

LGBT in Sudan Under Islamic Laws

More Clouds on the Horizon

The preparation of this article started on the 8th of July, the eve of the secession of southern Sudan from the Republic of Sudan to become an independent country. Southerners were very excited, obviously, but both northerners and southerners were wondering about what the future might hold for them. Homosexuals in both sides have more than their fair share of concerns.

In December 2010 president *Omar Al-Bashir* stated in a public speech which preceded Southern Sudanese referendum in January next year “If Southern Sudan chose the secession the constitution will be then modified and there will be no place to talk about racial and cultural diversity and Islam and Shari’a* will be the main resources for legislation” ¹ . This statement was said in the context of the “carrot and stick” policy attempted back then by the northern government in order to persuade southerners who were living in the north to vote for unity in the 9th of January referendum, however it’s echo stirred the fears of liberals, human right activists and, of course, LGBT community which had already suffered a great deal even during the transitional period between 2005 and 2011 in the name of Shari’a. During this period, in concordance with the “Republic of Sudan Transitional Constitution for Year 2005”, shari’a remained the main resource of legislations on the national level and it has been actively implemented in the northern states whereas the South was excluded.

Before the National Islamic Front came into power by the military coup d'état (National Salvation Revolution) which held up the logo of “Islamic State” and rejected the principle of “Secular State” in 1989, before that, there were no laws that criminalize same sex between adults. However, only two years after that in the 1991 Penal Code man to man sex was criminalized under the name of “Sodomy” with the “guilty” being lashed and maybe imprisoned for the first and second convictions and subjected to death penalty for the third and last conviction (the funny thing about this article is that anal sex between a man and a woman is included also as crime in the same article!!). As for “Acts of Obscenity” (public or private display of affection or a sexual behavior that does not reach the point of sexual intercourse) lashes, a year of imprisonment and a

fine are all options. However, there is no clear mention in that law for same sex between women.

Shari'a: designed and prejudiced, the Sudanese way

70% percent of the population in Sudan (before South Sudan secession) is Sunni Muslims with the dominant Sunni school is the *Maliki* denomination. The Maliki traditional teaching regarding so called “act of sodomy” implies that if four fair witnesses (should be men) saw two men with “the penis of one man enters the anus of another” then both men (the doer and whom it is done to) should be stoned to death, regarding homosexual acts between two women “sehaq” there is no definite *Had* (specific pre-defined punishment in the religious texts) However it is still condemned by the four Sunni denominations and *Ta'zir* is in order (up to the discretion of the judges or to decide the appropriate punishment).

Apparently, this is not exactly what the law states today since no individual is sentenced to death under the sodomy law unless he was caught for the third time. Maybe this was an attempt from the legislators to “soften” this obviously cruel law and since Sudan (up to the official level) is a country highly dependent on social affairs it could have embarrassed the government so much if any convicted person was executed at their first conviction because homosexuality is present even at the higher social levels like politicians, the army and even some religious men especially in the mystical community (however no one from these societies was hardly ever convicted with sodomy) and this could have caused great disturbance to the social fabric. Another possible reason for this is that Sudan has historical bonds and highly influenced by the neighbor Egypt in which the Hanafi denomination of Islam prevails; the Hanafi School has a loose and less aggressive provision regarding the issue with *Ta'zir* in the hand of the judges.

However, the Islamic view in Sudan wouldn't be complete without mentioning Sufism (Islamic mysticism) which is equally prevalent (sometimes more dominant) than the Sunni Islamic denominations in many areas of Sudan especially rural areas where illiteracy and poverty reach their peak. Everyday life of Sufis is not entirely clear since they live in isolation from the public but sometimes stories break out which reveals the extent of homosexuality among

them especially between the *Sheiyukh* (pl. of *Sheikh*) who are the spiritual leaders of these groups and some young men followers. Although these stories are usually brought up by the Salafis (fundamental Sunni Muslims) in the context of their historical eternal debate with the Sufis as an “argument” which proves the “astray” of Sufis, no one seems to deny these stories. Actually, historical Sufism books mention homosexual acts as part of the *Karamat* (special divine grants) that are allocated by God for those who reach high spiritual status. Nowadays, whereas Alnezam Alaam seizes any chance to find and punish other LGBT individuals, it stays remotely when it comes to homosexuality among Sufis, Apparently the government does not want to lose the support of these loyal and highly influential groups as a part of the Theopolitical games that the NCP government plays in order to remain in power.

