

Transcription: Asma Abdel Halim - Emory University

"Women's Rights Under Sharia Laws in Sudan" - February 18th, 2003

John Janzen: Our speaker today has a very interesting cv, I will try to touch on highlights only, so that she has most of the time remaining.

She is generally recognized as a lawyer trained in the Sudan and also as a human rights activist. She left the Sudan in 1992, she left following the intro of Sharia law, which will be the topic of her lecture today. She entered the Ph.D. program at the University of Ohio in Athens in 1996, in the field of education, worked with various foundations and initiatives in women's rights in Africa and Sudan. From 1998 to 2000 she worked with USAID in a project for women's rights, especially in connection with women's reproductive issues. At the present time, since last fall, she's been a fellow in the law and religion program in Emory University. She will be receiving her Ph.D. from Ohio University in April. She has published numerous articles and short books, her writing entitled "Equal but Subordinate Women and Religious Fundamentalisms - Challenges to the Application of International rights of Women in Sudan - Women National and International Perspectives". She has written 2 chapters in publications in UN development fund for women edited by Margaret Schuller: "Claiming our bodies and our Rights - Exploring Female Circumcision as an act of violence in Africa" and "Rituals and Angels - Female Circumcision in the case of Sudan". She will be speaking about women's rights under Sharia law in the Sudan, Asma Halim, we welcome you:

Asma Abdel-Halim: Thank you, John.

I'm actually glad and honored to be at this university speaking on such an issue because universities have been paying plenty of attention to women's issues.

First I'd like to start by giving a brief introduction about Sudan, sort of a historical background, part of today's topic:

The Sudan is known as largest country in Africa, vast country with over 200 ethnic groups, over 300 estimated by some people, who speak over 400 languages and dialects, but Arabic spoken by the majority, and it is the lingua franca.

The Sudan in ancient times has been home for ancient kingdoms, Cush (sp) and Merouy (sp), these were powerful civilizations that moved into Egypt and then Egyptians moved into them until they finally disappeared

It was once a traditional religion country, but in the 6th century it turned all Christian country and 2 very powerful Christian entities were formed where it's now northern and central Sudan.

By the 8th century Islam entered through a treaty when Muslims came through Egypt and tried to conquer Sudan, why are you waiting war?

We're waiting war because we would like to take slaves, etc.

And they said 'Ok we can do this peacefully, we can write that agreement'.

How much do you want every year? The main thing is we want to come into the country.

Islam entered into peaceful means, finally getting married to Nubian women in the area creating mixture of Afro-Arab culture that is now in the Sudan.

By the 14th century, Muslims were powerful. Strong powerful indigenous Muslim group took over forming very large Muslim entity in Sudan. By the 19th century that also was weakened by fighting. Another non-indigenous Muslim entity came in - the Ottoman empire - at that time ruled all over the world, Egypt was one of the provinces. Rulers of Egypt decided to conquer Sudan, which they did. Ottomans did unify parts of Sudan in their rule. By 1885, that rule was actually by the most powerful Islamic entity at that time. That Islamic entity wasn't interested in what they could do with Muslims or Islam. They wanted revenue for their vast empire. It was slavery, gold, etc. Indigenous people decided they would not take that anymore.

A leader arose among people, Mahadid (sp) - Messiah - waited one - would save the people. He founded an entity of followers and fought the Turks, prevailing. Sudan gained independence twice: once in 1885 when defeated Turks, and Mahadid state continued from 1885 until 1899. But then Mahadid died shortly after taking over capital of country. So the Mahadid state started to come up with strange ideas about Islam, they wanted to subdue everyone. They sent threats to Egypt and including Queen Victoria, to either give up or prepare to be dominated by Muslims.

Also at that time, the Sudanese said they had had enough. That was the second Islamic state that Sudanese claimed they had had enough of. Sudanese people were resisting going to other countries. In 1899 British talked Egyptians again into going into Sudan along the Nile to go into the Mahadid states. From 1899-1914 Sudan gained independence also through treaty with help of Egypt because by 1914 Egyptian monarch was gone and military took over.

And they told the British 'tough luck'. Sudanese went for self-determination and gained independence in 1956.

From that period on, we had a secular government always talking about Islamic war, etc. But it never materialized, no Islamic state can say why, even though majority was practicing Islam everyday but this dream of Islamic state has been realized only through dictatorships.

Up until 1914 we had built on common law following mostly laws that the British left in India, Kenya, Nigeria, Sudan was part of that.

Having said that I have to mention that there were 3 plural systems going on:

Common law applied to civil transactions

Sharia Law - personal law - family law - look into Muslim affairs

Customary Law - would govern other religions - Province courts

For purely political reasons - government was weak.

