April 9, 1991

SUDAN

New Islamic Penal Code Violates Basic Human Rights

On March 22, 1991 the Sudanese government introduced a new penal code, based upon an interpretation of *Shari'a* (Islamic Law). The code applies in all of northern Sudan, including the capital, Khartoum. For the present, it does not apply in southern Sudan, which is dominated by non-Moslems, and most of which is controlled by the rebel Sudan People's Liberation Army (SPLA). The code is based upon a penal code drafted by Dr Hassan al Turabi, leader of the Moslem Brothers and then-Attorney General, in 1988. For the military government of Lt-Gen Omer al Bashir, which seized power in June 1989, and which is dominated by the fundamentalist Moslem Brothers, the implementation of an Islamic penal code is a necessary step towards the creation of an Islamic state.

Africa Watch has no opposition to Islamic Law *per se*, but objects to any legal provisions which amount to a denial of fundamental human rights. Many of the provisions of the new Penal Code raise human rights concerns. These include:

* Limitations on the status of non-Moslems, amounting to their relegation to the status of second-class citizens. Moslems who do not subscribe to Islamic fundamentalism also have their rights curtailed.

* Limitations on the status of women, including their right to give evidence in court.

* The "crime" of apostasy (renouncing Islam), for which the penalty is death.

* The proposed implementation of *hudud* penalties, including amputation for certain sorts of theft, stoning to death for adultery, and flogging for a wide variety of lesser offenses.

* The principle of retaliation, "an eye for an eye".

The Penal Code as a whole is drafted in language drawn from historic Islamic jurisprudence. The legal terms give leeway for various interpretations, and hence for political manipulation. The record of the current government suggests that hard-line interpretations will be the result.

In addition, the government has reneged on its promises to submit the decision on the introduction of *Shari'a* to a popular referendum in all parts of the country. (The approval of the Penal Code by a referendum would not, of course, legitimize the code, as it would still contain articles contrary to human rights.)

The introduction of the Penal Code is even more alarming in the context of government actions which have undermined the independence of the judiciary, dissolved the Sudanese Bar Association, and detained without trial lawyers who oppose the government's program of Islamization. A State of Emergency is in force, with justice enforced through military tribunals. The act of introducing the code is a highly provocative and political act in Sudan's polarized political climate. It will certainly inflame the war in the south and make political compromise in the north far more difficult. The code contains articles, such as the prohibition on apostasy, which create new categories of essentially political offenses, which can be used to further the political aims of the Moslem Brothers.

A Legal Reform Conference was held between March 4 and 18, to decide on the modalities of implementation of the penal code. The conference covered issues such as the constitution and jurisdiction of courts, the appointment of judges, and the efficiency of the judicial system. Representatives from the now-banned Sudan Bar Association were invited, but leading members did not attend. The proceedings followed the format of previous conferences held by the government, with the discussions being conducted in a liberal atmosphere. The concluding statements reflected this ostensible liberalism, with affirmations of the independence of the judiciary, the primacy of the civilian law courts, and the rights of defendants.[*] However, these grand statements of principle bear little relation to the realities of Sudan today, and the principal legal questions confronting the country were not open for discussion.

One of the recommendations of the Legal Reform Conference was that all political detainees should be released. While Africa Watch welcomes this recommendation, it notes with alarm that under the new Penal Code, opposition to the self-proclaimed Islamic government may be construed as apostasy. The government may then re-arrest some or all of the released detainees and charge them with this offence. Then-President Nimeiri followed exactly this strategy in 1984, when he first released the imprisoned Republican Brothers and then re-arrested them and tried them for apostasy.

Background to Islamic Law in Sudan

Sudan has a rich Islamic heritage stretching back to the 7th century. Adherence to the *Shari'a* has long been one element in this tradition. In recent centuries, most Moslems in Sudan have been adherents of one or other Sufi orders, known as *tarigas*. The Khatmiya *tariga* has

[*] *See Sudan Embassy Bulletin (London), March 19 and 26, 1991.*

dominated much of northern and eastern Sudan since the 18th century, and others such as the Tijaniya are popular in the western regions. These *tarigas* have preached a characteristically Sudanese version of Islam: austere, mystical, peaceful, and tolerant. In the 1880s Mohamed Ahmed al Mahdi led his followers (the *Ansar*) in a successful war against the ruling Turko-Egyptian regime, and established an Islamic theocratic state. During the Mahdiya, the *Shari'a* was implemented in full. In 1898 the Mahdist armies were defeated by a combined Anglo-Egyptian force and the country was re-occupied by a foreign power. A penal code was then introduced based upon secular principles (it was based on the Indian Penal Code), while customary and Islamic law was followed for personal matters such as marriage and inheritance. It also provided for the referral of a civil case to a *Shari'a* court if both parties to the dispute agreed, but over the eighty years it was in force not a single Moslem took advantage of this provision. Over the years, with the establishment of a corpus of legal precedents, the penal code took on a distinctively Sudanese character.

