



# **CRIMINALISATION OF WOMEN IN SUDAN** *A need for Fundamental Reform*

A joint publication of the Strategic Initiative for Women in the Horn of Africa (SIHA) and The Redress Trust

**Inside art work by: Omer Jasoor - Sudan**

**Cover artwork by: Paul Kasambeko “Kaspa”**

**Design & Print by PHW Ltd**

**SIHA Network**

**First Published November 2017**

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*November 2017*

# Table of Contents

i.	<b>Introduction</b> .....	4	x.	<b>Consideration of the public order regime by regional and international human rights mechanisms</b> .....	44
ii.	<b>The legal framework</b> .....	8	x.1.	The African Commission on Human and Peoples' Rights .....	44
	ii.1. The Khartoum Public Order Act of 1998 .....	8	x.2.	United Nations treaty bodies.....	45
	ii.2. The Criminal Act of 1991 .....	9		x.2.1. The Human Rights Committee.....	45
	ii.3. The Ineffectiveness of Local Remedies in Sudan .....	13		x.2.2. The Committee on the Rights of the Child.....	46
iii.	<b>The public order regime and the right to equality and non-discrimination</b> .....	14		x.2.3. The Committee on Economic, Social and Cultural Rights.....	47
iv.	<b>The brutal nature of raids and arrests for public order offences</b> .....	17	x.3.	UN Charter Mechanisms.....	47
	iv.1. International standards on the right to liberty and the use of force by law enforcement.....	17	xi.	<b>Conclusion</b> .....	49
	iv.2. The right to liberty and the use of force under Sudan's public order regime .....	18	xii.	<b>Recommendations</b> .....	50
v.	<b>Infringement of fair trial rights</b> .....	22		xii.1. To the Government of Sudan.....	50
vi.	<b>The public order regime and the absolute prohibition of torture and other ill-treatment</b> ....	28		xii.2. To the African Commission on Human and Peoples' Rights .....	52
	vi.1. Conditions in police stations.....	28			
	vi.2. Sexual violence in police stations.....	29			
	vi.3. Corporal punishment .....	31			
vii.	<b>Detention in Omdurman women's prison</b> .....	32			
	vii.1. Deplorable conditions in Omdurman women's prison .....	33			
	vii.2. Access to health care .....	33			
	vii.3. The situation of children in Omdurman women's prison.....	34			
	vii.4. Treatment in Omdurman women's prison .....	35			
viii.	<b>The economic dimension of the application of public order laws</b> .....	38			
	viii.1. The impact of court imposed fines on vulnerable women.....	38			
	viii.2. Revenue accrued from fines.....	39			
	viii.3. Corruption by police officers and judges .....	40			
ix.	<b>Consequences of the application of the public order laws</b> .....	41			
	ix.1. The impact of public order laws on public life .....	41			
	ix.2. The impact of public order laws on university life .....	42			
	ix.3. The impact of the public order laws on family life and livelihood .....	42			
	ix.4. The intersection of the public order justice system and poverty.....	43			
	ix.5. The impact of imprisonment and abuse in detention .....	43			

*Sometimes we have more than one kasha raid<sup>1</sup> a day ...it is all about collecting money from poor women. In some cases, police just fabricate cases against some women who do not pay. I also noticed there is a discrimination against women since there are men who sell alcohol but they are not targeted by the raids.<sup>2</sup>*

The frequent arrests, detention, trial and punishment of women under Sudan's public order regime ostensibly designed to protect morality are key features of the criminal justice system. The public order laws incorporate strict moral codes designed to exclude and intimidate women from actively participating in public life, for instance by restricting their presence in the public sphere and controlling what they wear.<sup>3</sup> Public order police and public order courts are the main institutions responsible for enforcing those laws.

The public order laws owe their origin to the introduction in 1983 of Sharia laws and include the imposition of Sharia huddud punishments such as death by stoning, crucifixion, amputation, cross amputation<sup>4</sup> and flogging. Upon these laws' introduction, the ruling regime at the time declared a state of emergency which authorised security officers to raid homes and clubs and arraign suspects before specially established 'prompt justice courts' where the suspects were tried for alcohol consumption, gambling, mixing of sexes without family bonds and/or for holding unlawful gatherings.<sup>5</sup>

When the current government came into power following a coup in June 1989, it further extended and developed the public order regime, effectively criminalising and controlling an array of private relations in the public sphere. The public order regime embodies and imposes a particular set of values designed to control gender relations within society and the necessity of state engagement in the regulation of

1 'Kasha raid' is a term referring to raids carried out by public order police.

2 Strategic Initiative for Women in the Horn of Africa (SIHA) interview with Mandela area resident, Khartoum 2016.

3 SIHA Network, Towards Restoring the Human Rights of Women Detainees and Prisoners in Sudan - Baseline Assessment, February 2016, (SIHA Baseline Assessment), p. 5.

4 Amputation of the right hand and left foot

5 Dr. Amin Mekki Medani, The Draft Social Control Act 2011 for Khartoum State, Flogging into submission for the public order, November 2011, paper written on behalf of the Project for Criminal Law Reform in Sudan, p. 3, at [http://www.redress.org/downloads/publications/Draft%20Public%20Order%20Law%20November%202011\[1\].pdf](http://www.redress.org/downloads/publications/Draft%20Public%20Order%20Law%20November%202011[1].pdf).

personal "morality."<sup>6</sup> Overall, the public order laws contain a mix of criminal and moral prohibitions which blur the distinction between the enactment of law for public interest and the imposition of moral precepts based on religious convictions. The public order laws are vague and open-ended leaving them open to exploitation as a social control tool by the authorities.<sup>7</sup>

The laws comprising the public order regime include the Khartoum Public Order Act of 1998, provisions of the Sudanese Criminal Act of 1991 as well as the Organisation of Prisons and Treatment of Prisoners Act of 1992. These laws are applicable to Sudanese men and women, yet categories of women such as female alcohol brewers and sellers, tea sellers, female students and women human rights defenders are disproportionately affected. These groups of women are especially vulnerable owing to their origin and social status and/or because of the repression or criminalisation of their activities.

The reality of the public order regime in Sudan is that while the very nature of the legal prohibitions leads to their regular contravention they are not consistently enforced. At the same time, although the most draconian penalties such as stoning and execution are rarely applied, lashing as a form of punishment is frequently employed. Thus the very existence of the public order regime exerts a tremendous hold on the population—particularly women—who are arbitrarily and unexpectedly subjected to it. At any time and for any reason, public order laws can be enforced.<sup>8</sup> It should be noted that at times women are prosecuted under the public order regime without specific reference to public order laws.

The laws' application oftentimes result in fines, arrest, detention, prosecution and brutal punishment for ordinary activities that should not be criminalised as they relate to aspects of daily life such as the choice of women's clothes or social interactions with family, friends and colleagues. The public order laws' discriminatory application punishes women for expressing themselves and for engaging in economic and professional activities. As the majority of women who are arrested cannot afford to pay court-imposed fines, many are subjected to lashing and/or end up in prisons with deplorable conditions where they suffer additional abuse and violence. Despite the disquiet within Sudan about the application of these laws, their enforcement continues unabated, fostering a climate of fear.

Focusing on Khartoum State, this report highlights the personal experiences of women caught up in the arbitrary application of the public order regime. It considers the situation of women arrested under the public order regime and their progression through a flawed justice system from the moment of arrest, police custody, trial before public order courts and to the imposition of sentences, including corporal punishment and imprisonment. The report focuses on the experiences of particular groups of women most affected by the application of the public order regime,

6 SIHA, Beyond Trousers - The Public Order Regime and the Human Rights of Women and Girls in Sudan, 12 November 2009, (SIHA, Beyond Trousers), p. 7.

7 Ibid, p. 8.

8 Ibid, p. 9.

namely alcohol brewers and sellers, human rights defenders, female students and migrant women. Importantly, this report underscores the intersection of inequality with gender, ethnicity, class and nationality and the state's obligations to protect those affected by the violations detailed in the report.

Alcohol brewers, the majority of women arrested under the public order regime, frequently come from marginalised communities in the peripheries of Khartoum, and are largely made up of internally displaced persons (IDPs) and refugees. They are much more at risk of public order raids and arrests than those living in wealthier areas of the city as alcohol brewers and sellers are engaged in an illegal activity. The risk of arrest increases during the weekend, particularly for alcohol and tea sellers whose businesses flourish over weekends.<sup>9</sup>

Unlike tea and food sellers who can turn to cooperatives and unions for support upon arrest, alcohol brewers and sellers live hidden lives and carry the stigma of being involved in an illegal trade.<sup>10</sup> Migrant women from South Sudan, Eritrea and Ethiopia who are based in Sudan are also regularly arrested and detained by the public order police for alleged public order and immigration offences. As some of these women work as housemaids, they are also prone to accusations of theft by their employers.<sup>11</sup>

Another group affected by the public order regime is female student activists whose vulnerability is compounded by threats perpetrated by security officials. Female student activists in various campuses have reported how police and national security officers arrested and threatened them ostensibly for the breach of public order laws.<sup>12</sup> Female student activists are for instance targeted for wearing trousers considered to be 'immoral' by public order police.<sup>13</sup>

For female human right activists, the constant prospect of arrest and detention casts a dark shadow on their activities. These women's lives are frequently interrupted by the scrutiny of public order police and security agencies which take the form of threatening phone calls, allegations of a personal nature and interventions with friends and family.<sup>14</sup> Negative cultural and social perceptions of women, promoted in official ideology, further reinforce discrimination, harassment, and various forms of ill-treatment of women activists.<sup>15</sup>

9 SIHA, Baseline Assessment, p. 12.

10 Ibid, p. 14.

11 SIHA interview, Khartoum 2016.

12 Human Rights Watch, *Good Girls Don't Protest - Repression and Abuse of Women Human Rights Defenders, Activists, and Protesters in Sudan*, March 2016 (Human Rights Watch, Good Girls Don't Protest), at <https://www.hrw.org/report/2016/03/23/good-girls-dont-protest/repression-and-abuse-women-human-rights-defenders>.