No way out but to apply Sharia. First thing declared after Sharia were all things concerning women, which brings question 'why do all government that want to apply Sharia, actually want to start with women?'

In Islam I think it's because of the unified religious symbols. There are religious symbols that we apply and then we have the appearance of being a Muslim state.

Actually the chapter that John mentioned was among chapters by Hindu, Jewish about religious fundamentalisms. And when we talked about what they had to fight, I thought 'am I glad my parents ran into Islam' because it sounded like a very dire situation for other women.

Why then, every time we speak about women's oppression, Muslim women jump to the top of list. They do because of these unified symbols, one of which is the heja (sp). They give visibility to that state as an Islamic state

A Jewish woman might be more oppressed than a Muslim woman, yet there is one symbol that does not apply to her, but applies more to Muslim women, making them more oppressed, which is all in the end political. Once you choose one of those rules to be the law, you are talking about the will of the state.

So every time you go into an Islamic state, it's about what it wants with women.

After 1983, these rules were applied, but because government was weak, they made that horrible colossal mistake of executing one of the Islamic thinkers in Sudan.

But then that government fell through popular appraisal, we had sort of a democratic, actually another military government continued for one year, after that we had elections and a democracy. During that democracy, everyone was so afraid of Sharia. So they stopped executions. If somebody was convicted for theft and their hand had to be cut off, the execution would stop and leave it there in jail. It was a very confusing time, but everything regarding women started to happen.

That was short lived, in 1989 after one month they made their intentions clear: This is an Islamic government. This is a government that is going to start by asking every woman on the street who is man you're walking with. If you say he's a brother or a husband and you cannot prove that, you are going to be punished. Decency that has survived in that society became a matter of role - morality turned into certain positive rules that have to be applied, and who are the victims? Mostly women.

A recent example: a woman was accused of committing Zina, which consists of a man and a woman having sexual relations given that they're not married to each other. The only sexual relationship that people can have is in marriage. Anything outside of marriage is illegal and punishable. That woman had a very hasty trial, evidence is shabby, not even anywhere close to the requirements of the Sharia because required evidence in Sharia is very complicated and a sophisticated process. In Aria (sp?) times, Muslims did not have prisons, their penal system did not have any incarceration. It was either inside or these terminal punishments that called for very meticulous time or evidence.

This woman received a judgment by stoning to death. And these things keep coming up.

But they have never been executed. And they have never been executed because the government knows that in this Sudanese society you cannot execute such a judgment.

But it serves a very important political purpose of subduing whoever is thinking of crossing this government. All these judgments keep coming up.

Finally, in 1998 the government decided to have a constitution. In that constitution, women were mentioned 3 times: First, family and women. Women put within family - can't take woman out of family and think of her as a person. Even when they did that, they did not constitutionalize. They were content with standards. Have a standard for women rights.

Maybe I should explain this further:

If there's a sign that says speed limit is 65m/hour - that's a rule, you go 65.

But if it says "drive safely", then you can drive at 65 and argue that it was safe.

Nobody died, no accidents, everybody was safe - this is a standard - not a rule. When you put a standard, there is no rule. But when you have a rule then you have to abide by it.

This is what constitutions in most countries, not just in Sudan, have avoided because once you constitutionalize it, it becomes rule, can't go over it.

There is a general article in constitution that prohibits discrimination by reason of sex - Sudan is famous for ignoring its own constitution, be it religious or secular. The constitution will say one thing, the laws comfortably say another.

In the year 2000, the Commission of Khartoum came up with rule because he noticed that women were out doing all sorts of jobs because of economic situation of the country. Women who were students in universities whose families cannot pay them because funds were withdrawn, had to go on and find jobs - for the first time, they took jobs as waitresses, as workers at gas stations and that didn't sit well with the Commission, so he went and issued an order for the state of Khartoum. That order said 'women are not to be hired as waitresses, in hotels, in gas stations (other jobs)...(he put a very nice sentence) because that is degrading to women'.

At that time women wanted to know: if work is degrading, what can they do? Because that is the least honorable thing you can do, go out, get a job and pay for things. What does he think? Is prostitution fine then? They can get a lot of money. Under these rules and because of these situations created in the country, at one point they had to discuss prostitution at the National Assembly.

How can we be a country that applies Sharia in all walks of life and still suffer horrible problem of prostitution on the street while we're still punishing that with either lashes or stoning to death.

But then the women did something very courageous. What happened was even women who belonged to Islamic front (which is the government party) joined other women, because those Islamic women who believed in government, were also working. And they knew very well that if they remained quiet about this, they would be stopped from taking other jobs. This is something like 'testing the water'

How far can we go?

These women all came together, although some women haven't talked to women in the government for 10 years, started a constitutional case because he was discriminating against them in basis of sex, which is unconstitutional.

