

Bawader / Commentary, 15 December 2020

# Sudan: Have the Juba and Addis Ababa Agreements Untangled the Dichotomy between Religion and the State?

→ Abdelkhalig Shaib



Sudanese people celebrate during the reception of peace leaders following the signing of the Juba Peace Agreement in September between the transitional government and armed groups - Khartoum, November 2020. © Mahmoud Hjjaj/AA



The debate around religion and the State in Sudan and how to define the role of Islamic law in the legal realm – and in public life in particular – is a riddle that has since independence haunted politicians and the Sudanese elite alike. Prior to separation, delineating this controversial relationship in Sudan’s different constitutions had been one of the most contentious issues between the North and South Sudan. Post-separation, it was indisputably the key point of disagreement between the armed movements and the Bashir regime (until it fell in April 2019) and remains today an issue that is yet to be resolved. The relation between religion and the State will need to be properly addressed if the Sudanese people wish to build a nation on the basis of citizenship, without discrimination based on religion, race, or culture and without imposing an Arab-Islamic identity on a country so diverse.

The peace agreement signed on 3 October 2020 in Juba, the capital of South Sudan (the Juba Peace Agreement),<sup>1</sup> attempted to outline the post-independence relationship between religion and the State. Perhaps it will provide a general framework for an intelligent dialogue on a complex issue that requires agreement on the epistemological foundations that define it.

## Citizenship as the basis of rights and duties in the Juba Peace Agreement

The Juba Peace Agreement is a comprehensive agreement in the form of several detailed protocols aimed at addressing the fundamental issues of the Sudanese crises in Darfur, the regions of South Kordofan and the Blue Nile, and other marginalized regions. It is the outcome of nearly a year of tireless work in Juba between the transitional government and the armed opposition movements and constitutes, undoubtedly, a step in the right direction. However, the current challenge facing political and social forces in finding real peace evolves around building a modern democratic state that respects the diversity of the Sudanese people and does not discriminate against them on the basis of race, tribe, religion, gender, sex, or origin. Lasting peace will not be achieved without strengthening existing institutions and establishing new ones that are effective, independent and sustainable.

<sup>2</sup> Sudan: Have the Juba and Addis Ababa Agreements Untangled the Dichotomy between Religion and the State?



## Arab Reform Initiative

The relationship between religion and the State was strikingly present in the agreement, albeit to varying degrees and with no explicit reference to secularism (which many Sudanese associate with atheism). The agreement specified the complete separation between religious and state institutions to guarantee religion is not used for political ends and ensure the protection of religious freedoms. It also provided that citizenship forms the basis of rights and duties without discrimination. This does not preclude the existence of laws, programs, or activities that seek to improve the conditions of individuals and groups who have been disadvantaged because of their race, colour, religion, and regional or national origin. The agreement also affirmed that the State would consider equal all religions and cultures without any bias and established a national commission for religious freedoms to protect the rights of Christians and other minorities. It also granted South Kordofan and the Blue Nile a self-governance status that defines the purviews of local and federal powers, including drafting laws that will be based – according to the agreement – upon the 1973 constitution (considered by some the closest to secularism).

### **The Addis Ababa Agreement strengthens the principle of “separation between religion and state”**

The Juba Peace Agreement did not include movements with real influence on the ground. The most prominent absentees are the Sudan People’s Movement-North, led by Abdel Aziz al-Helou, (with which past negotiations faltered and which demand the secularization of the State), and the Sudanese Liberation Movement, led by Abdel Wahid al-Nur, (which refused to join the Juba platform because it sees it as not addressing the roots of the crisis in Sudan). However, al-Helou’s absence from the Juba Peace Agreement did not prevent him from signing a joint agreement (Addis Ababa Agreement) with the Sudanese Prime Minister Dr Abdallah Hamdoug in the Ethiopian capital on 3 September 2020, which unambiguously stipulated the separation of religion and State. In one of its most important clauses, the agreement calls for the establishment of a democratic state in Sudan and a constitution based on the principle of “separation between religion and State.” In the absence of such a principle, the right to self-determination in the



regions of the Blue Nile and the Nuba Mountains should be respected. Moreover, the Addis Ababa Agreement specified that the freedoms of conscience, worship, and religion are fully guaranteed to all Sudanese citizens and that the State is neither allowed to adopt an official religion nor discriminate between citizens based on their religion.

