



Report

Regarding imprisonment of Sudanese pastors



A report by the human rights organization Jubilee Campaign
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1. Introduction

In December 2015, we received news of the arrests of three Christian leaders in Sudan: Telahoon Nogosi Kassa Rata, a leader in the Khartoum North Evangelical Church, and two leaders of the Sudan Church of Christ, Hassan Abduraheem Kodi Taour and Kuwa Shamal. While Pastor Rata and Pastor Taour remain imprisoned, Kuwa Shamal has since been released but has been required to report to the Sudanese Intelligence and Security Service (NISS) every day. No charges against Pastor Rata and Pastor Taour have been explained, despite their being in prison for nearly four and a half months.

It was recently revealed that Pastor Rata is being detained in the Kober Prison in Khartoum, while the location of Pastor Taour, however, remains unknown. Little information is known regarding the physical condition of Pastor Rata, while there has been no information regarding Pastor Taour. The lack of information is due to the fact that no contact with the pastors has been permitted.

The case of the pastors should be considered in a broader context. The government of Sudan is being led by President Omar Hassan al-Bashir, who has led a campaign to turn Sudan into an Islamic nation. The Sudanese leader has declared that the future constitution will be based on Islamic Sharia law. Sharia law is already part of the nation's Penal Code, which signifies that Muslims who convert to Christianity are given the death sentence.

Sudanese Christians have already experienced the strict application of Sharia law and the Islamification of the country. Christians regularly encounter violations to their human rights, including their right to freedom of religion. Christians with a Muslim background are not certain of their security and feel pressured to leave the country. Quite frequently, Christians are apprehended and retained without being provided valid reasons.

A case that attracted international attention to Sudan's gross violations of religious freedom was the arrest and trial of Meriam Ibrahim during the summer of 2014. Meriam, who was in a progressive stage of her pregnancy, was apprehended and sentenced to death because she was accused of converting from Islam to Christianity. The government of Sudan refused to recognize Meriam as a Christian because her father was a Muslim, despite the fact that her mother was Christian and raised Meriam as such. Furthermore, because the government of Sudan insisted that Meriam be a Muslim, she was charged with adultery for being married to a Christian man. Marriages between a Muslim woman and a Christian man are not considered legitimate. Meriam was finally released from prison and her charges acquitted in the summer of 2014, after widespread international pressure.

In effort to make Sudan a complete Islamic country and expel Christianity, the Sudanese government regularly attempts, under false pretences, to confiscate church grounds. In September 2014, 38 Christians were apprehended, abused and fined by the police because they refused to render the grounds of the church. The government of Sudan continually engages in activities that violate basic religious liberties.

Unfortunately, the situation for Christians in Sudan continues to worsen. The NISS is progressively suppressing Christians and applying more vicious treatments. Church leaders have to be particularly cautious, as is shown with the incarcerations of Pastors Rata and Taour.

This report aims to provide a legal framework for the case of the two arrested pastors and raise political awareness for these unlawful arrests. This report encourages the government of Sudan, through diplomatic means, to release the pastors and aims to stimulate a fair trial.

2. The Sudanese pastors: profile

2.1. Telahoon Nogosi Kassa Rata

Pastor Rata is the leader of the Christian student movement FOUCS and also head of the mission office of the Khartoum North Evangelical Church.

On Saturday, December 12th, 2015 at 11:00 p.m., police officers of the NISS arrived at the house of Pastor Rata. The police officers asked for the pastor, but he was not home. The officers proceeded to confiscate his phones and laptops, and notified Rata's parents that Rata should report himself to the NISS office the next day.

On Sunday, December 13th, 2015, Pastor Rata reported to the NISS office, after which he never returned home. On December 17th, 2015 Rata's parents were able to visit Rata in prison where he informed them that he was treated well. Following their visit, his parents requested to visit their son several times, all of which were perpetually denied until March 26, 2016 when they received permission to visit their son for a second time. Since then, it is known that the pastor is located in the Kober prison in Khartoum. The pastor informed them that he was in good physical condition considering the circumstances, and that he received a sufficient amount of food.

Rata has been questioned several times regarding a foreign Christian that he would have met in Ethiopia and Sudan. According to an NISS contact of the family, the pastor, due to this meeting, is being suspected of espionage. The family has firmly denied that accusation. This supposed allegation by the police officers has not been confirmed by other sources.



2.2. Hassan Abduraheem Kodi Taour

Hassan Abduraheem Kodi Taour is Vice Chairman of the Sudanese Church of Christ. The members of the church are mainly from the Nuba Mountains in southern Sudan.

On December 18th, 2015, the NISS arrested two pastors of the Sudan Church of Christ. Pastor Kuwa Shamal, head of the mission working group in his municipality, was arrested at his house in Bahri, North Khartoum. Pastor Taour was arrested in his house in Omdurman, a city north of Khartoum, on the other side of the Nile.