Throughout the colonial period and the first decades of independence (which occurred in 1956), Islam thrived in northern Sudan. Not only did the *Ansar* and the Khatmiya flourish, but new movements were introduced, such as the Burhaniya sect, the Saudi-based Ansar al Sunna, the Republican Brothers Party and the fundamentalist Moslem Brothers organization. Under British rule, Islamic missionary activity in the south was severely restricted in favor of Christian missions, but this policy was reversed after Independence.

A substantial minority of Sudanese are non-Moslems. This group includes Coptic Christians, followers of missionary Christianity in the South, the Nuba Mountains districts of Kordofan and the southernmost parts of Blue Nile, and followers of traditional religions, mostly in the South. There are estimated to be up to two million Sudanese citizens from the south, mostly non-Moslems, currently resident in the north on account of war and economic crisis in their home areas.

The law codes in force between 1900 and 1983 awarded equal rights to followers of all religions. In 1972, the Regional Self-Government Act for Southern Sudan, which followed the Addis Ababa agreement bringing to an end the first civil war in Sudan, also acknowledged "Noble Spiritual Beliefs" (traditional religions) alongside the Scriptural religions. Article 16(d) of the Constitution of 1973 ran: "The State shall treat followers of religions and noble spiritual beliefs without discrimination as to the rights and freedoms guaranteed to them by this Constitution." During the period of secular law, personal matters concerning Moslems continued to be settled according to Islamic Law.

Shari'a was re-introduced into Sudan by then-President Nimeiri in September 1983. This had the support of the Moslem Brothers, but was opposed by most political forces in Sudan, including the Southerners and the leaders of the two dominant Islamic sects, the *Ansar* and the Khatmiya. Sadiq el Mahdi, then in opposition, called the laws a "travesty of Islam" and was detained on account of his public opposition. The so-called "September Laws" included the full

range of *hudud* crimes and penalties, and a provision for *ijtihad* or "free interpretation" whereby a judge could convict a defendant for offenses not on the statute book but allegedly prohibited by the Islamic Holy books, the *Koran* or *Hadith*. The principle of *ijtihad* was used in January 1985 to convict and execute Ustaz Mahmoud Taha, leader of the Republican Brothers Party, for the "crime" of apostasy (renouncing Islam). Islamic commercial law was also introduced, including the prohibition of charging interest and an attempt (soon abandoned) to change the taxation system to one based on *zaka*, the Islamic tithe.

Nimeiri's introduction of *Shari'a* was one of a set of policies which estranged southern Sudanese and prompted the rebellion and civil war. Since September 1983, the SPLA has consistently called for the abolition of Islamic Law throughout Sudan as a precondition for peace.

In April 1985, Nimeiri was overthrown by a popular uprising, and the incoming Transitional Military Council suspended the implementation of *hudud* penalties, the *ijtihad* principle and the prohibition on apostasy. However, Islamic Law remained in place, and many people were sentenced to *hudud* penalties such as amputation, though these were not in fact carried out. This state of affairs continued throughout the Parliamentary era of 1986-9, during which time there was a protracted debate on the future of *Shari'a*. The closest this came to a resolution was in 1988, when Hassan al Turabi submitted a draft penal code to the Constituent Assembly. This code, which is almost exactly identical to the present code, passed its first two readings but was withdrawn before the third reading. The withdrawal was occasioned by widespread opposition to the code, led by the Sudan Bar Association. The draft code was consistently supported by the Moslem Brothers and some of the leaders of the Democratic Unionist Party and Umma Party (some of whom are now in exile and decrying the promulgation of the same code by their ex-partners in the coalition government of 1988).

