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CAMPAIGN

# Report

## Meriam Yehya Ibrahim

*An innocent Christian on death row in Sudan*



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A report by human rights organization Jubilee Campaign

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## 1. Introduction

Thursday the 15th of May must have been the most difficult day in the life of Meriam Yehya Ibrahim . The 27 -year-old highly pregnant Christian woman from Sudan, was sentenced to a hundred lashes for adultery and was given the death sentence for apostasy because of her renunciation of Islam. Meriam has been imprisoned since February 2014, along with her twenty- month-old son Martin .

Meriam was pregnant at the time she was imprisoned. On Tuesday, May 27th, she gave birth to a healthy daughter in prison. The father has been prohibited to raise his own children because he is a Christian. Under Sudanese law, the mother is entitled to keep her baby for two years to be able to educate him or her, after which the death sentence of the mother will be carried out.

Her Christian Ethiopian mother raised Meriam. Her father, a Sudanese Muslim, left his family when Meriam was very young. But because the girl was born in Sudan, she was automatically considered a Muslim by the state. Meriam married a South Sudanese Christian man, Daniel Wani.

The court confronted the Christian woman with a choice: ‘Either you renounce your Christian faith, or we will kill you by hanging’. Meriam did not renounce her faith in Christ and persevered. For this reason the court upheld the sentence, which contained the lashes and death by hanging.

Jubilee Campaign is shocked by this horrific decision of the Sudanese courts. Freedom of belief is a universal human right and should be respected worldwide, especially in a country that is member of the United Nations and has adopted the UDHR and has ratified the ICCPR.

Fortunately, the international outcry is widespread and still growing. The embassies of the United States, Canada, Britain and The Netherlands have taken a collective position in which they shared their great concerns regarding the case of Meriam. They have urged the Sudanese government to respect the freedom of religion. Meanwhile, the Dutch and UK governments have summoned the Sudanese ambassador to explain the case.

In this report, Jubilee Campaign briefly deals with the decision of the Sudanese judge and subsequently addresses the following issues:

- What was the content of the judicial decision?
- What is the legal framework?
- What was the legal reasoning behind the decision?
- What legal and political objections can be raised against the verdict based on the Sudanese constitution and international treaties and law?

## 2. The Judicial Decision

Meriam was arrested after her alleged brother filed a charge against her because she was a Muslim-woman living with a Christian husband. It was later determined that Meriam and her husband were married in December 2011 and had one child together. Since February 2014, Meriam has been held captive in the Federal Omdurman Women's Prison in north-Khartoum along with her son.

On 11th May 2014 the case was on trial. The Al-Haj Yousef Criminal Court in Khartoum ruled that she was guilty of committing adultery and apostasy from Islam. Adultery, because the - by the church ordained - marriage was considered invalid by the Sharia. As a result, the court ruled that she was illegally living with a man. The declaration of invalidity was based on Meriam's alleged belief in Islam and her Muslim upbringing, and based on the evidence that some of her supposed relatives brought to court<sup>1</sup> (see also section 4.1. "Muslim or Christian"). The court's verdict identified a case of apostasy because Meriam declared to be a Christian during the court trial. However, because she is the daughter of a Muslim, she is thereby automatically considered a Muslim by birth.



Judge Abbas Mohammed Al-Khalifa gave the decision of the criminal court:

*"One hundred lashes for adultery and death by hanging for apostasy from Islam if Meriam within three days after the verdict does not repent, renounces her Christian faith and returns to Islam."*

On May 15th 2014, the case was heard again. During the session, an Islamic religious leader, who vainly tried to convince her that she had to renounce her Christian faith and accept Islam, addressed Meriam. In response, Meriam subsequently told the judge : "I am a Christian and I have never been guilty of apostasy."

The court, while addressing Meriam by the name of her father, Adraf Al-Hadi Mohammed Abdullah, stated: "We gave you three days to withdraw from your faith, but you do not want to return to Islam. I sentence you to death by hanging."<sup>2</sup>

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<sup>1</sup> <http://www.acjps.org/?p=1918>

<sup>2</sup> <http://www.aljazeera.com/news/middleeast/2014/05/sudan-woman-given-death-penalty-apostasy-20145159264775754.html>

### 3. The Judicial Decision In Legal Perspective

#### 3.1. Adultery

The court ruled that the marriage between Daniel Wani and Meriam Yehya Ibrahim was unlawful. The marriage was considered an “illegal” marriage because, according to the Sharia law applicable in Sudan, a Muslim woman is not allowed to marry a non-Muslim man. As mentioned in the previous section, Meriam is considered to be a Muslim by virtue of her birth. Her husband, Daniel Wani, was born in South Sudan and is a Christian. Interestingly, Wani fled to America in 1998 to escape the conflict in Sudan and is now a naturalized American citizen.