Pastor Shamal was released on December 21st, 2015. However, following his arrest he was expected to report to the



NISS office at 8:00 am daily, where he was then retained until midnight. On January 16th, 2016, he was discharged of those obligations, however, they were reinstated in February.

Pastor Taour has until now been denied access to his family and lawyer. No information is known regarding the reasoning for his detention. There are concerns about the health of Pastor Taour because prior to his arrest he had been suffering from a stomach ulcer. This ailment could deteriorate due to the prison-conditions.

Note:

A lawyer has requested access to Pastor Rata and Taour. The public prosecutor has, however, announced that both Christians are still being retained by the NISS. There will be no contact with the pastors until the NISS transfers their case to the public prosecutor.

3. Legal Framework

3.1. The facts

Currently, there isn't any clarity regarding the reasoning of the arrests of the pastors. The grounds could only be speculated upon. However, it appears to be more than coincidence that the case concerns two Christian leaders, given Sudan's history of arresting Christians. As the introduction of this report explains, Christian pastors in Sudan are increasingly subdued to control by the NISS.

From a legal perspective we can deliver a judgement based on the known facts of the case. Before looking into the relevant legislation, it is important to interpret the legally relevant facts. The following points are noteworthy:

The NISS has placed the pastors in custody while:

- no official charges have been filed;
- the pastors have been detained for more than a hundred days;
- the pastors have no contact with the outside world, including with family or lawyers.

The next paragraphs will analyse whether these facts constitute a violation of the law.

3.2. National Security Act 2010

The pastors are detained by the NISS and have been incarcerated for more than 100 days. The grounds of the incarceration were not made known to the family, to the public prosecutor, nor any lawyers. The Sudanese National Security Act 2010 (NSA) defines the competences for which the NISS is authorized. Article 50 of the NSA indicates the following:

Powers of the Members, Director and Council

- 1) *Pursuant to the provisions of Articles 29 and 37 of the Interim National Constitution, 2005, Each and every member shall, by virtue of an order issued by the Director, and for the purpose of executing the competences set forth in this Act, have the following powers:*
 - (a) *Any of the powers provided for in Article (25).*
 - (b) *Search after obtaining an order issued by the Director in writing.*
 - (c) *Powers of the policemen as provided for in the Police Forces Act and the Criminal Procedures Act.*
 - (d) *Exercise any lawful powers necessary for execution of the provisions of this Act.*
 - (e) *Arrest or detain any suspected person for a period not exceeding thirty days provided that his/her relatives are immediately informed.*
 - (f) *After elapse of the thirty days mentioned in Para (e) above, and if there are reasons that require more investigation, enquiry and maintaining the detained person in custody, NSS member shall refer the issue to the Director and make the recommendations he deems appropriate.*
 - (g) *The Director may renew the detention period for not more than fifteen days with the purpose of completing investigation and enquiry.*
 - (h) *If it comes to the knowledge of the Director that maintaining any person in custody is necessary for completion of investigation and enquiry in case of an accusation related to a factor threatening the security and safety of the people; intimidating society by way of armed robbery, racial, religious sedition or terrorism; disrupting peace; exercising political violence; or plotting against the country, he shall refer the issue to the Council which may extend the detention period for not more than three months.*
 - (i) *Without prejudice to paragraphs (f), (g) and (h), NSS authorities shall inform the competent prosecutor and hand over suspect and all documents and appendices thereof in order to complete the procedures. In case of absence of initial evidence, NSS shall release the suspect.*
- 2) *For the purposes of this Article, NSS shall take into account provisions of Article (33) of the Interim National Constitution, 2005.*
- 3) *The Director may issue standing orders to organize exercise of the powers set forth in Para (1) above.*

It can be derived from article 1(e) and 1(g) that NSS officers are indeed allowed to detain a person for 30 days, or up to 45 days with the permission of the NSS director Article 1(h) even permits an extension of detention for up to three months in cases of accusations related to factors threatening the security and safety of the people. This, however, can only be conducted with the permission of the High Security Council, which is seated by the president of the Republic. The entire period of detention can consequently reach 4.5 months.

It is clear that the NSA provides far-reaching authority to NSS officers. In comparison, article 79 of the Sudanese Criminal Procedures Act states that the police of Sudan may only detain a person for 24 hours if needed for further investigation.