In June 1989, at the time of the coup d'etat which brought Lt-Gen Omer al Bashir to power, the status of *Shari'a* remained unresolved. Al Bashir at first promised a referendum on the issue. Later this was revised; the government proposed a federal system of government for Sudan, with each federal state holding its own referendum on which legal code to adopt. Recently, federalism has been introduced throughout Sudan, and each of the previous nine regions is now a state (though, starved of resources and with little control over many rural areas, the change of administration is to a large extent merely nominal). However, on January 22, 1991, when the government announced the forthcoming implementation of *Shari'a*, no mention was made of referenda on the issue, except in the three southern provinces/states. The Penal Code that was introduced in March is similar to that drafted by Hassan al Turabi in 1988, with a few minor amendments.[*]

---

[*] *The Penal Code was reproduced in the government newspaper al Inqaz al Watani, in six parts, between February 12 and 21, 1991.*

Provisions of the 1991 Penal Code

Human rights concerns relating to the Islamic Penal Code fall under two broad headings. One is the restriction, on political grounds, of the full rights of citizenship to non-Moslems and Moslems who do not share the interpretations of radical Islam espoused by the government. The second is the penalties proposed for certain crimes, which involve cruel, inhuman and degrading punishments.

Status of Non-Moslems

Under *Shari'a*, non-Moslems do not enjoy the full range of rights accorded to a citizen. Many legal prohibitions are based on Islamic teachings that are not necessarily reflected in other religions, for example the prohibition on alcohol. The legislation on apostasy gives Islam a privileged status with respect to other religions, and prevents citizens freely changing their religion according to their beliefs. They have restricted rights for presenting evidence in *haddi* cases (see below), and cannot be considered "just witnesses," so they have no rights to present evidence in adultery cases. In the 1988 case of the Sudan Government versus Abu Nora, the judge interpreted the Laws of Evidence of 1983 (which are still in force) to mean that the testimony of a non-Moslem against a Moslem was not acceptable to the court.

Traditionally, under *Shari'a* non-Moslems may not serve in high government office, the judiciary, or the military in any position in which they will have authority over a Moslem, and may not practice their religion except in a discreet manner. Islamic law also traditionally distinguishes between scriptural religions (principally Christianity and Judaism), followers of which are accorded limited rights as members of the *dhimma* (community of non-Moslem believers enjoying protection by the Islamic state), and non-scriptural traditional religions, the followers of which are accorded no such protection. The "noble spiritual beliefs" followed by much of the southern Sudanese population falls into the latter category.[*] While neither the 1983, 1988 nor 1991 penal codes go so far as to draw a legal distinction between followers of scriptural and non-scriptural religions, and the withdrawal of civil and political rights from the latter, many non-Moslems fear that this may be the ultimate outcome of the process of the imposition of the *Shari'a*.

The 1988 draft penal code envisaged the extension of Islamic law, in restricted form, to the south of Sudan. This was an attempt to modify the demands of the *Shari'a* to suit a multi-cultural society. In 1991, the government has announced that the *status quo* will continue in the south; this means that the State of Emergency will prevail alongside the 1974 penal code in the few areas of the south still controlled by the government. According to the government, in time, the southern regions will be free to choose their own penal codes. Article 5.3 of the 1991 code states that the

[*] *See Abdullahi An-Na'im and Peter N. Kok, Fundamentalism and Militarism: A Report on the Root Causes of Human Rights Violations in the Sudan, The Fund for Peace, 1991, for a discussion of this and related issues.*

code is not applicable in the southern regions/states unless the accused requests it, or the competent legislative authority (the state government) decides it.

This geographical limitation of the scope of the penal code is intended to mitigate the political opposition to Islamic Law by non-Moslems in Sudan. However, it has a number of shortcomings:

* There are substantial non-Moslem communities in the north, including the Copts, many inhabitants of the Nuba Mountains, and many inhabitants of southern Blue Nile. There are also northerners from Moslem families who have become agnostic.

* There are up to two million displaced southerners, most of them non-Moslem, in the north, particularly in and around Khartoum.

* The penal code of the national capital will be Islamic. In order to exercise their full rights as citizens, non-Moslems will need to participate in central government and commercial, educational and other opportunities available only in the capital; but in doing so they will be subject to the *Shari'a* and thus relegated to the status of second class citizens.

* Moslems in the south have the right to be tried according to the *Shari'a* (if they choose). Non-Moslems in the north have no corresponding exemption from the *Shari'a*.