The essential difference between the Juba Peace Agreement and the Addis Ababa Agreement is that the latter expresses one of the fundamentals of al-Helou's Movement – the necessity to separate between religion and State so that Sudan can become a democratic nation that promotes the rights of all its citizens. This explains perhaps why al-Helou has so far failed to reach a final agreement with the government of Dr Abdallah Hamdouk, as he considers the separation of religion and State a precondition before joining the peace plans, just like the other armed movements.

## The separation between religion and state across Sudan's constitutions

Part of untangling the religion-state dichotomy lies in understanding the relationship between Christianity and Islam in Sudan. The dispute around religion has formed the basis of the relationship between the Muslim-majority North and Christian-majority South until their partition in 2011, as it was closely tied to the vision of traditional and sectarian parties and their conceptualization of the State. It is no wonder, then, that since independence Northern political elites with religious authority desperately defended Islamic law, finally succeeding in 1983 to implement it in what is known as the "September Laws". This was not the case, however, following Sudan's independence in 1956. The transitional constitution of 1956 was devoid of any mention of religion. The Constituent Assemblies elected after 1956 attempted to draft a permanent constitution by first adopting a transitional one (the Draft Constitution of 1968) that stipulated that Sudan be a democratic socialist parliamentary republic guided by Islam. The State's official religion would be Islam and Arabic its official language. However, the Constituent Assembly at that time failed to review the draft constitution because of internal schisms, in addition to the withdrawal of some of its members (including Christian



## Arab Reform Initiative

ones). The Constituent Assembly was never able to agree upon a plan for a permanent constitution and was dissolved on 25 May 1969 due to the onset of the May Revolution led by Jaafar Nimeiry.

During the Nimeiry era, the 1973 Constitution introduced a provision establishing Islam as the majority religion for the first time, while still recognizing Christianity as the religion of a large number of citizens. Another provision specified that the State would treat followers of different religions and spiritual beliefs without discrimination and respect their rights and freedoms. This translated the terms of the Addis Ababa Accords, signed on 27 February 1972 between President Nimeiry and the Sudan Liberation Movement to end the Sudanese Civil War. The 1973 Constitution also stipulated for the first time that Islamic law and custom were the primary sources of legislation, while the personal status matters of non-Muslims would be governed by their own personal laws. In 1983, Nimeiry reneged on the Addis Ababa Agreement, amending it to impose for the first time *Hudud* punishments. In addition, he introduced fundamental changes to the legal system, Islamic *Sharia* Laws, that became known as the “September Laws”. For example, alongside the addition of the *Hudud* punishments to the Penal Code in 1983, judges were granted the power to implement Islamic penalties even if not explicitly prescribed. Moreover, the Sources of Judicial Decisions Law in 1983 gave judges the capacity to implement any verdict supported by the Qur’an and *Sunnah*. If unable to do so, the judge could rely on several guiding principles (primarily *al-Ijma’* and *al-Qiyas*). The 1983 Civil Procedural Law stipulated that in matters without prevailing legislation, the courts would apply existing Islamic laws and principles. Nor was the 1984 Civil Transaction Law far from this Islamic character that had swept through Sudan’s legal sphere, stipulating that courts would be guided in the application of their rulings and interpretations, as well as in cases without prior legislation, by the principles of Islamic law. Moreover, they would follow the rules set down in the Sources of Judicial Decisions Law of 1983.

In 1984, Nimeiry initiated a draft of wide constitutional amendments to the 1973 Constitution by announcing Sudan an “Islamic Republic” (Article 1 of the Draft Amendments), in addition to naming the president “the leader of believers and head of the State” (Article 80 of the Draft Amendments) and that Islamic law and custom would be indisputable legal sources (Article 59 of the Draft Amendments).