13 SIHA interview, Khartoum 2016.

14 SIHA, Beyond Trousers, p. 23.

15 Equal Rights Trust, in partnership with Sudanese Organisation for Research and Development, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan*, October 2014, Chapter 2.4 on gender discrimination, at <http://www.equalrightstrust.org/search-confluence-addressing-discrimination-and-inequality-sudan>.

This report builds on forty interviews with alcohol and tea sellers, students and human rights defenders, former detainees and prisoners in and around Khartoum, Sudan, between August and December 2016. Representatives of the judiciary, legal profession, prison staff, the International Organisation of Migration, the Ministry of Justice and community members were also interviewed. The Strategic Initiative for Women in the Horn of Africa (SIHA) reached out to women groups through its networks and contacts in communities, police stations and Omdurman's Women's Prison where interviews with sixteen current and former inmates were carried out. The interviews were conducted confidentially in person and by telephone, in Arabic. The report also draws, more broadly, on SIHA's expertise and experiences working on women's rights issues in Sudan. It also builds on REDRESS' extensive law reform work and assistance provided to victims of torture and ill-treatment in Sudan.<sup>16</sup>

This report focuses on the experiences of women living in Khartoum, most of whom live locally and have either witnessed or experienced arrest, detention, imprisonment and punishment. The report does not purport to document all human rights violations faced by vulnerable women in Khartoum; rather it focuses on the experiences of selected groups of women who as a result of their activities end up being pursued by public order police. It recounts their experiences in police stations, courts and Omdurman Women's Prison.

The report was written by Judy Oder, Legal Adviser with REDRESS and edited by Jürgen Schurr and Carla Ferstman of REDRESS and Dr. Lutz Oette of SOAS. It is based on fieldwork carried out by SIHA, who conducted relevant interviews on the ground. SIHA consultant Mohammed Osman and REDRESS interns Nneka Egbuji, Maria Cristina Carletti and Claudia Cardao provided invaluable research assistance.

16 See further for REDRESS' work on Sudan at <http://www.redress.org/africa/sudan>.

The main components of Sudan's public order laws are included in the Khartoum Public Order Act of 1998 and relevant provisions of the Criminal Act of 1991, both of which will be outlined below.

Subsequent chapters of the report will analyse the extent to which relevant provisions of Sudan's public order laws and their application in practice comply with Sudan's obligations under relevant regional and international human rights instruments as ratified by Sudan. These include in particular the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child. At the regional level, Sudan has ratified the African Charter on Human and Peoples' Rights (African Charter) and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa.

As will be illustrated below, aspects of those treaties have been incorporated into Sudan's 2005 Interim National Constitution (INC).<sup>17</sup> They also form part of the INC by virtue of Article 27(3) which provides that the rights and freedoms enshrined in international human rights treaties ratified by Sudan shall be an integral part of the Constitution.

### ii.1. The Khartoum Public Order Act of 1998

The Khartoum Public Order Act (KPOA) of 1998 regulates social activities such as festivities and social gatherings.<sup>18</sup> It criminalises dancing between women and men, women dancing in front of men,<sup>19</sup> the singing of trivial songs at parties and prohibits begging.<sup>20</sup> It regulates management of queues in public places (separation of men and women) and regulates private businesses, for instance requiring hairdressing salons not to employ any women unless they are certain of their righteousness and good reputation.<sup>21</sup> The KPOA is directed at the control of male and female relations (with a number of exceptions) and characterised by a specific conception of women's

17 See also, REDRESS, *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives*, January 2014, at <http://www.redress.org/downloads/publications/140127final-sudan-uok-report.pdf>.

18 Khartoum Public Order Act 1998, Article 5.

19 Ibid, Article 7(1)(b).

20 Ibid, Article 7(1)(d).

21 Ibid, Article 16(a)(d).

moral capacity.<sup>22</sup> Any contravention of the Act "attracts punishments which include imprisonment for a term not exceeding five years, a fine and whipping."<sup>23</sup>

In addition to interfering with private lives, the Act's provisions are vague and prone to abuse by public order police. There have been many cases where officers have reportedly taken advantage of their position to blackmail, verbally and physically abuse both women and men. Women are left at the mercy of decisions by public order police without guidelines on what can trigger their arrest in public or private spaces.<sup>24</sup> The vagueness of the provisions of this law, its focus on instilling 'good behaviour' and its regulation of private social activities mean that women regularly fall afoul of it leading to their unfair trial before public order courts – at the end of which they are frequently found guilty, fined, lashed and/or imprisoned.

### ii.2. The Criminal Act of 1991

This section considers provisions of the Criminal Act of 1991 as applied by the public order police and as illustrated by first hand experiences of women interviewed by SIHA.

Article 79 of the Criminal Act provides:

*Whoever deals in alcohol, by storing, sale, purchase, transport or possesses it with the intention of dealing with others ... shall be punished with imprisonment for a term not exceeding a year or with a fine.*

Alcohol has been criminalised in Sudan since 1983. Often women who have fled conflict are illegal brewers in the capital.<sup>25</sup> For many Southern Sudanese who live in Khartoum, the brew and sale of alcohol is the only way to survive and maintain their families. The application of the criminal offence of manufacturing and selling alcohol affects persons belonging to this community disproportionately and harshly, given the cultural and economic context.<sup>26</sup> Women from Nuba Mountains, many of whom engage in the brew and sale of alcohol are also caught up in the web of public order law enforcement.<sup>27</sup>

Article 151 proscribes gross indecency, providing that:

(1) There shall be deemed to commit the offence of gross indecency, whoever commits any act contrary to another person's modesty.

22 SIHA, *Beyond Trousers*, pp. 9-10.

23 KPOA, Article 26(a)(d).

24 Nesrine Malik, *Sudan's public order laws are about control, not morality*, The Guardian, 2010, at <https://www.theguardian.com/commentisfree/2010/dec/11/sudan-laws-control-not-morality>.

25 Sudan Tribune, *Whip awaiting alcohol drinkers and dealers, Sudan president warns*, 25 March 2010, at <http://www.sudantribune.com/Whip-awaiting-alcohol-drinkers-and-34548>.

26 SIHA, *Baseline Assessment*, p. 4.

27 SIHA interview, Khartoum 2016.

- (2) Where the offence of gross indecency is committed in a public place...the offender shall be punished, with whipping not exceeding eighty lashes, and he may also be punished, with imprisonment, for a term, not exceeding two years, or with fine.

Article 151 does not define the kinds of acts which amount to gross indecency. It is prone to subjective interpretation by public order police who routinely arrest individuals on the basis of Article 151 for acts that should not be criminalised.

A woman interviewed by SIHA recounted how she was arrested by public order police in Khartoum and charged with gross indecency under Article 151 of the Criminal Act because she held hands with her boyfriend in public.

*I was in a rickshaw with someone I had relationship with, he was holding my hand when a police patrol passed by and they took us [to the police station]. They charged us and the judge sentenced each of us to pay 2000 SDG (US\$300). In the police station before the trial, a lieutenant asked me for my phone number indicating that the case would not be referred to trial – it was still referred to trial. At the police station, when people found out about the reason for my arrest – their attitude towards me changed. It was a horrible experience which damaged me.<sup>28</sup>*

Article 152 of the Criminal Act provides that:

- (1) Whoever commits in a public place 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 a fine or with both.
- (2) The act shall be deemed contrary to public morality, if it is considered in the religion of the doer, or the custom of the county where the act occurs.

Article 152 grants public order police unfettered powers to determine what constitutes an indecent act, indecent dress and acts contrary to public morality. The vagueness of this provision is contrary to the principle of legality, which requires, amongst other things, a certain degree of precision and certainty. A prosecution which violates the principle of legality is a violation of the accused person's fair trial rights, and can constitute a defence to a criminal law prosecution, as no crime or punishment can exist without a legal ground.<sup>29</sup> The principle of legality guarantees that a person cannot be convicted of a crime on the basis of a law that is excessively unclear.

28 SIHA interview with inmate at Omdurman's Women's Prison, Khartoum, 2016.

29 International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, UN Treaty Series, vol. 999, Article 15.

The impact of this vague provision is that there is no clarity as to what acts or type of clothing could potentially lead to prosecution. This provision is frequently invoked to arrest women wearing trousers and those found in public without headscarves.<sup>30</sup> Amira Osman, a women rights activist who was detained by the public order police for not wearing a headscarf, stated to SIHA "[I] am a Muslim woman but I will not cover my head, a piece of cloth should not determine my spirituality."<sup>31</sup>

Ms Lubna Ahmad Hussein, a journalist, was arrested by police together with 12 other women at a restaurant in Khartoum on 3 July 2009 for wearing trousers. The women, four of whom were Southern Sudanese, and three of whom were under the age of 18, were charged under Article 152 of the Criminal Act. Ten of the women pled guilty and received punishments of ten lashes each (two of them under the age of 18) and a fine of around 100 USD each. Lubna Hussein refused to plead guilty and publicly protested against her treatment. Her case generated publicity around the world, casting the spotlight on arbitrary law enforcement and administration of justice in the context of Sudanese public order laws. This may have been crucial in influencing the court's eventual determination of her punishment; upon her conviction, she was ordered to pay a fine instead of being subjected to the customary whipping.<sup>32</sup>

A similarly vague provision is Article 154 of the Criminal Act which criminalises prostitution. It stipulates that:

- (1) There shall be deemed to commit the offence of practicing prostitution, whoever is found in a place of prostitution so that it is likely he may exercise sexual acts, or earn therefrom, and shall be punished, with whipping, not exceeding hundred lashes or with imprisonment, for a term, not exceeding three years.
- (2) Place of prostitution means any place designated for the meeting of men, or women, or men and women between whom there are not marital relationship of kinship, in circumstances in which the exercise of sexual acts is probable to occur.