* The unequal relationship between the secular code in the south and the Islamic code in the north amounts to a restriction on the freedom of movement of southern non-Moslems; they may only enjoy their full range of rights while they remain in the south, but may not do so while elsewhere in their country, including in their national capital. Moslems in the south may also drink alcohol and engage in other activities prohibited by the Islamic Penal Code.

* The decision as to who is and is not a Moslem is not a straightforward one. As the discussion on apostasy has shown, some devout believers may be regarded by the current government as non-Moslems on account of their preference for secular forms of law and government, or their adherence to Moslem sects disapproved of by the government.

In summary, the *Shari'a* condemns non-Moslem Sudanese to the status of second class citizens. Several million non-Moslems residents in the north have limited rights, in accordance with the law prevailing in the north. Non-Moslems in the south may only enjoy their rights by remaining in the south, and not participating in central government or the life of the capital and the economically-dominant northern region.

Status of Women

Under the *Shari'a* penal code, women are treated as legal minors. They have limited rights

to give evidence before a court in a trial for a *haddi* crime, no rights in the case of adultery, and for other offenses, their testimony is considered to be worth half that of a man. The difficulty of securing convictions for rape has been mentioned. In addition, other elements of Islamic law as interpreted by the Moslem Brothers may restrict the rights of women.

The Legal Reform Conference of March 1991 agreed that women should not be barred from holding judicial or governmental positions. This resolution is welcome, but it is a controversial interpretation of Islam and is not binding on the government. According to most fundamentalist interpretations of Islam, women should not be involved in government or the legal profession in positions where they may have authority over a man. The present Sudan government has previously made public statements which suggest the intention of conforming to these principles.[*] For example, the government has prohibited women travelling unless they are accompanied by a *mahram* (a close male blood relative).

Apostasy

One of the provisions that has given rise to most alarm among Moslems and non-Moslems alike is the prohibition on apostasy (*ridda*), the renunciation of Islam. Article 126 of the 1991 Penal Code may be summarized:

* Any Moslem who advocates the rejection of Islamic beliefs or announces his own rejection of Islam by word or act is an apostate. A convicted apostate should be given a certain length of time to renounce his heresy and return to Islam (*toba*); otherwise the penalty is death (except in the cases of recent converts to Islam).

Traditionally, it has been regarded as sufficient to announce publicly the belief that there is no God but Allah, and Mohamed is his Prophet, to be considered to have returned to Islam. In addition, a recent convert to Islam is traditionally treated more leniently than someone born into the Islamic faith.

The draft code of 1988 stipulated that a charge of apostasy could not be brought more than six months after the alleged crime had occurred. This limitation does not appear in the 1991 code. While no charges of apostasy have been brought since April 1985, the offence has remained in the penal code. There is a danger that the prohibition on apostasy will be enforced retroactively to charge those who have allegedly renounced Islam during this period.

The prohibition on *ridda* is of concern even when interpreted according to lenient traditional principles. It becomes a crime for a Moslem to be converted to another religion, or for a recent convert to Islam to relapse. Under present circumstances, some non-Moslems in Sudan may

[*] *See News from Africa Watch, April 9, 1990, "Threat to Women's Status from Fundamentalist Regime."*

feel that they must nominally convert to Islam in order to obtain material benefits or security. For instance, some Islamic relief agencies require the adoption of Islam as a precondition to receiving relief, including life-saving assistance during famine. On some occasions, southern migrants and Ethiopian refugees who are non-Moslems have been known to take Moslem names while in northern Sudanese cities to avoid discrimination. Some southern children have been kidnapped or adopted by northern families and given Moslem names and circumcised. Some non-Moslem men adopt Islam in order to marry Moslem women, or to obtain a divorce (which is relatively easy for a Moslem man). In all these cases, the adoption of Islam is of uncertain reality or sincerity, and it is likely that new "adherents" will revert to their previous religion, which would then construed as apostasy. However it is likely that members of the present government will regard the adoption of a Moslem name, whether voluntary or not, as proof of conversion to Islam.

