as set out in the Rabat Plan of Action¹⁷,
- Criminalisation of incitement to genocide. The Sudanese amendment law of 2009 does not include incitement to genocide amongst the enumerated acts). This 2009 law should also be amended so as to cover different modes of liability for genocide, including aiding and abetting. This would then include aiding and abetting incitement to genocide, which would apply to publishers or broadcasters, as well as any incitement to crimes against humanity,

¹¹ 138.22.

¹² 140.22

¹³ News Intervention, 'USCIRF, Sudan Repeals Apostasy Law with New Act' (2020), <https://www.newsintervention.com/uscirf-sudan-repeals-apostasy-law-with-new-act/>.

¹⁴ BBC News, 'Viewpoint from Sudan - where black people are called slaves' (2020), <https://www.bbc.co.uk/news/world-africa-53147864>.

¹⁵ Article 19, 'UN Forum on Minority Issues: Free expression vital in tackling hate speech' (2020), <https://www.article19.org/resources/un-forum-on-minority-issues-free-expression-vital-in-tackling-hate-speech/>.

¹⁶ Ibid.

¹⁷ OHCHR, 'Freedom of expression vs incitement to hatred: OHCHR and the Rabat Plan of Action', <https://www.ohchr.org/en/issues/freedomopinion/articles19-20/pages/index.aspx>.

- Inclusion of all protected characteristics recognised under international human rights law. It should not be narrowly limited to the protected characteristics of race, ethnic origin, nationality and religion or belief. In particular, the list of protected characteristics should be revised in line with the right to non-discrimination as provided under Article 2(1) and Article 26 of the ICCPR¹⁸,
- A victim-centred approach to remedies, including compensation and the right of correction and reply (as per international standards) if incitement occurred through the mass media¹⁹,
 - States should also allow NGOs to bring civil claims in relevant cases and should provide for the possibility of bringing class actions in discrimination cases. This should form part of a comprehensive anti-discrimination framework.²⁰

D. Prevention and Accountability for Human Rights Violations and Mass Atrocities

14. In the second cycle, Sudan accepted a recommendation to take measures to end and prevent attacks against civilians, as well as to conduct transparent investigations of allegations of human rights violations and abuses and hold perpetrators accountable.²¹ It also accepted a recommendation to take immediate measures to conduct independent inquiries into all human rights violations, including allegations of extrajudicial executions, torture and other cruel, inhuman or degrading punishment or treatment, and international humanitarian law, as well as to bring perpetrators to justice.²²
15. Sudan did not accept a recommendation to ratify the Rome Statute of the International Criminal Court to ensure accountability for, prevention of and justice for the victims of human rights violations and fully cooperate with the International Criminal Court.²³
16. Regarding accountability, it is welcome that since the last review, the Sudanese authorities have committed to fully cooperating with the ICC for their investigation into alleged atrocities in the Darfur region, including receiving ICC investigators and agreeing to hand over ousted President Omar al-Bashir. This was codified in the repeal of criminal law provisions that prevented cooperation with the International Criminal Court. However, Sudan has not gone so far as to ratify the Rome Statute.

¹⁸ Article 19, 'Responding to 'hate speech': Comparative overview of six EU countries' (2018), https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf, p. 41.

¹⁹ Ibid., p. 42.

²⁰ Ibid.

²¹ 140.47.

²² 140.45.

²³ 141.11.

17. In addition, the transitional government of Sudan needs to take more meaningful steps towards the prevention of mass atrocities, and the building of social cohesion between communities across the country. Historical grievances, including prejudice and discrimination, often exacerbated by incitement to hostility, have impacted communities and are continuing to fuel violence. If change towards a rights-based and democratic society is to be achieved, it is critical to maximise opportunities for dialogue about the root causes of violence, their impacts and reversal.
18. Our research and interviews show that many inter-communal clashes started as individual disputes. As such, civil society groups have consistently identified the need for the Sudanese government to take responsibility for de-escalating attacks and to hold those responsible to account. Local groups repeatedly point to the weak and discriminatory justice system, and lack of fair government intervention as a driver of violence, as without this people take matters into their own hands.

The government of Sudan should:

- Address the root causes of destructive conflict in Sudan and seek to build social cohesion as integral to the transition,
- Ensure government recognition that law reform must be accompanied by attitude change in order to address deep-seated prejudice and bias,
- Engage with GAMAAC's Africa Working Group, with a view to establishing their own National Mechanism and creating an Atrocity Prevention focal point within government to lead their engagement on this topic,
- Ratify the Rome Statute, in order to strengthen its commitment to ending impunity for mass atrocity crimes,
- Urgently reform the National Security Service to end arbitrary detention, abuse, mistreatment and human rights violations.