



SUDAN: ABOLISH THE FLOGGING OF WOMEN

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Cover photo: Steve Cole

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WEARING “INDECENT OR IMMORAL DRESS”

On 3 July 2009, 13 women were arrested at the Umm Kulthum restaurant in the Riyadh area, east of Khartoum for wearing trousers in public.

The women were charged under Article 152 of Sudan’s 1991 Criminal Act for wearing “indecent or immoral dress”. Ten pleaded guilty and were immediately punished with 10 lashes and a fine of 250 Sudanese pounds. Three of the women were under 18 years of age. Of the 13, four were from South Sudan.

Out of the 13 women, only three, including Lubna Hussein, pleaded not guilty and exercised their right to have access to a lawyer.

Lubna challenged her arrest to draw attention to the plight of large numbers of girls and women in Sudan who are harassed, humiliated and ill-treated as a result of the law.

She invited 500 journalists and friends to her court proceedings on Wednesday 29 July 2009. In an interview with Al-Arabiyya TV, Lubna explained that no one would believe that she was going to be flogged for wearing ordinary clothes unless they were to witness her punishment.

On the morning of her trial over 100 activists gathered in support outside the courthouse. Some were beaten and arrested by the police. After her trial was postponed twice, she was sentenced to a fine of 500 Sudanese pounds or a month in prison. Lubna refused to pay the fine, and was taken to Omdurman women’s prison. She was released the following day after the Journalist’s Union paid the fine against her wishes.



Lubna Hussein leaves the cafe where she was arrested in Khartoum. Copyright: Private.

WHAT IS ARTICLE 152?

Article 152 is part of the 1991 Criminal Act. It states:

(1) Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent, or immoral dress, which

causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes, or with fine, or with both.

(2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.

Article 152 is part of a broader set of laws and practices, known as the public order regime, which allow the imposition of corporal punishment for what is seen as immoral behaviour in public or private sometimes, affecting a wide range of men and particularly women throughout Sudan.

THE VICTIMS OF THESE LAWS

The media attention Lubna Hussein's case obtained brought the punishment of flogging into the public spotlight. Large numbers of women are regularly arrested under these laws, but many remain silent because of the trauma of their arrest and punishment and/ or out of fear of the social stigma they would suffer from if people heard of their arrest.

"I came home and slept for a whole day. When my family found out, we all cried... We live in fear since."

Angelina

Angelina¹, a 16 year old girl from Southern Sudan was walking in Khartoum when she noticed that a man was following her. After a while she stopped and asked him to stop following her. He grabbed her and took her to a nearby police station where he asked that she be punished for dressing indecently. Angelina was wearing a knee-length skirt; her stalker was a plain-clothed police officer.

Angelina was prevented from contacting anyone and was immediately taken to a criminal court where she was charged under Khartoum's public order law and article 152 of the 1991 Criminal Act for dressing indecently. She was sentenced to lashing, which was executed in the presence of the judge.

Amnesty International documented several cases of young girls who were sentenced to flogging, some to more than 40 lashes. Amnesty International documented the case of at least one girl who was sentenced to 50 lashes, despite the fact that 40 lashes is the maximum allowable under Article 152. The flogging was immediately executed in court, without allowing the girl in question access to legal representation or to even contact her family.

Other organizations, such as the African Centre for Peace and Justice Studies reported several cases of flogging that took place in Khartoum in 2009.² The Strategic Initiative for Women in the Horn of Africa (SIHA) submitted a discussion paper to the 46th ordinary session of the African Commission on Human and Peoples' Rights in November 2009, illustrating cases of arrest under the public order regime. The report describes the way in which the public order regime superimposes its authority on the local culture of Sudanese communities such as Darfuris or Southerners living in Khartoum. It also illustrates the climate of fear in which women seem to be living in, particularly in Khartoum, following the intensification of raids and arrests by the public order police.³

THE BIGGER PICTURE: THE PUBLIC ORDER REGIME

Article 152 is not the only law that discriminates against women in Sudan. The article is part of the broader public order regime that actively restricts the human rights of women and girls. The public order regime includes the Public Order Acts, sections of the 1991 Criminal Act and the associated public order police and courts.

PUBLIC ORDER ACTS

The Public Order Acts are implemented on a state level, and as a result differ across Sudan. In all states, these laws restrict a variety of activities. State Governors are empowered to issue decrees that add to the Public Order Acts. The Khartoum Public Order Act of 1998 for instance places restrictions on public and private parties, dancing between men and women or women in front of men, the singing of trivial songs, seating on and entry to public transport facilities, queuing in public places and the operation of women's hairdressing facilities. The penalties for infraction can include fines, imprisonment for up to 5 years, flogging, confiscation of goods, or the closure of hairdressing businesses.

THE 1991 CRIMINAL ACT

Part XV of the 1991 Criminal Act, (Offences of Honour, Reputation and Public Morality) is part of the Public Order Regime. As well as Article 152, this section contains several articles that include corporal punishment for crimes that are vaguely described, such as gross indecency (article 151), indecent and immoral acts (article 152), and possessing, handling or manufacturing materials and displays contrary to public morality (article 153). The punishments for acts under articles 151, 152 and 153 vary between 40 lashes to 60 lashes in addition to a fine or imprisonment.

None of these articles are clear on what constitutes an indecent or immoral act. In 2007, a girl arrested for dressing indecently under Article 152, was also charged under Article 153 after police confiscated and searched her mobile phone on which they found a joke in a text message that the police officer deemed to be indecent. As well as her punishment for breaching Article 152, she received a further 40 lashes, one month in prison and a fine of 400 Sudanese pounds because of the joke.