The provisions of the apostasy legislation are of concern to devout Moslems as well. The traditional rejection of heresy, which consists of announcing that there is no God but Allah, and Mohamed is his Prophet, may be considered inadequate. This is illustrated by the trial and conviction of Ustaz Mahmoud Taha in 1985. Mahmoud Taha was the leader of the Republican Brothers Party, which advocated a tolerance of different creeds and different forms of Islamic belief and practice within a secular political constitution. He consistently supported the policy of secularism followed during the early years of President Nimeiri's rule, but felt compelled to advocate non-violent opposition to the introduction of Islamic Law in 1983 and moves towards establishing an Islamic State. Mahmoud Taha was a Moslem who could make this announcement in good faith, but the Moslem Brothers did not consider this sufficient evidence for his renunciation. He was also given no time to ponder his predicament and recant his allegedly heretical views, but was speedily executed. His views were themselves branded as heretical, and his continued adherence to them as apostasy. Four other Republican Brothers who were simultaneously convicted of apostasy were given three days to announce publicly their rejection of Mahmoud Taha's "infidel" teachings before they could be cleared of apostasy. Their recantation, wearing prison uniforms and bound in chains, was broadcast on Sudanese television. Following this, the Moslem Brothers charged a number of prominent Sudanese Ba'athists with apostasy, though they were unable to obtain convictions.[*]

The provision for the "crime" of apostasy therefore leaves open two critical areas of vagueness: who will count as a Moslem, and what counts as heresy as against orthodoxy. Given that the current government of Sudan has abolished the independence of the judiciary and appointed its own nominees to the courts, the government's interpretations will carry the day. These interpretations will be contested by Moslem scholars who have alternative readings of the prohibition on *ridda*, or the authority of the one *hadith* on which the prohibition is based. However, the record of the Moslem Brothers suggests that a narrow, fundamentalist and highly political

[*] *The fact that the Sudanese Moslem Brothers attempted to brand Ba'athism a heresy in February 1985 is ironic in view of their recent alliance with the Ba'athist regime in Iraq.*

version of orthodoxy will become the basis for enforcing the law. Under these circumstances, the prohibition on apostasy can easily become an instrument of terror for enforcing political and religious conformity on Moslems and non-Moslems alike.

"Free Interpretation"

The principle of "free interpretation" (*ijtihad*) states that the legal code is guided by the *Koran* and *Hadith* and that no provision in the code may be contrary to the requirements of these sources, and the stipulations of these Holy Books may also be taken as articles of law. Thus, if no offence is found on the statute book under which to convict a person who is thought to be in breach of Islamic principles, a judge may search in the *Koran* or *Hadith* for an appropriate prohibition, and then enact that prohibition as an article of law.

The principle of *ijtihad* was enshrined in the 1983 September Laws, and led, among other things, to the prosecution of hairdressers in Khartoum on the principle that it was contrary to Islam for men and women to have physical contact in hairdressing salons, despite an absence of such a prohibition in the statute book. A more serious example was the conviction of Mahmoud Taha for apostasy. The establishment of the *dhimma*-non *dhimma* distinction, withdrawing civil rights from the followers of non-scriptural religions, could also have been made following the *ijtihad* principle.

The principle of *ijtihad* is not included in the 1991 Penal Code. However, three points must be made:

(1) Many of the prohibitions that would be invoked using the *ijtihad* have been included in the code anyway, notably apostasy.

(2) The code is drafted using terms derived from Islamic jurisprudence of the time of the Prophet. The precise interpretation of many of these terms has been disputed by scholars over the centuries, giving leeway for hard-line interpretations.

(3) The Islamic penal code has been introduced for largely political reasons, and the provisions of the code will therefore be used to further the political ends of the government. It is possible that new articles may be introduced, or existing articles reinterpreted to suit the needs of political expediency.

***Hudud* Penalties**

One of the most striking aspects of *Shari'a* is the provision of penalties for a range of crimes known as *hudud* (singular: *hadd*). These penalties include amputation, stoning, flogging and crucifixion (the public display of the offender's body on a gallows following execution by hanging). These penalties may be considered as "cruel, inhuman or degrading," and as such are prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Punishments, which was

ratified by Sudan on June 4, 1986.

Fortunately, the severe *hudud* penalties (amputation) passed against convicted criminals since 1985 have been commuted to terms of imprisonment, so there is no "backlog" of prisoners awaiting these punishments.

Theft

The 1991 Penal Code contains the following provisions in the case of theft:

* For *haddi* theft (that is, theft of items above a certain value, and where the owner has taken normal precautions, e.g. not left the article lying unguarded in a public place), the punishment is amputation of the right hand. For a second conviction, the punishment is imprisonment of not less than 7 years.

A circular issued by the Chief Justice on March 25, defined the value of stolen goods necessary for *haddi* theft to apply. This is LS2600. At the black market exchange rate this is uivalent to about US$55 or £26 Sterling.