Then came the 1998 Constitution which expanded the State's religious underpinnings with the introduction of a provision on the "nature of the State", stating that the authority of the country is God, creator of mankind (Article 4). It also stipulated the impermissibility of instituting laws that oppose Islamic law and *Ijma' al-Ummah* (Article 65), thereby excluding non-Muslims by strengthening the hegemony of the religious State over the aspects of general life.

Until the signing of the Naivasha Peace Agreement in 2005 between the Bashir regime and John Garang, leader of the Sudan People's Liberation Army, the question of Islamic law and its application vis-à-vis non-Muslims was non-negotiable in peace agreements. After the agreement and the crafting of the 2005 Constitution, the North made concessions on this issue within the constitution itself. As a result, the South and Southerners residing in North Sudan would not be subject to Islamic law. This created an Islamic federation that divided Sudan along religious lines, paving the way for the South's secession in 2011.

After the fall of the Bashir regime in 2019, the signed Constitutional Charter was ratified between the Forces of Freedom and Change and the Military Council, which, for the first time since the 1956 Transitional Constitution, has neither mentioned the institutionalization of Islamic law nor established Islam as the official religion. In doing so, the Charter left aside a controversial issue that the Sudanese were unable to address at the time, as they were engaged in negotiations aimed at finding a common framework to share power with the Military Council.

## **Have the Juba and Addis Ababa Agreements been successful in understanding the relationship between religion and the state?**

Comparing the Juba Peace Agreement to the Addis Abba Agreement, we find that the Juba Peace Agreement calls for the complete separation between religious and state. However, it does not explain how this may realistically be achieved. Moreover, it did not explicitly stipulate the separation between religion and State.



## Arab Reform Initiative

Instead, it left this question (according to the agreement's provisions) to the National Constitutional Conference, where it will be one of several national issues to be discussed. Will the State refrain from intervening in religious institutions while guaranteeing freedom of worship for its citizens? How can we understand the relationship between religion and the State within the framework of the Juba Peace Agreement? Will the State guarantee freedom of religion and religious practice? Will it commit to its neutrality in religious affairs, refraining from using state institutions in any religious activities? All of these are questions left unaddressed by the Juba Peace Agreement. They are contentious issues that may need to be resolved during the Constitutional Conference which, according to the Constitutional Charter, will be held at the end of the transitional period.

On the other hand, the Addis Abba Agreement was clearer in stipulating that the State should not establish an official religion and that it should not discriminate based on religion. This suggests that separation between religion and State implies secularism (even if not explicitly stated) as opposed to a civil state which may not reflect this principle, consistent with the literature of the Sudan People's Liberation Movement. The call for secularism, however, has been explicit in the Nuba Mountains region under the control of Abdel Aziz al-Helou. Its adoption is a primary precondition for the movement to accept any final peace agreement. Nevertheless, in the wake of the December protests, the "civil state" has been a motto that the Sudanese have chanted, calling for a government free from the military's reigns. This does not necessarily reflect the concept of separation of religion and State as defined by Abdel Aziz al-Helou. The danger lies in the fact that the Addis Ababa Agreement linked the separation of religion and State to the right to self-determination. A joint statement released a day after the agreement's signing on 3 September 2020 attempted to assuage this fear. It noted that both sides had agreed to unofficial workshops to discuss the controversial issues under negotiation, including "the form of the relationship between religion and the State, and the right to self-determination." One workshop in Juba had already failed to address this question due to the government delegation's refusal of specific recommendations concerning religion and the State.

A more comprehensive framework for understanding the implications and core aspects of the agreements' provisions on the relationship between religion and



State is necessary to understand the failures of Sudan's constitutions. Additionally, this requires an understanding of what these provisions mean within the context of Sudan's current political stalemate. Sudan has always been a religiously diverse country, but with religious powers in the political arena, religion will continue to organize various aspects of daily life and control behaviours of society rather than be relegated to the ceremonial and symbolic realm. This strains the relationship between the State and religion and leads to extreme polarization.