Article 145 of the Sudanese Criminal Act 1991 - a provision that is based on Sharia - states that having intercourse within an unlawful marriage is considered adultery. In the subsequent article 146 of the Criminal Act the punishment for committing this act is prescribed.

**Part XV**  
**Offences of Honour, Reputation and Public Morality**  
**Adultery (Zina)**

- 145.(1) There shall be deemed to commit adultery :-**
- (a) every man, who has sexual intercourse with a woman, without there being a lawful bond between them;
  - (b) every woman, who permits a man to have sexual intercourse with her, without there being a lawful bond, between them.
- (2) Sexual intercourse takes place by the penetration of the whole glans, or its equivalent into the vulva.**
- (3) There shall not be deemed, to be lawful bond, marriage which, by consensus, is ruled void.**

**Penalty for adultery**

- 146.(1) Whoever commits the offence of adultery shall be punished with :-**
- (a) execution, by lapidation, where the offender is married (muhsan);
  - (b) one hundred lashes, where the offender is not married (non-muhsan).
- (2) The male, non-married offender may be punished, in addition to whipping, with expatriation for one year.**
- (3) Being “muhsan” means having a valid persisting marriage at the time of the commission of adultery; provided that such marriage has been consummated.**
- (4) Whoever commits adultery, in the Southern States, shall be punished, with imprisonment, for a term, not exceeding one year, or with fine, or with both, and where the offender is (muhsan), with imprisonment, for a term, not exceeding three years, or with fine, or with both.**

Based on the above, Meriam was sentenced to a hundred lashes for “adultery”: the punishment that, according to the article, applies to an offender who is not married. In Meriam’s case her marriage is considered non-existent.

### **3.2. Apostasy**

Meriam was sentenced to death by hanging, because she is supposed to have committed apostasy from Islam. She stated to be a Christian, even though the court considered it to be proved that she is a Muslim. This conclusion is based primarily on the fact that Meriam’s father was a Muslim. In addition, the court relies on the statements of relatives. She was supposedly raised in a Muslim environment.

Meriam was born in western Sudan. She is the daughter of a Sudanese Muslim father and an Ethiopian Orthodox mother. Her father left the family when they resided in a refugee camp in Southeast-Sudan. Meriam was only six years old when he left. From that moment Meriam was raised by her mother as a Christian. Although she has been a practicing Christian all of her life, she is nevertheless considered to be a Muslim because she is the daughter of a Muslim. Under Sharia law in Sudan, Muslim-women are not allowed to marry non-Muslim men.<sup>3</sup> It is also stated that Meriam, by marrying a Christian man, committed apostasy from Islam.

The decision is based on article 126 of the Criminal Act, a provision also derived from Sharia.

**Apostasy (Ridda)**

**126.(1) There shall be deemed to commit the offence of apostasy, every Moslim, who propagates for renunciation of the creed of Islam or publicly declares his renouncement thereof, by an express statement, or conclusive act.**

**(2) Whoever commits apostasy, shall be given a chance to repent, during a period to be determined by the court; where he insists upon apostasy, and not being a recent convert to Islam, he shall be punished with death.**

**(3) The penalty provided for apostasy shall be remitted whenever the apostate recants apostasy before execution.**

Paragraph 1 state that someone who makes a public statement or engages in an explicit act that shows that he or she actively renounces the (confession of) Islam, is guilty of apostasy. Based on the foregoing, it must be assumed that the court considers Meriam’s statement during the trial (see Chapter 2 ‘the judicial decision’) to be a public statement and the marriage with a Christian a well defined expression of the fact that Meriam has actively renounced the Islam.

Paragraph 2 states that the perpetrator has a chance to show repentance during a certain period of time to be determined by the court. If the perpetrator is persistent, the death penalty follows. The foregoing indeed has occurred in this case. After three days of reflection, Meriam declared still to be a Christian and that she will not renounce her faith.

Lastly, the third paragraph states that the penalty will be remitted in case Meriam decides to renounce her (Christian) faith before her execution.

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<sup>3</sup> <http://www.christiantoday.com/article/meriam.ibrahim.what.you.need.to.know.about.sudan.and.apostasy/37565.html>

## 4. Assessment Of The Judicial Decision

### 4.1. Muslim or Christian

Both verdicts are based on the fact that Meriam is considered a Muslim by birth. A relevant question however is whether this statement is accurate?

Meriam has declared that she has always been a Christian. She explained this several times, thus as well on the 4th of March 2014 during a court hearing. She has even submitted her formal marriage certificate, in which she is classified as a Christian. This official document is proof of the fact that she is a Christian and has never converted to Islam. From an objective and legal perspective therefore, she could never have committed apostasy.