Like the vaguely defined Article 152, which criminalises immoral acts and indecent dressing, Article 154 is used as a measure to control women. Women gathering at home could easily be accused of prostitution as the crime is not defined in law, by their sheer presence in 'a place' irrespective of whether that location serves the

30 SIHA, *Beyond Trousers*, pp. 8-9.

31 Interview with SIHA.

32 See Human Rights Council, *Report of the independent expert on the situation of human rights in the Sudan*, Mohammed Chande Othman, UN Doc. A/HRC/14/41, 26 May 2010, on the application of Sharia laws to non-Muslims, para. 29; see also SIHA, *Beyond Trousers*; see for further examples of how article 152 was invoked to prosecute women's indecency, REDRESS and African Centre for Justice and Peace Studies, *Sudan's human rights crisis: High time to take article 2 of the Covenant seriously: Submission to the UN Human Rights Committee ahead of its Examination of Sudan's Fourth Periodic Report under the International Covenant on Civil and Political Rights*, June 2014, paras. 24-39, <http://www.redress.org/downloads/publications/140613submissionsudanahrc.pdf>.

purpose of prostitution.<sup>33</sup> Public order police frequently invoke this provision to repress professional women's activities as it has been interpreted to cover all situations in which a woman is found in a place with a man that is not related to her.<sup>34</sup> This provision has also been construed to extend to situations where males and females are found working beyond normal office hours.<sup>35</sup>

As the climate created by the existence of the public order regime presumes women's guilt, a miscarriage can be interpreted as an abortion, which is criminalised in section 135 of the Criminal Act. A miscarriage may also lead to a charge of adultery. Section 135 violates reproductive health rights as a woman who suffers a miscarriage and is in need of medical assistance is presumed guilty of abortion and immediately arrested and detained.

Adultery is criminalised in Article 145 of the Criminal Act. It is usually proven through (a) confession, (b) the testimonies of four male witnesses, (c) pregnancy or, specifically in the case of married adulterers, (d) *lia'an*, which is an instance in Muslim tradition where a husband accuses his wife of adultery, and the wife must swear she is innocent in order to deny it. Nawaz recalls how public order police arrested her in Khartoum and charged her with Article 135 prohibiting abortion and Article 145 prohibiting adultery after she had a miscarriage.

*I was walking on the street when then I went into a house to use the toilet. I had a miscarriage and the woman (in that house) called the police. I got arrested for abortion and for adultery. I was at the police station for three days before being transferred to the prison.*<sup>36</sup>

Salma was arrested at her home in Khartoum by public order police along with a man with whom she had a romantic relationship. She was charged with adultery. Salma's pregnancy at the time of her arrest was used as evidence against her. Salma was released on bail before her trial. Faced with the reality of potentially being sentenced to a hundred lashes, Salma fled the court's jurisdiction before the conclusion of her trial. An arrest warrant was issued against her and her case is on hold until she is arrested or reappears.<sup>37</sup>

The KPOA and the provisions of the 1991 Criminal Act outlined above are not applied in a vacuum and must be considered in the context of Sudan's obligations under the regional and international human rights instruments it has ratified. As will be outlined in the following chapters, many of the provisions in these laws are contrary to Sudan's human rights obligations, as is their enforcement in practice.

33 A.A. Halim, *Gendered Justice: Women and the Application of Penal Laws in the Sudan*, in Lutz Oette (ed), *Criminal Law Reform and Transitional Justice, Human Rights Perspectives for Sudan*, pp. 239-240.

34 SIHA, *Third class citizens, Women and citizenship in Sudan, A Paper on Women's Struggle for Equal Citizenship in Sudan*, at <http://www.sihanet.org/publications/third-class-citizens-women-and-citizenship-in-sudan>, p. 7.

35 SIHA, *Beyond Trousers*, p. 11.

36 SIHA interview with an inmate, Khartoum 2016.

37 SIHA interview with affected woman, Khartoum 2016.

A Ministry of Justice Official interviewed as part to the research leading up to this report acknowledged the inconsistency of these laws with Sudan's international human rights obligations and Sudan's Interim National Constitution of 2005. He noted that:

*The public order act and moral crimes [provisions] in the Criminal Act both are inconsistent with some international human rights instruments ratified by Sudan and the Interim National Constitution 2005. There should be a committee working to bring these laws into conformity but this has not happened yet, maybe because some of those provisions are mainly linked to Islamic Sharia.*<sup>38</sup>

### ii.3. The Ineffectiveness of Local Remedies in Sudan

Victims of crimes involving bodily injury may receive compensation in criminal proceedings in three ways: (i) compensation awarded as part of a supplementary civil suit; (ii) *dia* (blood money); or (iii) in the form of a fine designated for that purpose. In civil proceedings, a torture survivor or relatives of a torture victim can claim damages for tort, i.e. trespass against the person, under civil law.

For crimes such as torture and other ill-treatment where the alleged perpetrator is an official, a civil suit may be instituted against the state but a suit against the perpetrator itself can only proceed if the head of the forces (for example the National Intelligence and Security Services; the Armed Forces) concerned lifts immunity.<sup>39</sup> There is no procedure in place to request the lifting of immunity, which is entirely at the discretion of the head of the relevant forces. As a result, in the vast majority of cases, immunity of the officials allegedly responsible for the torture and ill-treatment presents an insurmountable obstacle for proceedings to proceed beyond the filing of a complaint. The African Commission and other human rights bodies have criticised the existing immunity provisions as being incompatible with Sudan's obligation to provide victims with access to an effective remedy, and urged Sudan to enact relevant legislative reforms. Sudan has yet to adhere to these recommendations.<sup>40</sup>

In practice, where lawyers have brought civil claims before criminal courts they have on some occasions been asked to bring a separate civil suit before civil courts instead. However, such civil proceedings take a long time, and compensation awards are usually very low in any case. As a result, lawyers do not view it as worthwhile to pursue this avenue even if it were to result in a successful outcome.<sup>41</sup>

38 SIHA interview with Ministry of Justice Official, Khartoum 2016.

39 Article 52 (3) of the National Security Act 2010, article 45 (2) of the Police Act 2008 and article 34 (2) of the Armed Forces Act, 2007.

40 See for example, African Commission on Human and Peoples' Rights, Concluding Observations on Sudan's 4<sup>th</sup> and 5<sup>th</sup> Periodic Reports, 2008-2012, urging Sudan to "[R]epeal Article 52 (3) of the National Security Act 2010 that provides members of the NISS and their associates with immunity from criminal and civil procedures", at <http://www.achpr.org/states/sudan/reports/4thand5th-2008-2012/>.

41 REDRESS and Sudan Organisation against Torture (SOAT), *National and international remedies for torture, A handbook for Sudanese lawyers*, 2005 p. 35.

# The Public Order Regime and the Right to Equality and Non-Discrimination

iii

Public order laws and their discriminatory application – on the basis of gender, race, ethnicity, nationality and economic status – are inconsistent with Sudan’s international, regional and constitutional obligations to protect women’s rights. Non-discrimination, and its corollary equality, are key components of women’s (and indeed every person’s) human rights, embodied for instance in Articles 3, 23, 25 and 26 of the ICCPR. Both the ICCPR and the ICESCR include accessory rights to non-discrimination in Articles 2(1) and 2(2) respectively. For example, Article 2(1) of the ICCPR provides a right to non-discrimination attaching to all other human rights recognised in the ICCPR. It obliges States to undertake to respect and to ensure to all individuals within its jurisdiction the rights in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.



At the regional level, Article 2 of the African Charter obliges all States Parties including Sudan to guarantee non-discrimination by ensuring the enjoyment of the rights recognised and guaranteed in the Charter “without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.” Article 3(1) provides that every individual shall be equal before the law and guarantees that every individual shall be entitled to equal protection of the law. Under Article 18(3) the State shall ensure the elimination of discrimination against women and ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.

Sudan is therefore obliged to prevent gender and intersectional discrimination in accordance with regional and international human rights obligations. These are to some extent incorporated in Articles 27(3) and 31 of its Interim Constitution

of 2005, which provides that all are equal before the law and are entitled without discrimination on the basis of race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law. Further, in Article 32(1), the 2005 Constitution obliges the State to guarantee equal rights to men and women and the enjoyment of all civil, political, social, cultural and economic rights.