Article 50 of the NSA outlines the rights of the detainee:

The Rights of arrested, detainee and person in custody

- 1) *Upon arresting, detaining or putting a person in custody, he/she shall be informed of the reasons why he/she is arrested, detained or put in custody.*
- 2) *The arrested, detainee or person in custody shall have the right to inform his/her family or mother employer of his/her detention and shall be allowed to communicate with his/her family or advocate if this does not prejudice the progress of interrogation, enquiry and investigation.*
- 3) *The arrested, detainee or person in custody shall be treated in a manner safeguarding his/her dignity and he/she shall not be physically or morally hurt. Regulations shall organize the manner of keeping and handing over his/her belongings.*
- 4) *Detainee shall have the right to obtain an additional portion of food and cultural items and clothes at his/her own expense subject to security situation and order in detention facilities.*
- 5) *Women detainees shall be placed only in detention facilities allocated for them. They shall be treated in a manner that is commensurate with their status as females.*
- 6) *A detainee's family shall be allowed to visit him/her in accordance with the regulations.*
- 7) *A detainee shall have the right to medical care.*
- 8) *The competent Prosecutor shall continuously search the detention facilities in order to ensure compliance with the detention regulations and receive any complaint from the detainees in this respect.*
- 9) *Regulations shall determine the conditions that must be fulfilled in detention facilities and the regulations and issues ensuring safeguard of the detainees' dignity.*
- 10) *A detainee shall have the right to resort to court if kept in custody or detention more than the period specified in Article (50) of this Act.*

Article 50 (10) of the NSA states that the detainee has the right to resort to a court if that person is kept in custody more than 4.5 months. In other words, during the first 4.5 months the detainee can be retained without the right to have the detention examined by an independent judge.

Furthermore, the article states that the reasons for the arrest and detention shall be communicated to the detainee. The detainee also has the right to contact his family in order to inform them of his charges. This can, however, be withheld if it would influence the investigation. The law is consciously formulated in such a way that it grants the NISS extensive powers. It would be sufficient for the NISS to state that contact with the detainee's family would influence the investigation, and therefore prohibit communication. Although the right to visit is regulated in article 50 (6), which states that this right shall be in accordance with the 'regulations', these regulations remain unspecified.

In this particular case of Pastor Rata and Taour, we see that visitors have been prohibited. As is described, they have the right to receive visitors but it can be withdrawn under certain circumstances. However, the NISS has communicated nothing regarding the reasons of the deprivation of contact with the family.

3.3. Constitution and International Treaties

3.3.1. Violation of Constitutional Rights

The Sudanese Constitution, ‘The Interim National Constitution of the Republic of Sudan 2005’, in Article 3 determines that the Constitution is supreme over all other laws and that all laws have to comply with the Constitution.

Article 3; Supremacy of the Interim National Constitution

The Interim National Constitution shall be the supreme law of the land. The Interim Constitution of Southern Sudan, state constitutions and all laws shall comply with it.

The Sudanese constitution contains a few articles that regulate detention and deprivation of liberty.

Article 29; Personal Liberty

Every person has the right to liberty and security of person; no person shall be subjected to arrest, detention, deprivation or restriction of his/her liberty except for reasons and in accordance with procedures prescribed by law.

Article 34; Fair Trial

- 1) *An accused is presumed to be innocent until his/her guilt is proved according to the law.*
- 2) *Every person who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her.*
- 3) *In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by an ordinary competent court of law in accordance with procedures prescribed by law.*
- 4) *No person shall be charged of any act or omission which did not constitute an offence at the time of its commission.*
- 5) *Any person shall be entitled to be tried in his/her presence in any criminal charge without undue delay; the law shall regulate trial in absentia.*
- 6) *Any accused person has the right to defend himself/herself in person or through a lawyer of his/her own choice and to have legal aid assigned to him/her by the State where he/she is unable to defend himself/herself in serious offences.*

From Article 29 it can be understood that the deprivation of freedom is permitted, if on the grounds of the law it can be justified. In order to assess whether the incarcerations of Pastor Rata and Taour have legal bases in the law, both the reasons for their detention and their charges should be provided. This however, has not yet occurred, which consequently qualifies the incarcerations as a violation of the right to personal liberty.

Subsequently, Article 34 of the Constitution describes the rights of a fair trial. Article 34 (2) provides that the reasons of the detention should directly be announced. Pastor Rata and Pastor Taour have, however, not been informed about the grounds of their detention, which ultimately constitutes a violation of their constitutional rights.

3.3.2. Violation of International Treaties

Sudan is a member of the United Nations and therefore has signed the African Charter on Human and Peoples Rights, as well as the International Covenant on Civil and Political Rights (ICCPR).

In this particular case of Pastor Rata and Taour it can be noted that the reasons for their incarceration are not provided and the pastors have been retained incommunicado. In addition, the NSA states that a detention can only be examined by an independent judge after 4.5 months. Based on these facts it can be concluded that several rights, enshrined in the ICCPR and the African Charter on Human and Peoples' Rights have been violated. Article 6 of the African Charter states:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 9 of the ICCPR states that no one can be subdued to arbitrary arrest or incarceration:

Article 9

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
- 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
- 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
- 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
- 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

3.3.3. Working Group on Arbitrary Detention

The question arises what defines a situation as 'arbitrary'? The Working Group on Arbitrary Detention¹, which is a subdivision of the U.N. Human Rights Council, has elaborated on the definition of this word.