The experience of Islamists in power for three decades clearly demonstrated that if any constitution the Sudanese intend to discuss adopts a specific religion (even if it is the majority religion) or provides that Sharia should be one of the sources or the main source of legislation to take precedence over the constitution itself, this cannot guarantee the implementation of the high values which Islam embraces in practice, concerning equality, justice, freedom, and human dignity. This is especially true if the constitution is accompanied by a political ideology that imposes a religious standard on all of its citizens (Muslim or not). Likewise, the absence of such provisions from the constitution does not necessarily mean that religion will be separated from society. In its essence, religion is a private matter. The State does not pray, fast, or pay *zakat*, as these are all personal obligations. Similarly, designating the State as secular is not necessarily a safety-valve that guarantees basic freedoms often enumerated in constitutions and ensured in international and regional agreements on human rights. The Nimeiry regime did not initially impose Islamic law and *Hudud*, but he nevertheless ruled autocratically, imprisoning and executing his opponents.

## Will the Sudanese find what they are looking for in a civil state?

Perhaps what the Sudanese are looking for is a civil state in the broadest of terms. Such a State does not disavow religion, but rather allows for a political space where all religions are treated equally. The foundation of the civil state is the citizen. It is not ruled by religious men, military men, or any higher apparatus that is not elected outside the framework of the social contract. This requires building



the State's institutions and its civil and military apparatuses upon legal frameworks that allow them to carry out their functions in a manner that integrates their roles without the interference of loyalties. This will lead to political stability without falling into the trap of building modern institutions completely devoid of their institutional objectives. Some see in the civil state a parallel to an extreme or aggressive secularism that calls for atheism. This is a reductive and imprecise view. Sudan will only progress by building a modern system for a civil state that does not hold an extreme position against freedom of religion as an individual right and works for the separation between religion and politics. This has been successfully practised in Canada, the USA, South Africa, Germany, whose experiences Sudan can learn from.

The Juba Peace Agreement stipulated that the state should consider equal all religions and cultures. This implies the state's neutrality in matters relating to religion in that it does not support or criticize a religion, nor does it distinguish between different religious beliefs. On the other hand, the complete separation between religious and state institutions makes it difficult to understand what is intended by the agreement without referring to specific institutions. Perhaps the closest that comes to mind is the religious role of the Council of Sudanese Scholars 'Ulama' that supported the Bashir regime (this body was under the supervision of the presidency of Sudan until the fall of Bashir and a large number of its members belonged to the Sudanese Islamic Movement). The body's impact can be traced through its political fatwas. For example, the president of the body, Dr Muhammad Othman Salih decreed in 2016 that it is not permissible to disobey the ruler, indicating that such behaviour is essentially forbidden. There is also the Islamic *Fiqh* Academy financed by the state and considered one of its political and religious arms. Its role not only included issuing *fatwas* in areas related to worship but extended to include political questions under the Bashir regime's climate of political Islam. The academy thus took advantage of religious principles and values by granting political legitimacy to the actions of the Bashir regime.

The discussion around the separation between religion and state in all of its political, social, and legal complexities has not so far been addressed in a systematic and in-depth way in Sudan. It has not been addressed at the level of the political elite and the armed movements, nor has it been addressed among



## Arab Reform Initiative

Sudanese at the community level (some of whom see the Juba Agreement as an attempt to handle the issue by dividing power and appeasing the ambitions of the armed movements' elite from marginalized areas).

Finding a framework to define the relationship between religion and the State has been dependent upon political circumstances and the context in which the constitution was written. As a result, political events and those surrounding the formation of the constitution are inextricably linked. It has been difficult for the Sudanese to accept a social contract that accommodates their diversity. On the one side is the obsession of the Islamist movement in establishing a theocratic government in which statemen have supreme authority in managing state affairs, all in the name of religion. On the other side is the desire for the separation of religion and State (no matter what this may entail) by establishing a constitution that organizes the State around citizenship. The inevitable result has been a fabricated and false division between the secular left and the religious right that has led to wars and repeated failures in managing diversity. It has also led to the creation of elitist solutions at the level of the political elite who have treated urgent political necessities in an effort to achieve peace without addressing the most critical questions: How should the Sudanese organize the relationship between religion and the State? How should they be involved in the ongoing discussions seeking to understand this relationship? What are the required concessions to be made by all? Tackling these questions will be a long and draining process but is essential for building the State.