Meriam and Daniel were married in December 2011 during a church service with about five hundred people present. According to Meriams lawyer, most wedding guests are able to testify that both were devout Christians at the time of the marriage. During the trial however, these witnesses were never allowed to testify in court.

The Sudanese court based its decision predominantly on the statements of the alleged brothers and mother of Meriam, who primarily have accused Meriam of living together with a Christian man while being a Muslim. The lawyers of Meriam however, have made known that these people are not speaking the truth. "We can prove that the mother of Meriam past away in 2012 and the other two are lying. But the court has not shown any interest in our evidence."<sup>4</sup>

Meriam has made a personal choice for Christianity after the Christian upbringing by her mother. Nevertheless, the court decided that she is Muslim because of the religious background of her father. This deprives any child after birth of the right to a personal choice. In any case, not when it comes to the freedom to choose a specific religion. A born Muslim is not allowed to convert. If he decides to do so against the rulings of the law, he or she could be charged with apostasy.

The verdict - and such policies in general – is in direct breach with the universal principle of religious freedom.

### 4.2. In light of the constitution: the “Interim National Constitution of the Republic of Sudan 2005”

This section will deal with the most relevant provisions of the Sudanese Constitution in Meriam's case.

In the first place, it is important to mention that the Sudanese constitution in article 3 states that the constitution has priority over all other laws, and that other laws should be in accordance with the constitution.

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<sup>4</sup> <http://www.dailymail.co.uk/news/article-2640367/Sudanese-doctor-facing-execution-marrying-U-S-Christian-gives-birth-baby-girl-squalid-jail.html>

*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.*

#### **4.2.1. Freedom Of Religion**

The freedom of religion is part of the Bill of Rights, which is incorporated in the constitution. It contains the most important human rights and liberties. The constitution formulates in article 38 the freedom of religion.

*38. Freedom of Creed and Worship*

*Every person shall have the right to the freedom of religious creed and worship, and to declare his/her religion or creed and manifest the same, by way of worship, education, practice or performance of rites or ceremonies, subject to requirements of law and public order; no person shall be coerced to adopt such faith, that he/she does not believe in, nor to practice rites or services to which he/she does not voluntarily consent.*

This section states explicitly that Sudan underwrites the freedom of religion or creed. Subsequently the Bill of Rights declares that no person can be forced to convert to another religion.

Formally speaking, if it would have been the case that Sudan would have had no constitution that would guarantee the freedom of religion, had not adopted the UDHR and had not ratified the ICCPR-treaty, the court could have been justified in applying article 126 and 146 of the Criminal Act in certain cases. However, based on the previous articles it is clearly proven that the articles of the Criminal Act are in contradiction with the constitution of the state of Sudan and should never have been applied.

#### **4.2.2. Equal Treatment**

Based on article 31 of the Sudanese constitution, equal treatment is guaranteed for every Sudanese citizen.

*Equality before the Law*

*31 All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law.*

In the case of Meriam this right however has been breached. A religious marriage is declared invalid when persons are from different religions but is valid when both persons are from the same religion. This legal construction is not in conformity with article 31 of the constitution.

Based on the above-mentioned assessment the undivided conclusion can be drawn that the judge has acted arbitrarily. The court has based the decision on the provisions in the Sudanese Criminal Act, but the court has evaded the provisions regarding religious liberty and equal treatment of its own constitution.

#### **4.2.3. Torture**

Meriam was convicted and sentenced to a hundred lashes. It is stated that the execution of the sentence will be postponed until after giving birth to her baby. However, from article 33 of the constitution could be derived that no person should be subjected to torture. This means that the given sentence may not be executed.

*33. Sanctity from Torture*

*No person shall be subjected to torture or to cruel, inhuman or degrading treatment*

#### **4.2.4. Death Sentence**

The constitution does not prohibit the death sentence. It is mentioned however, that the death sentence shall not be executed within two years from the moment the convicted person has given birth.

*36. Restriction on Death Penalty*

- 1) *No death penalty shall be imposed, save as retribution, hudud or punishment for extremely serious offences in accordance with the law.*
- 2) *The death penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy except in cases of retribution or hudud.*
- 3) *No death penalty shall be executed upon pregnant or lactating women, save after two years of lactation*

Subsequently it is mentioned that the death penalty can only be imposed for extremely serious offences. It is the Sharia, and not the constitution that states that apostasy should be punished with the death sentence.

#### **4.2.5. Sharia**

In addition, it is decided that the national law is based on Sharia law, but that non-Muslims could not be submitted to punishments prescribed by Sharia law.

