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## Human Rights Council

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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

### **Written statement\* submitted by Jubilee Campaign, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2021]

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\* Issued as received, in the language(s) of submission only.

## **The Human Rights Council Must Ensure that there is No Penalty for Apostasy**

Jubilee Campaign would like to draw the Council's attention to the existence of apostasy laws in numerous member states, with over 10 countries including the death penalty for apostasy.<sup>1</sup> These laws punish the act of leaving or denouncing a religion, in clear contravention of Article 18 and 19 of the International Covenant on Civil and Political Rights which protect the freedom of religion or belief and freedom of expression.<sup>2</sup>

The UN Special Rapporteur on freedom of religion or belief has condemned the use of apostasy laws and the Human Rights Committee has clearly stated that laws and practices which criminalize apostasy are inconsistent with international human rights norms.<sup>3</sup>

This submission will focus on the persecutory implementation of apostasy laws and laws that, while not directly criminalizing apostasy, punish behaviors relevant to religious conversion in countries such as Afghanistan, Mauritania, and Iran. Moreover, this submission will highlight the achievements of Sudan in abolishing apostasy laws.

### **Afghanistan**

Afghanistan's Constitution of 2004 in Articles 1 and 2 asserts that the nation is classified as an Islamic Republic and that the official national religion is Islam. Article 130 states that "in cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner."<sup>4</sup> Moreover, the 1976 Afghan Penal Code stipulates that hudud crimes be criminalized pursuant to Hanafi jurisprudence.<sup>5</sup> Under such Hanafi jurisprudence, apostasy, is classified as a hudud offense and is therefore punished by death.

An example case is that of Abdul Rahman, a former Muslim who converted to Christianity. The court sentenced him to death for apostasy before finally dropping the charges on procedural grounds regarding his mental capabilities. Rahman was acquitted.<sup>6</sup>

### **Mauritania**

Mauritania's Constitution of 1991 recognizes Islam as the official religion of the nation, and there is no existing provision guaranteeing citizens freedom of religion or belief in accordance with its obligation as a signatory to the International Covenant on Civil and Political Rights.<sup>7</sup> Article 306 of Mauritania's 1983 Penal Code stipulates that "any Muslim guilty of the crime of apostasy, either by word or by apparent or obvious action, will be asked to repent within three days. If he does not repent within this time, he is condemned to death as an apostate."<sup>8</sup> In the case that a convicted individual repents, his or her sentence would be commuted to a period of imprisonment between three months and two years, accompanied by a fine of 5,000 – 60,000 Mauritanian ouguiya. In 2018, Mauritania officially adopted an amendment to 306 of the Criminal Code which would eliminate the opportunity to avoid the death sentence by repentance and would in effect make the death penalty mandatory for crimes of apostasy.<sup>9</sup>

While Mauritania claims a moratorium on the death penalty, as recently as 2014, a Mauritanian lower court sentenced blogger Mohamed Cheikh Ould Mkhaitir to death for apostasy following an online article in which he condemned the use of religion to marginalize and discriminate lower-caste members of society.<sup>10</sup> The court had decided that "the article [that Mkhaitir published] evidenced apostasy as it spoke 'lightly of the Prophet Mohammed.'"<sup>11</sup> In 2017, following Mkhaitir's apology, an appeals court rescinded the death penalty and instead commuted his sentence to two years in prison and a fine. In July 2019, Mkhaitir was officially released from prison. Reflecting on his case, Mkhaitir writes:

“No one around wanted me to live. Nonetheless, I tried to convince myself that I lived in a State governed by rule of law and that the main role of lawyers was to defend the right of all detainees to a fair trial, leading to their release. Yet, I was shocked to discover that many involved in the justice system were in favor of my death!”<sup>12</sup>

#### Iran

Iran is another example of a country that, despite its lack of penal code provisions that directly criminalize apostasy, does allow regional courts to carry out inhumane sentences according to Shari’a law. Similarly to Mauritania, Iran’s constitution permits courts to “refer...to reputable Islamic sources or religious rulings” in situations when no codified laws to apply to the case at hand.<sup>13</sup> As Iran Press Watch iterates, “the fact that apostasy is not explicitly proscribed by the Iranian legal framework, and the differences in interpretations of Islamic law regarding apostasy, contribute to a lack of legal certainty for those living under Iranian laws.”<sup>14</sup>