These various provisions stand in stark contrast to Sudan’s public order laws and their enforcement. Laws, policies and practices put in place to suit those with power and which may appear on their face to be non-discriminatory are not sufficient in and of themselves to guarantee equality. Laws must go further and tackle the specific needs of marginalised communities and there must be greater consideration of the extent to which the implementation of laws can be discriminatory. For example, Article 75 of the Criminal Act prohibits the brew and sale of alcohol by everyone, men and women. It is a gender neutral provision. However in practice, the majority of individuals arrested for these offences, as indicated by the research undertaken for this report, are women with roots in Nuba mountains or South Sudan, where the production, consumption and sale of alcohol is part of their way of life.

Similarly, Article 152 of the 1991 Criminal Act, while being neutrally worded, is primarily aimed at and applied against women.<sup>42</sup> Other instances of discrimination are reflected in the application of the law of evidence, where, for some offences such as adultery, only men can provide admissible evidence which amounts to de jure discrimination.<sup>43</sup> The laws on sexual violence fail to provide equal and adequate protection of women’s rights to physical and mental integrity, which constitutes both discrimination and a failure to implement positive obligations to prevent and protect against torture and other ill-treatment and the right to health (see further below, Chapter VI). Article 149 of the Criminal Act defines rape with reference to adultery, creating confusion over evidentiary requirements for prosecution (adultery requires for male eye-witnesses of the act) and puts women at risk of facing prosecution for adultery if they cannot prove rape.<sup>44</sup>

In April 2015, Sudan passed a number of amendments to the 1991 Criminal Act, including long awaited amendments concerning rape and sexual violence. An amendment to article 149 changed the definition of rape to reflect international standards so that Sudanese women would no longer face charges of adultery or committing immoral acts for sexual crimes committed against them. A closer look however shows that serious gaps remain around clear guidance to law enforcement officers and judges. As a result, the criminal justice outlook for survivors of sexual violence in Sudan remains bleak.<sup>45</sup> Despite reports that these provisions have been

42 Ibid.

43 Article 149 of the Criminal Act of 1991; see REDRESS and Khartoum Centre for Human Rights and Environmental Development, *Time for Change: Reforming Sudan’s Legislation on Rape and Sexual Violence*, November 2008, pp. 28-29.

44 UN Human Rights Committee: *Concluding Observations on Sudan*, UN Doc. CCPR/C/SDN/Co/4, 19 August 2014, para.12.

45 Amendment to the Criminal Act (2015), on file with SIHA.

amended, the government is yet to publicly release the amendments to the Criminal Act.

The Government of Sudan should take proactive measures to address existing legislative and institutional discrimination, disadvantages and barriers to the enjoyment of women's rights so as to combat gender discrimination.<sup>46</sup> In addition to reforming existing legislation and institutions so as to better align them with regional and international obligations, Sudan should adopt comprehensive anti-discrimination or equality laws. Any such initiative should embrace a holistic approach to substantive equality which looks beyond the surface to how discrimination may occur in the course of the implementation of laws and policies and recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities.

This holistic approach brings together: (a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation, and gender identity, among others; (b) types of inequalities in different areas of civil, political, social, cultural, and economic life, including employment, education, and the provision of goods and services; and (c) socio-economic inequalities.<sup>47</sup>

Taking into account these different types of inequalities would help to ensure that the intersection between gender, poverty, race, ethnicity, economic background is adequately factored in to the formulation of meaningful responses to human rights violations resulting from the application of public order laws.

46 CEDAW, *General Recommendation no.28 on Core obligations of states parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/2010/47/GC.2, 19 October 2010, paras. 24 and 28.

47 Equal Rights Trust, *Declaration of Principles on Equality*, 2008 <http://www.equalrightstrust.org/content/declaration-principles-equality>.

## The Brutal Nature of Raids and Arrests for Public Order Offences

SIHA's research suggests that the often violent nature of arrests carried out by public order police frequently results in violations of the right to liberty and security,<sup>48</sup> the right to life,<sup>49</sup> right to freedom from torture and other ill-treatment,<sup>50</sup> as well as the right to privacy.<sup>51</sup>

### iv.1. International Standards on the Right to Liberty and the Use of Force by Law Enforcement

Under international law, an individual may only be lawfully deprived of his or her liberty on grounds and according to procedures established by law.<sup>52</sup> An arrested person must be informed of the reasons for the arrest and promptly informed of any charges.<sup>53</sup> Anyone arrested

also has a right to be brought promptly before a judge to determine the legality of his or her detention.<sup>54</sup> These standards are also reflected in the African Commission's Guidelines on the conditions of arrest, police custody and pre-trial detention in Africa.<sup>55</sup>

48 ICCPR, Article 9; African Charter, Article 6.

49 ICCPR, Article 6; African Charter, Article 4.

50 ICCPR, Article 7; African Charter, Article 5.

51 ICCPR, Article 17.

52 ICCPR, Article 9(1); International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Article 17(2)(a); African Charter, Article 6; Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, 2003 (Fair Trial Guidelines), DOC/OS-XXX)247, Section M(1)(b).

53 ICCPR, Article 9(2).

54 ICCPR, Article 9(2).

55 African Commission, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines), adopted at the 55th Ordinary Session in Luanda, Angola, 28 April - 12 May 2014, Articles 4(b)(j).



Domestic laws and regulations on arrest and detention must conform to international standards.<sup>56</sup> Arrests without warrant in circumstances where a warrant is required by domestic law,<sup>57</sup> and holding individuals in custody for longer than the period authorised in national law<sup>58</sup> amount to arbitrary arrest and detention. International standards provide that arrests and detentions must not be based on discriminatory grounds and prohibit policies and procedures allowing arrest and detention based on racial, ethnic or other profiling.<sup>59</sup>

Furthermore, the use of force by law enforcement officials is governed by principles of necessity and proportionality. International instruments such as the Code of Conduct for Law Enforcement Officials (Code of Conduct)<sup>60</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>61</sup> provide important guidance in this respect. Article 4 of the Code of Conduct sets out the principle that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” The African Commission reiterated in its General Comment on the right to life that “[T]he primary duty of law enforcement officials – meaning any actor officially tasked with exercising a law enforcement function, including police – is to protect the safety of the public. The State must take all reasonable precautionary steps to protect life and prevent excessive use of force by its agents... .”<sup>62</sup> The use of force that is not necessary and proportionate under international law may amount to a violation of the prohibition of torture or other prohibited ill-treatment, and, where it results in death, of the right to life.

## iv.2. The Right to Liberty and the Use of Force under Sudan’s Public Order Regime

Relevant provisions of Sudanese law fall short of the international standards on the right to liberty as outlined above. The Criminal Procedure Act of 1991 for instance does not provide for prompt access to a lawyer of one’s choice, fails to provide that an

56 Human Rights Committee, *A v Australia*, UN Doc. CCPR/C/59/D/560/1993 (1997), para. 9.5; Inter-American Commission of Human Rights, *Alfonso Martin Del Campo Dodd v Mexico* (12.228, Report 117/09), paras. 46-47.

57 Inter-American Court of Human Rights (IACtHR), *D.D. Tibi. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 7 September 2004, Series C, para. 103.

58 Working Group on Arbitrary Detention Opinion (Venezuela), UN Doc. A/HRC/13/30/Add.1 (2009) pp. 172-179.

59 Committee on the Elimination of Racial Discrimination, *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, paras. III (A) (20) and (23).

60 Code of Conduct for Law Enforcement Officials, adopted by UN GA resolution 34/169 (1979) 17 December 1979.

61 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

62 African Commission, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4)*, adopted during the 57<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights held from 4-18 November 2015 in Banjul, The Gambia, para. 27 [http://www.achpr.org/files/instruments/general-comments-right-to-life/general\\_comment\\_no\\_3\\_english.pdf](http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf).

arrested person should be brought before a judge promptly (normally within the first 48 hours of arrest) and does not provide for an unequivocal right of compensation for arbitrary arrest and detention.<sup>63</sup>

Furthermore, the aggressive approach of public order police during arrests similarly fails to adhere to the above standards. Public order raids range from violent community confrontations, the round-up of individuals in cafés to arbitrary office and house raids. Because the raids are random, and the laws governing them vague, Khartoum residents, particularly those in poor neighbourhoods live under a cloud of fear not knowing when public order police will raid their homes or business premises.

The raids and arrests are inherently discriminatory. Public order police target women human rights activists,<sup>64</sup> women who brew or sell alcohol and women who hail from certain parts of the country, who are viewed as security threats and responsible for criminality. An official interviewed by SIHA confirmed that:

*I worked in different administrative units including the outskirts in Khartoum and Omdurman...we used to coordinate with public order police for raids in those areas. Here, it is different; police still raid women dealing in alcohol in some places in the neighbourhood usually after complaints from the people living there. But for other things like dress code, we always ask them (public order police) not to intervene much except against beggars or homeless boys who wash cars or even some street vendors. Most of families here have contacts or they are relatives to officials in the government. Also, they are all well behaved and just young people who want to enjoy their life. There is no similar risk here comparing to places like Dar Al-Salam, where most people are from Darfur or South Sudan, and they pose security threats and spread criminality.<sup>65</sup>*

Raids by public order police are frequently carried out violently and are accompanied by beatings and assaults. According to Leilah, an alcohol brewer and seller:

*The police usually raid my area of work two times a week, even though sometimes they will not show up for the whole month. The raid is usually composed of three public order police trucks – they beat us and confine our materials. They also insult and harass us while doing so, referring to us as slaves and that we should be cleaned out of the country.<sup>66</sup>*

In addition, as outlined in further detail below, some public order police officers exploit the vulnerability of women detained in police stations following raids by demanding sexual favours in exchange for their release.<sup>67</sup>

63 Nadil Adib, *At the State’s mercy: Arrest, detention and trials under Sudanese law*, in Lutz Oette (ed), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan*, pp. 121-138, at p. 124.