* For *haraba* theft (when violence is also used), the punishment of execution or execution with crucifixion (if murder or rape is involved), or amputation of the right hand and left foot (if severe hurt is involved, or the theft of money is such that it counts as *haddi* theft), or imprisonment up to seven years with exile (for other cases).

Many Islamic scholars have objected to this provision. They have argued that the *hudud* penalty of amputation for theft may only properly be imposed in a society which has provided for the welfare of all to such an extent that there is no need for any person to steal to satisfy basic needs, nor on account of his estrangement from society. During a period of drought shortly after the death of the Prophet, Omer Ibn al Khattab, the Second Caliph, put this principle into practice and suspended the punishment of amputation for theft. By contrast, Sudan today is stricken by famine and riven by social upheaval, and the government is proposing the implementation of such penalties. The government is also a military junta which seized power in a coup d'etat, ruling by decree in a State of Emergency, which has imposed many restrictions such as a curfew. These can hardly be considered ideal conditions for the development of a humane Islamic society.

According to the law of evidence adopted in 1983, sufficient evidence for conviction for a *haddi* crime is provided by the testimony of two men, or one man and two women. (The value of the evidence of four women, in the absence of a man, remains unclear.) This law of evidence remains in force.

Retaliation

The penal code provides for the principle of retribution (*qasas*) for the crimes of bodily harm and murder. Under this principle, the victim is given the option of exacting retribution on the convicted perpetrator, on the basis of "an eye for an eye, a tooth for a tooth". Alternatively, the victim can demand the payment of blood money (*diya*) and a prison sentence.

Adultery

Adultery is also a *haddi* crime.

* For adultery, if the offender is married, the punishment is execution by stoning; if the offender is unmarried, the punishment is flogging amounting to 100 lashes. In addition, an unmarried offender may be punished by exile for one year.

There are several problems with this section. According to the *Shari'a* and the 1983 law of evidence, a conviction for adultery requires four "just witnesses" (*shuhud 'udul*) to the actual act of intercourse - a difficult requirement to meet. The term "just witnesses" is not defined in the 1983 code, but according to traditional Islamic jurisprudence, such witnesses must be male and Moslem.

In response to the difficulty of securing convictions under these stipulations, after the introduction of the 1983 Penal Code the judiciary reinterpreted the prohibition on "indecent acts" to include the new offence of "attempted adultery". This went to the opposite extreme, to the extent that a man and a woman seen in public together and unable to produce a marriage certificate on demand were deemed to be attempting adultery. This provision fortunately does not occur in the 1991 code, but there may well be pressure for a similar measure to be introduced if no convictions are obtained for adultery under the present provisions. In addition, the descriptions of the crimes of prostitution and indecent acts in the 1991 code are worded in a sufficiently vague and open-ended manner so as to leave open the possibility that these articles may be used to similar ends.

According to the traditional interpretation of "just witness," a woman is prohibited from giving evidence in a trial for the crime of adultery, though she may bring witnesses.

A second problem relates to rape. Rape is regarded as a version of adultery, in which force is used. The same rules of evidence apply as adultery cases. This has the consequence that a victim of rape, being female, cannot testify in her own defence, and if she cannot bring four male witnesses to the act itself who are prepared to testify on her behalf, she cannot obtain a conviction of the man who raped her. The testimony of the man who raped her can, however, be heard by the court. A non-Moslem woman who has been raped by a Moslem man, but who cannot bring forward Moslem witnesses to testify on her behalf, cannot obtain a conviction of her assailant.

We also note the provision for sodomy:

* For sodomy, the punishment is flogging up to a maximum of 100 lashes or imprisonment of

up to five years. For a second offender, the punishment is both flogging and imprisonment, for a third, it is execution.

Note that the punishments decreed are milder than those for adultery.

Alcohol

The *Shari'a* prohibits the consumption or possession of alcohol. Articles 78 and 79 may be summarized:

* For being drunk (found with the smell of alcohol on the breath), the punishment (for a Moslem) is flogging amounting to 40 lashes. (There is no prohibition specified for non-Moslems drinking alcohol.) If the offender is both drunk and disorderly, the punishment is both flogging of 40 lashes and imprisonment of up to one month. (This latter penalty applies to Moslems and non-Moslems alike).