¹ <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

The Council and Working Group mark in its Basic Principles and Guidelines the following cases as arbitrary:

- a) *When it is clearly impossible to invoke any legal basis to justify the deprivation of liberty (such as when a person is kept in detention after the completion of his or her sentence, or despite an amnesty law applicable to the detainee, or when a person detained as a prisoner of war, is kept in detention after the cessation of effective hostilities) (category I);*
- b) *When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);*
- c) *When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);*
- d) *When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);*
- e) *When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or other status, and which is aimed at or may result in ignoring the equality of human rights (category V).*

The case of the two Sudanese pastors resembles a case of the Working Group on August 5th, 2015² of which a report was published. In that particular case, the rights of the detainees, derived from the ICCPR, were completely ignored. The Working Group submitted the report to the Sudanese government, who provided no response. The report of the Working Group concluded that the retention of freedom in this particular case could be situated in categories I, II and III as is described in the Basic Principles and Guidelines of the U.N. Human Rights Council. Consequently, this case could be defined as a case of arbitrary deprivation of liberty, which is a violation of Article 9 of the ICCPR.

The following statement of the Independent Expert on human rights in Sudan, who reports to the Human Rights Council of the U.N., indicates that the Sudanese policy of arbitrary detention and arrests could be seen in a broader context:

The fear of arbitrary arrests and detentions by the National Intelligence and Security Service continues to be a major cause of intimidation of political opponents and other civil activists in the Sudan. This creates an impediment to the full enjoyment of the right to liberty and security as guaranteed under article 29 of the Sudanese Constitution and article 9 of the International Covenant on Civil and Political Rights to which the Sudan is a State party. The Independent Expert urges the Government and its security agents to desist from arbitrary arrests and detentions and to fully respect and ensure the right to liberty and freedom of individuals

*Report of the Independent Expert on the situation of human rights in the Sudan (A/HRC/27/69),
4 September 2014*

² <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/174/68/PDF/G1517468.pdf?OpenElement>

3.3.4. Detention Sudanese pastors is arbitrary

When the case of the Sudanese Pastors Rata and Taour are assessed in light of the report of the Working Group, it becomes clear that the arrests and detentions may be considered arbitrary. The pastors are not retained on lawful grounds. Both men currently have been retained more than 100 days without the option of having their case assessed by a judge. Currently, it is known that Pastor Rata is being detained in the Kober Prison in Khartoum. The location of Pastor Taour, however, remains unknown. Throughout the detainment of the pastors, no formal charges have been provided. Consequently, violations of Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9 of the ICCPR have been committed. The deprivation of liberty of both pastors amount to arbitrary detention as described in category I.

Jubilee Campaign observes a direct connection between the arrests of the two pastors and their activities as church leaders. Expressing ones religion is a right enshrined in Articles 18 and 19 of the Universal Declaration of Human Rights and Article 18 of the ICCPR. Consequently, the deprivation of liberty is violating the mentioned rights and can be marked as arbitrary, in conformity with category II.

Both pastors are meanwhile incarcerated for more than 100 days and isolated from the outside world. Family is not allowed to visit nor is contact with their lawyer permitted. It currently remains unclear why the pastors are being retained by the NISS. As a result, Article 9 of the ICCPR is violated, which states that arrestees should be directly led before a judge. Furthermore, the pastors have not had the opportunity to have their detention independently examined. This implies that the deprivation of liberty could be marked as 'arbitrary' as is described in category III.

4. Conclusion and Recommendations

This report unveils several violations of rights enshrined in the National Security Act, the Sudanese Constitution, the ICCPR and the African Charter on Human Rights and Peoples' Rights. As evidence shows, there is clear reasoning to believe arbitrary deprivation of liberty has been committed.

Jubilee Campaign condemns the unlawful and arbitrary arrests and detentions of Pastor Rata and Taour and calls for the following action:

- The immediate and unconditional release of both pastors;
- For the pastors to be immediately informed about the charges laid against them;
- Direct termination of the incommunicado incarceration by allowing the pastors to contact their family and lawyers as well as receive visits;
- Revision of the National Security Act, which enables the NISS to detain arrestees for more than 4.5 months without granting them the rights to have their detention examined by an independent judge. Subsequently, the NSA needs to in compliance with the Sudanese Constitution and international treaties.
- To bring the Sudanese national law in adherence with the Constitution and international treaties that guarantee the right to freedom of religion.

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