64 See for instance SIHA, *Beyond Trousers*; Human Rights Watch, *Good Girls Don’t Protest*.

65 SIHA interview with local official, Khartoum 2016.

66 SIHA interview with alcohol brewer and seller, Khartoum, 2016.

67 See below, Chapter VII.3.

## Public Order Police Raid of the Umm Dawm Community

The brutal nature of the raids, as part of the implementation of public order laws, has furthermore resulted in deaths of community members. On 14 October 2015, public order police carried out a raid, in search of alcohol, in the Umm Dawm community, near Khartoum. Umm Dawm lies on the banks of the Blue Nile and is mainly inhabited by low-income communities, IDPs and migrant workers. The majority of its inhabitants are involved in the informal sector, working as tea-sellers, alcohol-sellers, petty traders and brick-makers.

The nature of the raid in Umm Dawm community was so violent that residents sought to flee by swimming across a nearby river. Achol Kuol, a woman struggling to swim across the river, was hit on the head by a police officer before losing consciousness. She drowned. A six-month old baby left along the river bank by a fleeing mother was hurled into the water by a police officer who reportedly stated ‘Go follow your mother.’ The baby was rescued by community members but died a few days later from injuries resulting from the violent experience. Other community members who died that day include Salwa Ali Koko (a mother), Fatima Ali Nato and Lisa Ali Bakheit. All three had been attempting to swim when they were pelted with stones by public order police as they struggled to keep afloat. Appeals by bystanders to the public order police to call the Civil Defence Rescue Operation to assist the drowning community members were ignored.<sup>68</sup>

The Ministry of Interior Affairs denied the occurrence of the incident and released a statement that no drowning had been recorded in the two weeks prior to the Umm Dawm incident. This official denial made it difficult for relatives and the community to coordinate the search for the missing bodies with the Civil Defense Rescue Unit.<sup>69</sup>

This incident depicts the level of violence meted out on marginalised communities by public order police in the course of their work. This was not an isolated incident and mirrored earlier incidents in which public order raids have similarly resulted in deaths. In March 2012, Awadia Ajabna, a school teacher and resident in the Al-Daim neighborhood of Khartoum, was shot dead by public order police during a raid in her neighbourhood.<sup>70</sup> Further back in 2010, Nadia Saboon, a tea-seller, tried to escape public order police during a kasha sweep in Souq Arabi market. She fell on an iron bar and suffered injuries, from which she died. To this date no one has been held accountable for these deaths.<sup>71</sup>

A community member summarised the impunity of public order police for violations committed during public order raids. She observed that: *“The excessive use of force by police is very noticeable in these raids, but there is nobody to hold them accountable.”*<sup>72</sup>

68 SIHA, *Deadly Public Order Raid in Umm Dawm*, 15 November 2015, at <http://www.sihanet.org/news/deadly-public-order-raid-umm-dawm>.

69 Ibid.

70 Ibid.

71 Ibid.

72 SIHA interview with resident of Al Fath, Khartoum 2016.

## Residential Raids

Residences in Khartoum are not exempt from public order raids. Public order police force their way into homes in search of alcohol and to arrest individuals suspected of committing public order offences. According to an interviewee, “Police officers climb over walls and invade houses with no respect for privacy. *We are psychologically traumatised by the raids and the inhumane treatment we face.*”<sup>73</sup>

Raids are associated with alleged immoral acts such as adultery, alcohol brewing and they single out individuals and their families as undesirable members of a community. Residential raids are therefore not only unsettling for targeted persons; they ostracise the individuals and entire families.

Hayat, originally from the Nuba Mountains and currently resident in Shandi city (approximately 100km from Khartoum) recounted to SIHA interviewers, an incident where the public order police raided her house in search of alcohol. Despite the illegality of the search which was carried out without a search warrant, Hayat was prosecuted. As police did not find anything in her house, she was acquitted due to a lack of evidence. However, despite her innocence, Hayat, together with her husband and their seven children were subsequently evicted from their home.<sup>74</sup>

Arrests for public order offences are dependent on a public order police officer’s interpretation of an act or an outfit’s indecency. The implementation of the public order regime has created a climate of fear within poorer areas of Khartoum and throughout the country with individuals, particularly women, hesitant to go about their daily activities.

Once arrested and charged with public order offences, women start an arduous journey that frequently leads to flawed trials, fines, imprisonment and/or severe corporal punishment. As there is no accountability for violations committed during arrest, and as relevant legal provisions providing for these arrests are vague and thus provide authorities with unfettered discretion, there is no incentive for public order police to change their behaviour.

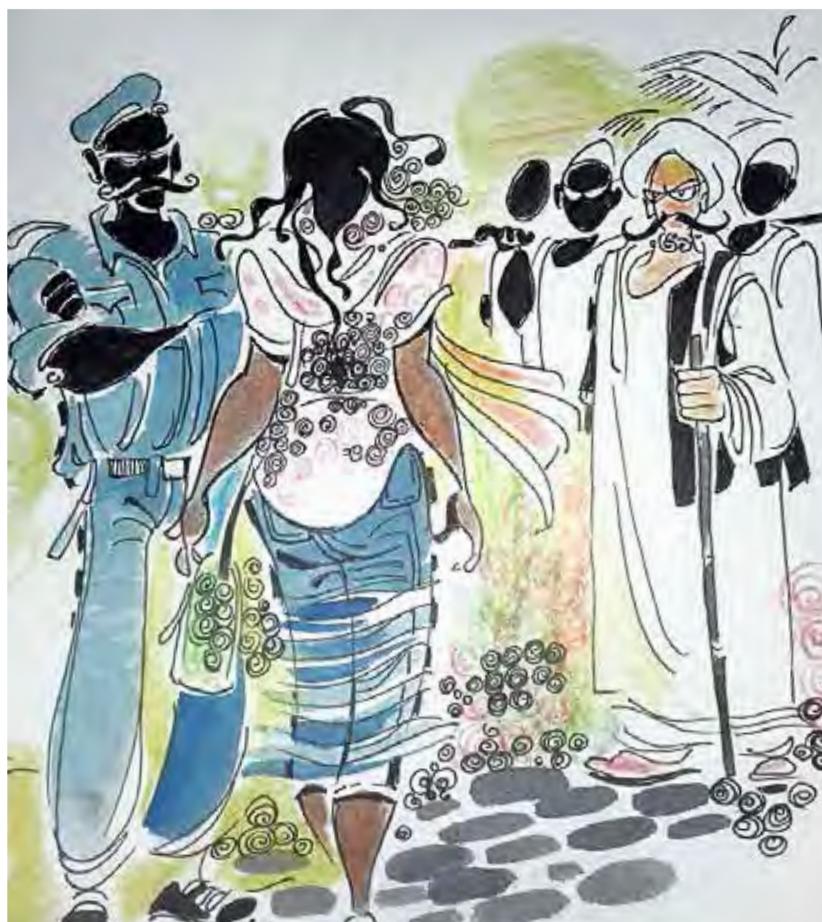
73 Ibid.

74 SIHA, interview with affected woman, Khartoum 2016.

## Infringement of Fair Trial Rights

Following arrest for a public order offence, women are prosecuted before public order courts, established by the Chief Justice to conduct summary trials of public order law offences. In practice, these courts can execute their sentences immediately after the court's verdict, even though there is a right of appeal.<sup>75</sup> The experiences of the women interviewed as part of this report paint a grim picture and reflect the inconsistency of these practices with constitutional provisions and Sudan's obligations under the African Charter and other international standards.

Women detainees interviewed by SIHA, including for example a women's rights activist who was detained with two young women from Nuba Mountains, stated how they had been held at a police station for twenty-five days without being charged or having the legality of their detention determined by a judge.<sup>76</sup> One of the women was arrested on suspicion of adultery while the other was pregnant outside marriage.<sup>77</sup> This is contrary to regional and international standards which stipulate that individuals have a right to be brought before a judge promptly.<sup>78</sup> The UN Human Rights Committee has recognised that 72 hours of detention without being brought before a judge is excessive and not in compliance with international standards.<sup>79</sup>



75 SIHA, Baseline Assessment; SIHA interview with lawyers, Khartoum 2016.

76 SIHA interview with women's rights activist, Khartoum 2016.

77 Ibid.

78 African Commission, *Resolution on the Right to Recourse and Fair Trial*, adopted at the 11<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights in Tunis, Tunisia, in 1992; Fair Trial Guidelines, Guidelines 41-42.

79 UN Human Rights Committee, *Concluding Observations on the second periodic report of Uzbekistan*, UN Doc. CCPR/CO/83/UZB, 26 April 2005, para. 14.

The right to be presumed innocent until proven guilty is another essential fair trial right enshrined in regional and international law.<sup>80</sup> It is also guaranteed in Article 34(1) of the 2005 Constitution<sup>81</sup> and section 4(c) of the Criminal Procedure Code of 1991.<sup>82</sup> These provisions notwithstanding, the treatment of suspects from the moment of their arrest through to their detention by public order police and their prosecution before public order courts, calls into question the respect for the presumption of innocence until proven guilty. For example, SIHA interviewed a lawyer who observed a trial, in which a single bottle was tendered as evidence to convict three women charged separately for brewing and selling alcohol.<sup>83</sup> All three pleaded guilty, as they were made to fear long prison sentences if they were to be convicted following a full trial.