*Artikel 156 onder*

*The judicial discretion of courts to impose penalties on non- Muslims shall observe the long-established Sharia principle that non-Muslims are not subject to prescribed penalties and therefore remitted penalties shall apply according to law*

#### 4.2.6. Treatment while in detention

Article 10 of the ICCPR-treaty, which is ratified by Sudan, states that prisoners have the right to a treatment with humanity, respect and dignity.

In addition to the fact that Meriam was in the last stages of her pregnancy, and at present has given birth to her baby daughter, her 20-month year old son has to remain in prison with her as well. According to Meriams lawyer, in many occasions there are ongoing complaints regarding a lack of hygiene and the presence of vermin. Subsequently she has had a difficult pregnancy and a request to take her to a private hospital has been declined.<sup>5</sup>

Furthermore, Meriam's husband Daniel, has stated that his wife is chained to the floor most of the time and only rarely is allowed to go outside. She also receives insufficient nourishment, which does not help her already worrisome condition deriving from the difficult delivery of her baby. According to Daniel, both Meriam and their son Martin, have caught different deceases because of the poor sanitary facilities in prison.

According to a report of Human Rights Watch the prison is overcrowded and the sanitation is extremely poor which is the reason why children remaining with their parent in prison often catch diseases or even die of the diseases caught in prison.

In addition to this, Meriam is hardly allowed to receive visitors. Her husband was only given 10 minutes when he visited her for the first time. This was hardly enough to give attention to his son, let alone to have a conversation with his wife. "I actually wanted to take Martin with me, but I knew that was not allowed", Daniel told the British news paper Daily Mail. "It is not an appropriate place to stay for a little boy. I cannot spend time with my wife and child because the Sudanese authorities do not recognize me as the father and husband."<sup>6</sup>

Daniel told that in addition to this, his wife was in a lot of pain because of the difficult birth. "She is not allowed to leave her cell for weeks in a row. Meriam has been slain with medical complications whilst in prison, but nobody knows for sure what is going on." When Meriam went into labor she was not taken to a hospital. "She had her baby in the prison hospital", Meriam's lawyer stated.<sup>7</sup>

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<sup>5</sup> <http://edition.cnn.com/2014/05/17/world/africa/sudan-christian-woman-apostasy/>

<sup>6</sup> <http://www.dailymail.co.uk/news/article-2640367/Sudanese-doctor-facing-execution-marrying-U-S-Christian-gives-birth-baby-girl-squalid-jail.html>

<sup>7</sup> <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/sudan/10857502/Sudanese-woman-sentenced-to-death-for-apostasy-gives-birth.html>

## 5. Conclusion and recommendations

### **Jubilee Campaign ascertains that:**

- The law on the basis of which Meriam is convicted is in contradiction with the UDHR and the ICCPR-treaty;
- The Sudanese judge applies laws that are in contradiction to the constitution with which he breaches the constitution;
- Meriam has always been a Christian, she has never been a Muslim and she cannot be an apostate. This means that the conviction based on article 126 Criminal Act- even when this article was not contradicting the constitution- is not possible;
- Meriam's marriage is lawful, which means that a conviction based on article 146 Criminal Act- even in the situation that the article would not be in contradiction with the constitution – is not possible;
- A choice whether to follow a certain religion should – not only in this case but at all times- not be factually addressed, because the Sudanese constitution guarantees freedom of religion and creed, Sudan has adopted the UDHR and has ratified the ICCPR-treaty;
- Meriam is solely convicted because of her choice of religion, which is in contradiction to the Sudanese constitution, the by Sudan adopted UDHR and the ratified ICCPR-treaty;
- The sentence for adultery, hundred lashes, should be considered as torture, while the Sudanese constitution prohibits torture;
- The treatment of Meriam as a detainee while being held prison is not in conformity with the ICCPR-treaty.

### **Jubilee Campaign condemns:**

- The corporal punishment and the death sentence to which the criminal court has sentenced Meriam;
- The fact that Meriam is convicted merely because of her religious choice.
- Each application of apostasy-, blasphemy and anti-conversion law or policy that is aimed at such;
- The detention of an, on improper grounds, convicted pregnant woman and her twenty month old son;
- The discrimination of religious minorities or any other religious group;
- The application of law that is in contradiction with the related international treaties.

**Jubilee Campaign calls for:**

- The verdict to be revised and to be brought in conformity with the Sudanese constitution;
- Meriam to be released immediately and to provide her with protection against possible attacks of individuals who want to take the law into their own hands;
- Meriam, her husband and her two children to be given the possibility to immigrate to America, to the Netherlands or elsewhere in Europe. Her husband had already commenced with a process to immigrate to America the moment the criminal charges were filed;
- The Sudanese government to start a procedure which leads to the concurrence of the Criminal Act 1991 with the constitution;
- Every possible action to be taken to ensure the freedom of religion and life conviction;
- The support of the action taken by Amnesty International.

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