The reality that for many Sudanese religion is a central part of their national identity cannot be disregarded. Therefore, it cannot be determined at this stage that any future constitution for Sudan will not adopt an official religion in the way the Addis Ababa Agreement states. Nor is it known if the civil state as defined above can constitute the minimum level of political consensus towards finding a final framework between religion and the State in a diverse country like Sudan. The link between the right to self-determination in the two regions and the separation of religion and the State explains the depth of the crisis. Moreover, it shows the lack of confidence even with the transitional government that emerged following the popular revolution to which the Sudanese army allied itself.



## Conclusion

One of the most important matters resting with the transitional government in Sudan is to find lasting and just peace throughout the country. However, we cannot disregard the fact that the government of Dr Abdallah Hamdouk does not have a parliamentary bloc, nor does he represent all the Sudanese people (even if he was endorsed in an unprecedented manner by the different powers). He thus enjoys a limited authority, which necessarily leaves him with partial options in dealing with the peace issue (among others), and in particular with Abdel Aziz al-Helou's Sudanese People's Liberation Movement-North regarding the issue of separation of religion and State.

The separation between religion and the State may well be one of the elements of the civil state for which the Sudanese have called to guarantee against the exploitation of religion in politics. This does not inevitably lead to the separation of religion from society but rather to the non-employment of religion and its preachers in the political realm. Religion belongs to God, but the country must accommodate everyone. Nevertheless, the dilemma and failure of the Sudanese State since its inception have had nothing to do directly with the relationship between religion and the State but rather the polarization around the relationship between the North and South, which eventually transformed into an Arabic/Islamic-Christian conflict. Perhaps the time has come for the Sudanese to engage in societal and intellectual discussions around the relationship between religion and the State. A lack of satisfaction with the stipulations in agreements may contribute to (or detract from) establishing pillars of a democratic state in which citizenship forms the basis of rights and duties. Importantly, these rights would be safeguarded without any discrimination.



## Endnotes

1. The Agreement was signed between the Sudanese government, the Revolutionary Front (a broad alliance between armed movements and other powers), and the Minni Minawi wing of the Sudan Liberation Movement, in the presence of South Sudanese President Salva Kiir and the presidents of the Sudanese Transitional Council of Sovereignty and the Cabinet of Sudan (Abdel Fattah Al-Burhan and Abdallah Hamdouk, respectively),



## About the author

### Abdelkhalig Shaib

Abdelkhalig Shaib is a lawyer and legal counsel at an international bank in Bahrain. He received his LLB and LLM degrees from the Faculty of Law at the University of Khartoum and an LLM degree from Harvard Law School. He is a member of the Sudanese Bar Association, the New York State Bar Association, and the American Bar Association. He is also one of the founders of the Arab Association of Constitutional Law. Abdelkhalig participated in the Bahrain Independent Commission of Inquiry in 2011. Abdelkhalig was also a visiting fellow at Harvard University and provided legal advice to a number of international organizations on Sudan's constitution-making, elections, and political accommodation in Sudan. Abdelkhalig has published a number of academic articles, such as a media sustainability index report published with the International Research and Exchanges Board and an article on the right to non-discrimination published in the yearly book of the Arab Association of Constitutional Law. Finally, Abdelkhalig provided detailed comments and revised drafts to the Constitutional Charter of 2019.

## About Arab Reform Initiative

The Arab Reform Initiative is the leading independent Arab think tank working with expert partners in the Middle East and North Africa and beyond to articulate a home-grown agenda for democratic change. It conducts research and policy analysis and provides a platform for inspirational voices based on the principles of diversity, impartiality and social justice.

- We produce original research informed by local experiences and partner with institutions to achieve impact across the Arab world and globally
- We empower individuals and institutions to develop their own concept of policy solutions
- We mobilize stakeholders to build coalitions for positive change

Our aim is to see vibrant democratic societies emerge and grow in the region.

Founded in 2005, the Arab Reform Initiative is governed by a Plenary of its members and an Executive Committee.

[arab-reform.net](http://arab-reform.net)

[contact@arab-reform.net](mailto:contact@arab-reform.net)



© 2020 by the Arab Reform Initiative.  
To view a copy of this licence, [click here](#)