* For possessing or dealing in alcohol (taken to mean manufacturing, storing, selling, transporting, offering, using as an ingredient in food or drink, or advertising it), with the intention of involving another person, the punishment is imprisonment of up to one year, with an optional fine. (This provision applies to Moslems and non-Moslems alike.)

The existence of the second provision renders the first one largely redundant. While a non-Moslem is theoretically allowed to drink alcohol, he or she is prevented from doing anything to obtain it. Moreover, the penalty decreed for handling alcohol involves a severe sentence that is in some ways harsher than the flogging ordained for a Moslem caught drinking or drunk. The article appears only to immunize those who drink alcohol they themselves manufactured. As it may be assumed that in almost all cases a non-Moslem caught drinking has manufactured, bought, stored, or transported that alcohol in a manner that involves another person, he or she is therefore liable to punishment in some ways harsher than that to which Moslems are liable.

The 1983 September Laws included similar prohibitions on non-Moslems transacting or possessing alcohol. This aroused much comment, and there were unsuccessful attempts by some lawyers to argue that the second article described above referred only to commercial dealing in alcohol. The fact that Article 79 stipulates only the necessary involvement of a second person and does not stipulate commercial dealing, suggests that the prohibition is quite deliberate.

In 1984 an Italian priest was flogged for the possession of communion wine.

Conclusion

Africa Watch has no objection to the promulgation of a penal code founded upon religious principles, provided that fundamental human rights are respected and the principle of equality

before the law is upheld. The introduction of the Islamic Penal Code into Sudan on March 22, fails to guarantee basic human rights, and therefore gives rise to a number of serious concerns for Africa Watch. Some of the punishments ordained by the code are cruel, inhuman, or degrading, and thus violate Sudan's international legal obligations. The code also discriminates against women, non-Moslems and Moslems who are not fundamentalists, denying them basic civil and political rights. The prohibition against apostasy is especially dangerous for both non-Moslems and Moslems, particularly those with non-fundamentalist political beliefs. The penal code leaves considerable latitude for variant interpretation and political manipulation, and the record of the current government gives little reason for optimism that the provisions of the code will be interpreted and utilized in anything but an aggressive and intolerant manner. The Sudanese government has also reneged on its promise to hold referenda on the subject of *Shari'a* before its implementation, though approval of the Penal Code by a referendum would not legitimize the code, as it would still contain articles contrary to human rights.

Recommendations

Africa Watch is urging the Sudan government to suspend the implementation of the Islamic Penal Code until a number of basic human rights conditions can be met. These include:

* The equality of non-Moslems before the law; the right of all citizens (including Moslems who are not fundamentalists as well as non-Moslems) to choose to be tried according to a secular law code, and the right of citizens of all religious persuasions to serve in government, the judiciary, and the military at all levels.

* The full equality of women before the law, their right to present evidence in court and for that evidence to be given equal weight to that of a man, and their right to serve in government and the judiciary at all levels.

* The abolition of the article prohibiting apostasy.

* The abolition of the *hudud* penalties of flogging, amputation and stoning.

Please write to the members and representatives of the Sudan Government listed below, in support of these recommendations.

Please address appeals to:

H.E. Lt-Gen Omar Hassan al Bashir
Head of State, Defence Minister and Commander-in-Chief
Army Headquarters
Khartoum
Sudan

H.E. Mr Abdalla Ahmed Abdalla
Ambassador
Embassy of the Republic of Sudan
2210 Massachusetts Avenue, NW
Washington DC, 20008

His Excellency Mr. el Rashid Abu Shama
Ambassador
Embassy of the Republic of Sudan
3 Cleveland Row
St. James's
London SWIA IDD

Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Chairman is William Carmichael and Alice Brown is Vice-Chair. Its Executive Director is Rakiya Omaar; its Associate Director is Alex de Waal; Richard Carver is Research Consultant; Janet Fleischman and Karen Sorensen are Research Associates; and Ben Penglase and Jo Graham are Associates.

Africa Watch is part of Human Rights Watch, an organization that also comprises Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch. The Chairman of Human Rights Watch is Robert L Bernstein and the Vice-Chairman is Adrian DeWind. Aryeh Neier is Executive Director of Human Rights Watch, the Deputy Director is Kenneth Roth, Holly Burkhalter is Washington Director, and Susan Osnos is Press Director.

you reproduce excerpts, we only ask that you acknowledge Africa Watch as the source of the information.