In 2006, Iranian Christian Pastor Youcef Nadarkhani was arrested on double charges of apostasy and evangelism. Pastor Nadarkhani, born into a Muslim family, renounced his faith and converted to Christianity when he was 19 years old, and he eventually became a member of the evangelical Church of Iran as well as a house church pastor. In 2010, the court officially convicted Pastor Nadarkhani of apostasy and sentenced him to execution by hanging, despite his reasoning that he had not committed apostasy as he did not identify as a Muslim prior to becoming Christian. In September 2012, in response to condemnation by the international religious freedom advocacy community, Iranian courts acquitted Pastor Nadarkhani’s apostasy charges and released him, though he has been in prison since 2018 under new charges of proselytism.<sup>15</sup>

#### Sudan – Good Practices

In July 2020, it was announced that the transitional government of Sudan had formally ratified and implemented the Miscellaneous Amendments Act which, among other provisions that reflect a positive turn towards human rights, abolished Article 126 of Sudan’s criminal code which criminalizes apostasy with the death penalty.<sup>16</sup> Subsequently, Sudan’s transitional government also ratified an interim Constitutional Declaration which includes provisions protecting freedom of religion or belief.<sup>17</sup> Prior to this monumental step, a court in 2014 sentenced Christian woman Meriam Yehya Ibrahim to death by hanging under the apostasy law and a second conviction of adultery for marrying a Christian man and was sentenced to 100 lashes.<sup>18</sup> She was eventually released and pardoned thanks to international pressure. The improvements in Sudan are testament to how problematic legislation can successfully be changed to fall in line with human rights.

#### Recommendations

Jubilee Campaign urges members and observer states of the Human Rights Council to:

1. Encourage UN Member States who have apostasy legislations and the death penalty – including those countries discussed herein – to abolish such inhumane laws, as they have a “chilling effect on the peaceful exercise of human rights and fundamental freedoms.”<sup>19</sup>
2. Encourage UN Member States to release all prisoners of conscience who are held under apostasy, blasphemy or similar laws which criminalize the act of voluntarily leaving a religion or belief.

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<sup>1</sup> Library of Congress, Laws Criminalizing Apostasy.

- 2 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.
- 3 UN Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, 5 March 2019, A/HRC/40/58. ; Human Rights Committee, general comment No. 36 (2018) on the right to life.
- 4 Constitution of Afghanistan, 3 January 2004.
- 5 Library of Congress, Laws Criminalizing Apostasy.  
Mandana Knust Rassekh Afshar, The Case of an Afghan Apostate – The Right to a Fair Trial Between Islamic Law and Human Rights in the Afghan Constitution, Max Planck Yearbook of United Nations Law, 10, 2006
- 6 Ron Synovitz, “Afghanistan: HRW Still Concerned About Apostasy Law”, RadioFreeEurope, 29 March 2006.
- 7 Mauritania’s Constitution of 1991 with Amendments through 2012.
- 8 Ordonnance 83-162 du 90 juillet 1983 portant institution d’un Code Pénal, Journal Officiel de la République Islamique de Mauritanie, 9 July 1983.
- 9 Human Rights Watch, “Mauritania: Mandatory Death Penalty for Blasphemy”, 4 May 2018.  
Office of the High Commissioner for Human Rights, “Death Penalty: UN experts urge Mauritania to repeal anti-blasphemy law”, 7 June 2018.
- 10 Voice of America, “Mauritanian Blogger Once Sentenced to Death is Freed”, 30 July 2019.
- 11 Global Freedom of Expression, The Case of Mohamed Cheikh Ould M’khaitir, Columbia University.
- 12 Amnesty International, “I slept with voices demanding my death and woke up with shouts calling for me to be killed”, 28 August 2019.
- 13 Constitution of the Islamic Republic of Iran, 24 October 1979.
- 14 Iran Press Watch, Apostasy in the Islamic Republic of Iran, 15 January 2017.
- 15 United States Commission on International Religious Freedom, Pastor Youcef Nadarkhani.
- 16 Khattab Hamad, “Sudan uprising: Sweeping reforms usher in justice and freedom”, Global Voices, 14 July 2020.
- 17 Sudan’s Constitution of 2019.
- 18 BBC News, “Sudan woman faces death for apostasy”, 15 May 2014.
- 19 UN Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, A/HRC/42/28, 28 August 2019.