Article 145 which prohibits *zina*⁴ and Article 154 prohibiting prostitution are also considered part of the Public Order Regime. These articles are also unclear and are extremely vague. Rape in Sudan is defined as the offence of *zina*, performed without the consent of the victim. Survivors of rape can be convicted for *zina* if they are unable to prove that they did not consent to the intercourse, since they would have confessed to intercourse outside of marriage. While unmarried women convicted of *zina* receive 100 lashes, married women can be stoned to death. The Strategic Initiative for Women in the Horn of Africa (SIHA) reports that Article 154, which prohibits prostitution has been applied to women who share an office with men outside normal office hours.

WHY SHOULD THE LAWS BE CHANGED?

CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

Article 33 of Sudan's 2005 Interim Constitution states that "no person shall be subjected to torture or to cruel, inhuman or degrading treatment".

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Sudan is party to the ICCPR. The concluding observations of the UN human rights committee on Sudan in 1997 state that flogging, amputation and stoning, which are recognized as penalties for criminal offences, are not compatible with the International Covenant on Civil and Political Rights.⁵

Article 37 of the Convention on the Rights of the Child states that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". Sudan is party to the Convention on the Rights of the Child.

Article 5 of the African Charter on Human and Peoples Rights states that "every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".

In response to a complaint that was lodged in 2000, the African Commission found the Republic of Sudan in violation of Article 5. The African Commission requested the Government of Sudan to:

- Immediately amend the Penal Code 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments;
- Abolish the penalty of lashes;
- Take appropriate measures to ensure compensation of the victims.⁶

Despite these recommendations and despite Sudan's national and international obligations, the 1991 Criminal Act remains in place. Flogging remains a form of punishment in Sudan.

VAGUE, DISCRIMINATORY AND A RESTRICTION ON FREEDOM OF EXPRESSION AND ASSOCIATION

Under the public order regime, the public order police have broad discretion to judge whether a woman or a man is being indecent or immoral. This can be through their dress, demeanour or presence in a public or private place with persons of the opposite sex. The public order laws, including Article 152, do not contain illustrations of what is an immoral or indecent behaviour or dress, leaving the decision to the public order police. The power given to the public order police to evaluate what is immoral and indecent has resulted in widespread breaches and abuses over the years. There have been many cases where officers have taken

advantage of their position to blackmail women or men and to abuse them verbally and even physically. Women are left at the mercy of these decisions without guidelines on what can trigger their arrest in a public or private space.

Even if the vagueness of the law and the abuses of power were ended, the law is still discriminatory in its application, and an unreasonable restriction on the human rights of freedom of association and expression.

DUE PROCESS

Defendants are in most cases tried by public order courts where due process is not adhered to, including the right to a lawyer and a fair trial. These courts do not meet Sudanese or international fair trial standards.

Defendants are often tried immediately or within a few days of being arrested. Judges issue summary rulings and women are often flogged on the spot and are frequently denied the right to appeal the decision. Amnesty International has documented cases where defendants are lashed within hours of their arrest. Defendants have limited access to defence counsel. In many cases contact with friends or relatives is prevented. Judges also do not inform the accused about the appeals process.

GOVERNMENT SAYS THEY REMOVED LAWS

The third periodic report on the implementation of the International Covenant on Civil and Political Rights was submitted on the 10 January 2007. In the report, the Government of Sudan stated that the Public Law Regime had been abolished.

The public order acts have been renamed the Society Safety Code 2009. Public order police have been replaced by Police of Social Security. The offensive articles of the 1991 Criminal Act that form part of the Public Order Regime are still in place.

By continuing to impose the odious provisions of the public order laws, Sudan remains in violation of its international obligations and continues to fail its own people.



Sudanese activists protesting outside the Khartoum Court where Lubna Hussein is being tried for 'indecent dress'. The placard reads 'The cause of Lubna, the cause of all women'. Copyright: Associated Press.

TAKE ACTION

Please send appeals, preferably by fax, calling for the repeal of Article 152 to:

H.E. President Omar Hassan Ahmad al-Bashir
Office of the President
People's Palace
PO Box 281
Khartoum
Sudan
Fax: +249 183 774339

Mr. Abdel Bassit Sabdarat
Minister of Justice
Ministry of Justice
PO Box 302
Khartoum
Sudan
Fax: + 249 183 780796

Dr Abdelmuneim Osman Mohamed Taha
Advisory Council for Human Rights
Rapporteur
PO Box 302
Khartoum
Sudan
Fax: +249 183 77 08 83

Please write politely to the Sudanese authorities calling on them to:

- Fulfil their commitment to human rights treaties, including Article 7 of the International Covenant on Civil and Political Rights, and Article 5 of the African Charter of Human and Peoples Rights
- Repeal Article 152 of the Criminal Code 1991 because the article is vague and discriminatory, and fails to adhere to Sudan's human rights obligations
- Remove the penalty of flogging for crimes against public order as it is cruel, inhuman and degrading punishment

1 For reasons of security and confidentiality, the name used in this paper is not the young girl's real name.

2 African Centre for Justice and Peace Studies, Sudan Human Rights Monitor, June-July 2009, http://www.acjps.org/Publications/Human_Rights_Monitor-Issue2-FINAL.pdf

3 Beyond Trousers: The public order regime and the human rights of women and girls in Sudan, summary and recommendations, available at <http://www.redress.org/documents/Public%20Order%20Submission%20Sum%20and%20Recs.pdf>

4 Zina is often translated into adultery but can refer to extramarital as well as premarital intercourse.

5 CCPR/C/79/Add.85, para. 9.

6 Curtis Francis Doebbler v. Sudan, African Commission on Human and People's Rights, Comm. No. 236/2000 (2003).

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