*I have a long experience in criminal and public courts. Public order courts lack the minimum standard of justice. Two months ago, I was in Kalakala public order court, and there were three women accused of making and selling alcohol. I observed that the first accused woman was asked by the judge whether a bottle of alcohol belonged to her or not. Her answer was 'yes.' The same bottle was then raised to the second accused woman and she also answered 'yes, it is mine.' The third accused woman was asked the same question with same bottle and her answer was yes too. I said to the public order judge 'I am not representing these women, but I observed you charged all of them with the same product and this is not correct.' The judge replied that it is impossible to bring all [the bottles] inside the courtroom, so they just take a sample. Despite my protests, all three women were sentenced.'*<sup>84</sup>

The judge's failure to question why the three women who were arrested and charged separately would admit guilt for brewing and selling alcohol on the basis of a single piece of evidence is a clear illustration of the violation of the presumption of innocence by a public order judge.

### No Legal Assistance

Sudan is obliged to ensure that anyone accused of having committed a crime has a right to legal assistance.<sup>85</sup> Article 34(6) of the 2005 Interim Constitution stipulates a suspect's right to a lawyer of his or her choice, and provides that legal aid shall be available to suspects charged with serious offences.<sup>86</sup> The article does not specifically point out the kinds of offences that are considered serious.

80 ICCPR, Article 14(2).

81 Sudan Interim Constitution of 2005, Article 34 (1).

82 Criminal Procedure Code, Section 4(c).

83 SIHA interview with lawyer, Khartoum 2016.

84 Ibid.

85 ICCPR, Article 14(3) (d).

86 Sudan Interim Constitution of 2005, Article 34(6).

These provisions notwithstanding, the right to legal assistance is frequently not complied with in the wider criminal justice system as well as in cases involving public order offences. One lawyer interviewed by SIHA indicated that most women with long prison sentences for non-public order related crimes in Omdurman Women's Prison never had legal representation during their trials.<sup>87</sup> Most are poor and unaware of their right to an attorney and when they do not demand an attorney, one is not provided. A female prisoner who had served more than 20 years in total in Omdurman and Al Obeid prisons, stated that she had never had a lawyer for any trial, and that she was unaware she had such rights.<sup>88</sup>

The precarious situation of individuals accused of a public order offence is further compounded by the unprofessional behaviour of public order police and public order judges who actively discourage accused persons from engaging lawyers in their trials, arguing that their involvement complicates cases. A Sudanese man arrested for drinking alcohol explained his experience in this regard:

*I, alongside three friends, was arrested by public order police in August 2015 for drinking alcohol, after which we spent the night at a police station. Early in the morning, we were transported to the court where the police were surprised to see our lawyers. They negotiated with us that there is no need for lawyers. [They said] 'Without lawyers you will only be flogged 40 lashes and pay 200 SDG (US\$ 30) as a fine, so for your own good, don't involve these lawyers.' We didn't follow this advice, and at the court our lawyers told the judge they were representing us. The judge also said there was no need for lawyers' representation, but our lawyers insisted on attending, and in the end they agreed with the judge that they would only attend the court but not participate in the court's proceedings. To our surprise, we were only sentenced to 40 lashes, while our counterparts who were not represented by lawyers were sentenced to 40 lashes, and one month of imprisonment.<sup>89</sup>*

This kind of dissuasion by police and judges against the use of lawyers also extends to situations in which lawyers wish to appeal their clients' cases. A lawyer interviewed by SIHA referred to occasions when he indicated his intention to appeal decisions and found his clients' files emptied of official documentation.<sup>90</sup> The hostility of judges and police officers to counsel's participation in court processes makes it extremely difficult for lawyers to defend their clients and meaningfully participate in proceedings.

Another lawyer described the challenges to access his female clients in public order police stations and defend them in court. Public order police officials are reluctant

87 SIHA interview with lawyer, Khartoum 2016.

88 SIHA interview with inmate, Khartoum 2016.

89 SIHA interview with inmate, Khartoum 2016.

90 SIHA interview with lawyer 2016; SIHA Network Public Order Regime Narrative, Unpublished Internal Report, 2014.

to allow lawyers to visit clients, insisting that there is no need to release women on bail as they will be arraigned in court the next day. Similarly, some public order judges consider lawyers a burden in trials as their presence may prevent judges from proceeding with a summary trial without hearing the defence.<sup>91</sup>

### Forcing Women to Confess Guilt in Court

The right not to be compelled to confess guilt is protected under international law.<sup>92</sup> The Criminal Procedure Code of 1991 provides in Section 55(1) (a) that a person shall not be compelled to incriminate him or herself or to confess guilt.

However, women arrested under public order laws are frequently not informed of their right not to incriminate themselves or are compelled to confess guilt. Women appearing before public order judges feel that they have no option but to confess to the alleged crime whether they committed it or not. This is because if they deny the accusations, the judge will naturally invite the public order police officers who arrested the accused as 'witnesses' to testify. The case then becomes a contest between two opposing versions of the events, and given the marginalised status of the women they are routinely not believed.

### Independence of the Judiciary

Under regional and international human rights standards, judges must ensure that judicial proceedings are conducted fairly and that the parties' rights are respected.<sup>93</sup> Article 123 of the 2005 Constitution stipulates that the national judiciary shall be independent of the legislature and the executive, with the necessary financial and administrative independence.

Despite the protection of these rights in constitutional, regional and international standards, the reality in public order courts suggests that these rights are frequently ignored. Some judges appear to be preoccupied with ensuring that suspects charged with public order offences are convicted within the shortest possible time, rather than ensuring a fair and public hearing by a competent, independent and impartial tribunal. In explaining why three women pleaded guilty to a charge of alcohol with a single piece of evidence, a lawyer who observed the proceedings noted:

*These women know the public order court well. If they complained or denied, the reaction of the judge is always 'if you insist this product is not yours or that you didn't commit this crime, I will request witnesses, and if they testify differently, I will double your punishment.'<sup>94</sup>*

A lawyer noted that the prevalence of stigmatisation of accused persons by judges and police officials renders them partial, contrary to the principle of the independence

91 SIHA interview with lawyer, Khartoum 2016.

92 ICCPR, Article 14(3)(g); see also Fair Trial Guidelines, Section N(6)(d).

93 African Charter, Articles 7(1) and 26; Basic Principles on the Independence of the Judiciary, Principle 6.

94 SIHA interview, Khartoum 2016.

and impartiality of the judiciary.<sup>95</sup> Judges' ingrained attitudes and biases oftentimes influence their decisions during their conduct of public order trials. The research for this report suggests that those arrested for prostitution or sexual intercourse out of marriage for instance are usually brought to court in the clothes they were arrested in. A former police officer noted that this practice "has an influence on the judge... when we used to bring people, especially girls with tiny clothes and trousers, it was easy for him to arrive at a sentence."<sup>96</sup>

### **Discriminatory Sentencing Practices**

The discriminatory application of the public order laws is also reflected in the sentencing practice of the public order courts.

Judges of public order courts treat women accused of public order crimes differently than men and based on their appearance and ethnic origin. For example, women from Nuba Mountains and South Sudan face discrimination because they look different. The situation of women from South Sudan is compounded by the complexity of the relationship between Sudan and South Sudan, following South Sudan's independence. The involvement of these women in the brew and sale of alcohol, an activity that is criminalised and viewed as immoral, makes them prone to discrimination by judges.

When asked about the types of crimes prosecuted in the public order courts and the process for judging and sentencing those accused, a public order judge confirmed that judgments and sentences are subjective and biased:

*The majority of women detained are alcohol sellers and makers, and most of them are arrested during the weekend. The second category is women with immoral dressing and behaviour. Most of these women are captured during non-Islamic festivals like Christmas, New Years, and Valentine's Day. Alcohol sellers and makers are clear due to their shape, but the problem comes with the girls that were accused of immoral dressing and behaving. Most of them look like good girls who come from respectful families, so I do my best not to allow them to go to prison. All I order is flogging or fines, and most of the time I make them promise not to do things like that and then release them<sup>97</sup>*

Discriminatory sentencing and discriminatory interpretation of the law are also evident in instances in which men and women are arrested for brewing and selling

95 SIHA interview with lawyer, Khartoum 2016.

96 SIHA interview with ex-police officer, Khartoum 2016.

97 SIHA interview with public order judge, Khartoum 2016.

alcohol under Article 79 of the Criminal Act. Under Article 79, selling alcohol is punishable by up to one year in prison or a fine. Judges do not have other sentencing guidelines, and consequently sentence at their discretion. While the fines for women are set quite high, men rarely have to pay such high fines.<sup>98</sup>

SIHA's research suggests that many public order judges, police officers and prosecutors, are not familiar with the right to equality before the law enshrined in Sudan's Constitution. A judge noted that while they receive training in procedural aspects, their training is mainly delivered by supervisory judges, who may not be well versed with equality and non-discrimination provisions.<sup>99</sup> Race and ethnicity are also factors taken into account by public order court judges. A lawyer observed that:

*During a trial of several men found in a prostitution house, the judge singled out a suspect who, due to his physical appearance, appeared to be from the northern part of Sudan. The judge wondered why the man who seemed like a well behaved Muslim was found in a prostitution house. At the end of the trial, the man from the northern part of Sudan was fined 250 SDG (US\$40) and the rest of the men from southern and western parts of the country were fined 2000 SDG (US\$300) each.*

98 SIHA, *Third class citizens, Women and citizenship in Sudan, A paper on women's struggle for equal citizenship in Sudan*, p. 7, at <http://sihanet.org/sites/default/files/resource-download/Third%20Class%20Citizens-%20Women's%20Struggle%20for%20Equal%20Citizenship%20in%20Sudan.pdf>.