What happened was that the constitution gave a temporary injunction - regulation by commission not enforced anymore until courts rule - court has kept the case and it's stipend.

All gas stations where women came back for a job said 'no, we won't hire you'. Because who knows? Maybe tomorrow commission will send police and they'll say 'ok, all women out' and we won't have anyone to pump gas.

So the purpose of what the commission wanted from that has been done.

The case by the women is kept.

And they keep sending one lawyer after the other, give a date, etc.

Sometimes dates are set, letters are sent and it's been going on like this.

The other thing women did was, they kept coming back for these and other jobs.

Women who are petty sellers - who would sell tea on the street - were forced to pay taxes, get expensive licenses, didn't make any sense.

So what they did was, they refused to pay and continued to sell the tea.

And they were in every corner that if they disappeared, something was going to happen.

They just keep on doing what they are doing.

The law continued to be legislated against women and discrimination against women

And specifically there is the personal law for Muslim acts, which put women as minors.

The act starts out by saying that 'a marriage contract is a law between a man and a woman', but you turn the other page and it's a contract between two men. These two men are the husband and the guardian of the woman, because the guardian of the woman is not contracting on behalf of the woman, he is contracting as of his right. He is the person who has the right to contract that marriage. He is the person who has the first right to decide the suitability of her husband because not every woman can get married with the person of their choice. If she insists, she has to go to court and take that guardian to court, then if court is convinced that person is ok, they would ask the next guardian in line because there's a Hierarchy of Guardianship. If they are refused, then the judge would appoint himself as a guardian and conclude contract.

Once contract is concluded, the woman is on her own. If she wants a divorce, her guardian can't get her one.

She has to fight for a divorce herself. Also, within this, they go into that wide spectrum of Sharia law and decide 'What entitles woman to a divorce?'

On the other hand, a man can divorce a woman while watching TV. It's a very easy process, if 2 witnesses not

there you can go back tomorrow and bring the 2 witnesses, it doesn't matter. Just go to court and register that, no questions asked. If a woman wants a divorce, she has to go through the whole process. And there comes the issue of custody - right of the child. But then it becomes sort of the right of the man. The law states specifically that, by age 7, every man is entitled to take the boy out of the custody of the woman. Girls by age 9. If the woman wants to keep custody, she has to go to court, prove that it's in the best interest of the children that they stay with her. Nothing worse automatically for the woman.

And here we're talking about families. Families coming apart or families being put back together. Rights of women there are taken away. And this is actually against the constitution. Although there is not constitutionalization in women's rights, there is onstitutionalization in non-discrimination.

Muslim women are not the only women in Sudan. About 1/3 of the Sudan are not Muslims. There are about 5-10% Christians and the rest are traditional, customary laws.

If customary law say that when a man dies, the woman is inherited by their older brother, then that's fine, because that is their tradition.

And now and for along time that went 'ok because that's what they believe in'

But then it turned out, no, it's not ok. Not everybody believes in something that is gonna apply to women.

Women are going to fight back.

The good comes out of the bad, with Sudanese families scattered everywhere in the past 12 years. Woman have gained some independence, which made them look bad. I've heard many of them saying "I'm going back to the Sudan, but there is no way I'm not gonna go back to the same 'slice' (situation? Place? Context). That just has to change".

I could go on and on, there is a long list of laws where there are several issues that are legislated against women, and women are discussing. Let us not go into Sharia, because Sharia gives us very limited rights, Sharia is not the divine will. Yes, it is a sophisticated very good body of jurisprudence that just cannot be applied, because there are other things, and we have to move out of that to another state of being Muslims and applying Islam because none of those women wanted to convert to anything else. What are they gonna convert to that is not discriminating to women?

But they would like to go ahead with things such 'you cannot impose something to me that you are not imposing on yourself.' If we are talking about development, you have to look back and see, who is taking part on that development? Who is building the houses? Who is taking kids to school? A good percentage of men are trying to find jobs in the Gulf Area, Arabian Peninsula, and other parts of the world, and women are there, taking care of business, bringing up kids, building up homes, keeping communities together. Even the refugees and displaced, when they come, they try to reform their communities until their hope of going back is realized. If they are the ones entrusted with all this, they should be entrusted with other things.

One of the other challenges facing women, other than the patriarchal interpretation of Islamic law and rules, is how to apply international law? We live now within states that have been rectifying some of the most important regional documents and international documents on socio-economic rights, political rights, human rights. Sudan is not expected anytime soon to sign or rectify the elimination of all sorts of discrimination against women. But there are other documents and treaties that the Sudan is part of.

How can we force this government to apply that international standard and remove this duality especially in women rights? Because there is always the argument of Westernization, 'this is not Islam'. Westernization aside, we would like to discuss Islam and see how it is in contradiction with international law if at all.