The victims, silence of the lambs

In a tribal country like Sudan in which the everyday life is centered around the family and with the reputation and the honor of the family is of extremely dangerous importance , accurate and specific information like names, dates circumstance and addresses about individuals convicted with sodomy is scarce and mostly remains in the archives of the “Alnezam Alaam” (public order- a branch of the police) or the intelligence agencies, families do whatever possible to keep it quiet and the “convicts” (the victims) do not speak about it publically out of shame. However, from now to then some cases break out to public especially if they were big (in terms of numbers of arrested people) and some victims find the courage to talk (though hiding their true identity) and here I bring just two examples that reflect the situation in here:

The case of the 12 Freedom Sudan members

Ali, a cofounder and the president of *Freedom Sudan* (Sudan LGBT association) wrote about his own terrifying story in the organization website, in April 2009 and while Ali and 11 of his friends (2 women and 9 men) were holding a private party in the residency of one of them, agents from intelligence agency raided their party and caught them all and then took them to an unknown place. There, as Ali tells, each of them was put in solitary confinement “cells of 1.5 meters long walls” he says under highly unsanitary conditions and he was

deprived from water and food for 2 days straight. As for his interrogation Ali says “They stripped me naked and they started to interrogate me. They asked me about everything, if I’m a gay, friends, family, political and LGBT association activities? They started to hit me. Some one of them he put a pistol to my head and said? I wish I can kill you right now? They dragged me from my legs and they tied me upside down, and they started hitting me with a metal stick all over my body, they grabbed my organ and hit me there too, and they stuck that stick in my ass and they were laughing out loud about it and asked me? Do you like it, do you want more? I was screaming from pain and I was bleeding from everywhere, urine came out. They kept doing that till I lost my consciousness”.

He remained there for almost 4 weeks and spent another three and a half months in prison and while waiting for his trial in which he was expecting to be sentenced to death since he was caught “red handed” as he said, some family members succeeded in smuggling him out of prison and then he flew out the country via a fake passport. About his 11 friend Ali mentioned that 8 of them were later flogged 100 lashes each while the fate of another 3 members, including his boyfriend, was never known since then.

The case of the 19 men and the gay wedding party

A famous incident took place In August 2010 when 19 men were flogged publically and fined after being caught *Alnezam Alaam* in a private party celebrating the wedding of two homosexual men in Khartoum. However, the charge against them was limited to breaking public morality codes in Sudan (since none of them was caught red handed) by wearing feminine clothes putting make up dancing “womanly fashioned”. There were no lawyers to defend them and one lawyer who witnessed their trial mentioned no one of his colleagues dared to defend the accused due to the overwhelming public hostility these individuals where met with.

There has been a figure circulating the internet recently estimating the number of homosexual men only in Khartoum state to be 715 men. Obviously this number is not accurate and highly underestimates the size of our population bearing in mind that global rates range approximately from 4-10% and that over 5 million people live in Greater Khartoum. However, this number can reflect the number of homosexual men known the authorities and under the case these will

be probably watched and subjected to arbitrary arrests and harassments by Anezam Alaam. It worth mentioning that this figure was provided by the AIDS Prevention Program in Khartoum State in the context of its presentation of the HIV prevalence in the state.

South Sudan: Out of Shari'a, Stuck in Homophobia!

In the newborn country of South Sudan there seems to be no light in the horizon for LGBT people, at least in the short term, with the president of the world's newest country *Salva Kiir Mayardit* stating in an interview with Netherlands worldwide radio in July 2010 "Homosexuality is not in our character" and added "it is not there and if anybody wants to import it to Sudan [...] it will always be condemned by everybody." ²

The homophobic discrimination there is fueled by some bishops in the Episcopal Church and the homophobic wave that is spreading nowadays in some African countries like the nearby Uganda. In 2006 a bishop named *Abraham Mayom Athiaan* admonished the Episcopal Church in Sudan about failure to condemn homosexuality sufficiently strong, this took place despite the fact that South Sudan has had already its own law against sodomy since 2003 which was renewed in 2008 under the article 248 from the law "unnatural offences".

However, only around 10% of Southern Sudanese are Christians according to the Federal Research Division of the US library of Congress estimate in the early 90s(although recent census and personal impression from southerners who live in Khartoum indicate much greater prevalence) , the majority of the population have Animist traditional indigenous believes (and sometimes mixed Christian and animist beliefs) but even among those homosexuality seems to be not tolerated, in a blog named *Charlie Alder in South Sudan* the blogger (after whom the blog is named) mentioned the story of woman from the Dinka (one of powerful tribes in South Sudan) who went from Sudan to Canada and lived there for 5year during which she discovered freely her homosexual orientations, after she returned to Sudan and came out to her family she was immediately kidnapped in order to be sold to tribes that practice human sacrifices!.

Links:

1. BBC Arabic website, Middle East page:
http://www.bbc.co.uk/arabic/middleeast/2010/12/101219_bashir_sudan_constitution.shtml
2. Sudan Tribune Electronic Magazine, August 1st 2010:
<http://www.sudantribune.com/Homosexuality-will-not-be,35815>

Definitions:

* Shari'a or Sharia: is the code of conduct or religious law of Islam. Most Muslims believe Sharia is derived from two primary sources of Islamic law: the precepts set forth in the *Qur'an*, and the example set by the Islamic Prophet Muhammad in the *Sunnah*. Fiqh jurisprudence interprets and extends the application of Sharia to questions not directly addressed in the primary sources by including secondary sources. These secondary sources usually include the consensus of the religious scholars embodied in *ijma*, and analogy from the Qur'an and Sunnah through *qiyas*. Shia jurists prefer to apply reasoning ('aql) rather than analogy in order to address difficult questions.

(Definition taken from wikipedia.org)

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