99 SIHA interview, Khartoum 2016.

# The Public Order Regime and the Absolute Prohibition of Torture and Other Ill-Treatment

The public order regime is characterised by the systemic use of torture and ill-treatment of women. As mentioned above, torture and ill-treatment may occur during arrest and public order raids, and is also committed once women are in custody, in prison and when sentenced to corporal punishment.

Regional and international treaties Sudan has ratified prohibit torture and other ill-treatment under any circumstance. The prohibition of torture is also an integral part of Sudan's 2005 Constitution. Sudan is therefore obliged to prevent, prohibit and punish torture and ill-treatment and to provide redress to victims where it occurs.

These obligations notwithstanding, torture and ill-treatment – as part of the public order regime, but also beyond- is prevalent throughout Sudan. Over the last decade, national, regional and international actors have identified a series of problems in Sudan's legislative and institutional framework and practice in relation to the prohibition of torture.<sup>100</sup> However, the Government of Sudan has not taken measures to effectively combat torture. No anti-torture policy or coordinated efforts are in place to tackle the causes of torture through relevant reforms or adequate responses to individual cases.



## vi.1. Conditions in Police Stations

In addition to the absolute prohibition of torture and ill-treatment, regional and international standards require that the human rights of detainees and prisoners must be

<sup>100</sup> See for example, SIHA, *Beyond Trousers*; African Commission, *Curtis Doebller v. Sudan*, Communication 236/00; Human Rights Committee's concluding observations on Sudan in 2014, UN Doc. CCPR/C/SDN/CO/4, 19 August 2014, para. 10.

respected and ensured.<sup>101</sup> These obligations extend to all detainees without discrimination and apply regardless of nationality or immigration status.<sup>102</sup> The African Commission considers that every detained person is entitled to proper conditions of detention, and that detention must be subject to basic human rights standards.<sup>103</sup>

In Khartoum police stations, cells are typically equipped to hold six to ten people. In reality, the number of detainees can vary from one to more than fifty people being held at one time.<sup>104</sup> According to the Sudan Criminal Act, any accused person can be held for a maximum of twenty four hours in a police station, after which detention can be renewed for seventy-two hours. In reality, female detainees are frequently held much longer in detention centres, with multiple examples of female detainees held for several months in detention, identified during the conduct of SIHA's research.<sup>105</sup>

A lawyer working with detained Ethiopian and Eritrean women stated that her clients are crowded inside in inhumane situations in the narrowest of spaces.<sup>106</sup> Additionally, these women are subject to theft of their belongings including phones and money during detention and arrest.<sup>107</sup>

## vi.2. Sexual Violence in Police Stations

The right to freedom from torture and other ill-treatment or punishment is absolute, and includes the right not to be subjected to rape or other forms of sexual violence.<sup>108</sup> Indeed, jurisprudence of regional and international human rights mechanisms recognises that rape committed against detainees will always amount to torture.<sup>109</sup> Any sexual conduct between detainees or prisoners and officials or staff is presumed to be coerced, due to the nature of the inherently coercive environment of incarceration.<sup>110</sup>

The research for this report identified the dire conditions in police stations where women

<sup>101</sup> See for example Article 10 (1) ICCPR, providing that "[A]ll persons deprived of their liberty shall be treated with humanity and with respect of the inherent dignity of the human person." See also Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by UN GA Resolution 43/73 (9 December 1988), UN Doc A/RES43/173 (UN Body of Principles), principle 5; UN Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, Rule 60 (1).

<sup>102</sup> Human Rights Committee, General Comment 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 10 April 1992, para. 4.

<sup>103</sup> African Commission, *Zegveld and Ephrem v Eritrea*, Communication No.250/2002, para. 55.

<sup>104</sup> SIHA, *Baseline Assessment*, pp. 2 and 13.

<sup>105</sup> *Ibid*, p. 6.

<sup>106</sup> SIHA Interview with lawyer, Khartoum 2016.

<sup>107</sup> *Ibid*.

<sup>108</sup> Human Rights Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 10; Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, §16.

<sup>109</sup> See for example European Court of Human Rights, *Aydin v Turkey* (1997), application no. 57/1996/676/866, Judgment of 25 September 1997, paras.83, 86; UN Committee Against Torture, *C.T. and K.M. v Sweden*, Communication No.279/2005, 17 November 2006, para.7.5.

<sup>110</sup> Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3*, 15 January 2008, para. 42 (Special Rapporteur Nowak, 2008); International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Kunarac et al*, IT-96-23 & IT-96-23/1-A.

are prone to routine sexual abuse.<sup>111</sup> The research found that the widespread nature of the abuse tends to relate to a woman's racial, social and economic status, with women from marginalised communities most likely to face discrimination.<sup>112</sup> Furthermore, there is no external oversight of practices within police stations and detainees do not have access to complaints mechanisms.

A prosecutor stated how he is reluctant to allow women to stay in a police station overnight because "during the night, the officers either sleep or leave the jail, and these women will be alone with soldiers and you know soldiers attitudes."<sup>113</sup> The research has also established that it is not uncommon for police to blackmail women in police stations by telling them that they will be released if they have sex with them.<sup>114</sup> Ethiopian and Eritrean women are particularly vulnerable to this form of abuse.<sup>115</sup>

An Ethiopian woman arrested in Khartoum stated:

*I spent one month in the police station in Khartoum Bahri Shambat, and during the day I cleaned the jail while at night I was raped by police.*<sup>116</sup>

A former detainee at a police station stated:

*During my wait at Kalakala police station, I found two young girls in their early twenties, both originally from Nuba Mountains. One was pregnant outside marriage and the other was accused of adultery. During my first and last nights in the detention centre, I discovered that these two girls were raped daily by police, and that was why the police didn't want them to go to court or prison. I was then transferred to the prison and until now I do not know what happened to them.*<sup>117</sup>

Activists are also prone to suffer sexual violence by officials in custody as indicated by the reported patterns of abuse. In February 2011, three security officers raped Safia Ishaq Mohammed Issa, a student human rights activist, in custody.<sup>118</sup> In April 2015, during the election, a woman activist was arrested and "reappeared, after three days in detention, badly bruised."<sup>119</sup> Human Rights Watch documented sexual assaults of student activists by security officials in its 2016 report.<sup>120</sup>

111 SIHA, Baseline Assessment, p. 12; SIHA *The Application of the Public Order Regime (POR) on Women in Sudan*, September 2016, p. 18 (SIHA, *The Application of the Public Order Regime*).

112 SIHA, Baseline Assessment, pp. 2, 13.

113 Ibid.

114 SIHA interview, Khartoum 2016.

115 Ibid.

116 SIHA, Baseline Assessment, p. 6.

117 SIHA interview with women's rights activist, Khartoum 2016.

118 REDRESS, *Safia Ishaq Mohammed Issa v Sudan*, at <http://www.redress.org/downloads/complaintsa-fia-ishaq-mohammed-issa-v-sudan18february2013nosig.pdf>.

119 Ibid.

120 Human Rights Watch, *Sudan: Silencing Women Rights Defenders*, 23 March 2016, at <https://www.hrw.org/news/2016/03/23/sudan-silencing-women-rights-defenders>.

### vi.3. Corporal Punishment<sup>121</sup>

Women convicted of public order offences such as wearing 'indecent dress' are frequently sentenced to pay fines, imprisonment and/or corporal punishment, mostly in the form of whipping (also referred to as flogging). The resort to flogging is based on the Criminal Act of 1991 and other statutes, including the Public Order Act, as set out above.<sup>122</sup> Other forms of corporal punishment permissible under Sudanese law include amputation and stoning, though the research for this report has not identified any cases over recent years where such punishments were carried out.

The research for this report confirmed that the practice of whipping / flogging as a form of punishment is used primarily against those who are perceived not to conform to the public moral order. They often belong to marginalised communities.

Corporal punishment such as whipping is outlawed under international law.<sup>123</sup> The African Commission considered whipping as a form of punishment in Sudan in a case in which women students of the Nuba Association were arrested and subsequently sentenced to fines and between 25 and 40 lashes for having violated article 152 of the Criminal Act of 1991. The lashes were carried out in public on the bare backs of the women using a wire and plastic whip, leaving permanent scars on the women. The African Commission considered that:-

*[T]here is no right for individuals, and particularly the government of a country, to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the [African] Charter and contrary to the very nature of this human rights treaty.*<sup>124</sup>

While this decision was rendered in 2003, public order courts continue to impose corporal punishment of this kind as a sanction after conviction for public order offences, contrary to Sudan's regional and international obligations.

Nahla, a university student recounts that during a visit to a friend employed in a shisha and beverage café, public order police raided the establishment and arrested all customers and employees. The two young women, along with others arrested, were taken to a police station and later released on bail. The next morning they were charged before the Alshargi Public Order Court and convicted of the crime of serving and consuming shisha. They were each fined 2000 Sudanese Pounds (US\$300). On account of wearing trousers, Nahla was additionally convicted under Section 152 of the Criminal Act for 'indecent dress' and fined an extra 5000 Sudanese Pounds (US\$750) or six months imprisonment. In addition, Nahla was lashed twenty times.<sup>125</sup>

121 See generally, REDRESS, *No more cracking of the whip: Time to end corporal punishment in Sudan*, March 2012, at <http://www.redress.org/downloads/publications/Corporal%20Punishment%20-%20English.pdf>.

122 See above, Chapter II.

123 See UN Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 1992, para. 5.

124 African Commission, *Curtis Francis Doebbler v Sudan*, Communication 236/00, para. 42.

125 SIHA interview with student, Khartoum 2016.

# Detention in Omdurman Women's Prison

It is a fundamental principle of international law that persons deprived of their liberty have the right to humane treatment and respect for the inherent dignity of the human person.<sup>126</sup> Humane treatment applies without discrimination and regardless of nationality or immigration status.<sup>127</sup> Cramped and unhygienic detention and lack of privacy in custody can amount to inhuman or degrading treatment.<sup>128</sup> Any restrictions on detainees' rights must be prescribed by law and must be necessary to achieve an aim that is legitimate under international standards.<sup>129</sup>

As deprivation of liberty renders individuals vulnerable and dependent on the authorities for their essential needs, States are obliged to ensure that detainees have access to necessities and services that satisfy their basic needs. The State is therefore obliged to provide adequate and appropriate food, washing and sanitary facilities, bedding, clothing, health care, recreation, physical exercise, facilities to allow religious practice, and communication with others, including those in the outside world.<sup>130</sup>



126 ICCPR, Article 10; African Charter, Article 5; see also Section M97 of the Fair Trial Guidelines.

127 Human Rights Committee, *General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 10 April 1992, para. 4.

128 Human Rights Committee, *Weerawansa v Sri Lanka, Views*, UN Doc. CCPR/C/95/D/1406/2005, 14 May 2009, paras. 2.5, 7.4.

129 Human Rights Committee, *General Comment No. 34: Article 19 (Freedom of Opinion and Expression)*, 12 September 2011, paras 18, 21-36.

130 Standard Minimum Rules on the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rules 9-22 and 37-42; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, Principles 19 and 28; UN General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, 16 March 2011, Rules 5-6, 10-17, 26-28, 48, 54; Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, Guideline 33.

Specific additional requirements need to be met for women in detention, and international standards underscore the duty of States to address the gender-specific needs of women deprived of their liberty.<sup>131</sup> They require States to provide for women's particular hygiene and health care needs, including pre-natal and post-natal care.<sup>132</sup>

## Vii.1. Deplorable Conditions in Omdurman Women's Prison

Women convicted for public order offences and sentenced to a term of imprisonment are placed in Omdurman Women's Prison. Omdurman Women's Prison is extremely overcrowded.<sup>133</sup> Although it has capacity for 500 prisoners, it was reported that between 2011 and 2015 the average number of prisoners ranged from 900 – 1,100 women.<sup>134</sup> South Sudanese women who shared a crowded section complain that they have no access to medical treatment and no beds. They are not protected from rain<sup>135</sup> and extreme temperatures.<sup>136</sup> One inmate stated to SIHA: *"We get very exhausted and suffer when the rains pour."*<sup>137</sup>

Maintaining personal hygiene in Omdurman Women's prison is another serious challenge with inadequate access to toilets being reported by several inmates, as a cause of clashes.<sup>138</sup> At the prison there were only sixteen toilets for the 965 women prisoners in 2015, equaling one toilet per every 60 women.<sup>139</sup> The sanitation of the prison environment is reported to be unhealthy and causing sickness and the spreading of disease.<sup>140</sup> An inmate interviewed as part of this study stated that she had not showered for a month<sup>141</sup> and that the bathrooms in the prison are flooded<sup>142</sup> creating conditions amounting to *"daily suffering."*<sup>143</sup>

## Vii.2. Access to Health Care

Prisoners have a right to the highest attainable standard of physical and mental health.<sup>144</sup> The right to health extends not only to timely and appropriate health

131 Fair Trial Guidelines, Section M(7)(c); The Bangkok Rules, rules 5-18.

132 The Bangkok Rules, rules 5-18; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *10th General Report on the CPT's activities*, CPT/Inf (2000) 13, 18 August 2000, paras. 30-33; Special Rapporteur Nowak, 2008, para 41.

133 See for instance, the finding of the African Commission's delegation following a visit to Sudan: *Press Release on the Human Rights Promotion Mission Undertaken by the African Commission on Human and Peoples' Rights to the Republic of Sudan from 22 to 28 May 2015*, at <http://www.achpr.org/press/2015/06/d266/>.

134 SIHA report, *Baseline Assessment*, p. 8.

135 Alwan Daily, A visit to Omdurman women prison, different faces for suffering, 25 October 2015 on file with REDRESS.

136 SIHA interviews with inmates, 2016.

137 SIHA interview with inmate, Khartoum 2016.

138 SIHA interview with inmates and former inmates, Khartoum 2016.

139 SIHA, *Baseline Assessment*, p. 9.

140 SIHA, *Prison Status Report*, January 2017, on file with the SIHA.

141 SIHA interview with inmate, Khartoum 2016.

142 Ibid.

143 Ibid.

144 ICESCR, Article 12; African Charter, Article 16; CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, paras. 34, 4, 11, 43 and 44.

care, but also to underlying determinants of health, such as adequate food, water and sanitation.<sup>145</sup> Law enforcement officials and prison authorities are responsible for protecting the health of people in their custody.<sup>146</sup> Health care should be provided free of charge.<sup>147</sup>

In Omdurman Women's Prison medical, social and psychological services are lacking or almost non-existent.<sup>148</sup> Essential medical check-ups, which would protect many other prisoners from different contagious diseases like tuberculosis, are not conducted. The prison has recorded cases of yellow fever, and epidemic lung infections, and one case of HIV.<sup>149</sup> The sanitation of the prison environment is poor, a factor which contributes to sickness and spread of diseases.<sup>150</sup>

Although a medical centre exists, it lacks both medical equipment and doctors. The large number of inmates makes it difficult to consult the one available doctor.<sup>151</sup> The lack of medicines is aggravated by the lack of a dedicated budget which makes the prison reliant on external support.<sup>152</sup>

### vii.3. The situation of Children in Omdurman Women's Prison

The best interests of children detained in prison together with their mothers should be considered in all decisions concerning their welfare. Such children should not be treated as prisoners and special provision should be made for them.<sup>153</sup> Under Article 32(5) of the Constitution, the State shall protect the rights of the child as provided in the international and regional conventions ratified by Sudan.

The research highlights that children live under unacceptable conditions with their mothers in Omdurman Women's Prison. The quality of food and water is poor and cases of malnourishment and dysentery are common among babies and children who are taken into prison with their mothers.<sup>154</sup> The prison does not make provision for the welfare of children within the prison system and infants have to be fed by their mothers. The environmental health risk due to the overcrowding of the prisons raises major concern for the health of those infants.<sup>155</sup> Older children within the

145 CPT, 3<sup>rd</sup> General Report, CPT/Inf (93) 12, para. 53.

146 Robben Island Guidelines, Guideline 31; Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979, Article 6.

147 Body of Principles for the Protection of All Persons under An Form of Detention or imprisonment, Principle 24.

148 SIHA, Prison Status Report, January 2017.

149 Alwan Daily, *A visit to Omdurman women prison; Different faces for suffering*, 25 October 2015, on file with REDRESS.

150 SIHA, Prison Status Report, January 2017.

151 Ibid.

152 Alwan Daily, *A visit to Omdurman women prison, Different faces for suffering*, 25 October 2015.

153 UN General Assembly, Convention on the Rights of the Child (CRC), 20 November 1989, Article 3; Bangkok Rules, Rules 49-52.

154 Ibid, Bangkok Rules.

155 SIHA, Prison Status Report, January 2017.

prison risk being abused, with a prisoner confirming to SIHA that “when children are brought to the prison they are used as servants and if they refuse to take orders they get beaten.”<sup>156</sup>

In *Meriam Yahia Ibrahim v the Republic of Sudan*,<sup>157</sup> a case in which a mother was detained and shackled in Omdurman prison together with her new-born baby and a two year-old son, the Applicant's representatives argued before the African Commission that there was a violation of the State's duty to prevent, and protect children from ill-treatment, including inadequate health care. According to the Applicants, the detention of two infant children with their mother in harsh prison conditions, unable to contact their father, without access to specialised child- or healthcare amounted to violation of their right to health.<sup>158</sup>

### vii.4. Treatment in Omdurman Women's Prison

No detainee or prisoner may be subjected to disciplinary punishment except in accordance with clear rules and procedures established by law or regulation.<sup>159</sup> The law or regulation must also set out the conduct constituting a disciplinary offence and the types and duration of the punishment and the authority competent to impose it.<sup>160</sup> As outlined above, the rights to equality and non-discrimination are guaranteed in the 2005 Interim Sudan Constitution, the African Charter and the ICCPR.<sup>161</sup> The Convention on the Elimination of Racial Discrimination (CERD) requires States to refrain from acts of racial discrimination and ensure that all public authorities act in conformity with this obligation.<sup>162</sup>

Whenever a detainee or prisoner makes allegations of torture or other ill-treatment, or there is reason to believe that the individual has been tortured or otherwise ill-treated, the individual should be immediately examined by an independent doctor who can prepare an independent report.<sup>163</sup> Complaint mechanisms are required to comply with the right to an effective remedy. Even without an express complaint

156 Ibid.

157 African Commission, Communication 471/1, *Meriam Ibrahim and others v Sudan*; submission on file with REDRESS; the case was pending at the admissibility stage as of September 2017.

158 See Bangkok Rules, Rule 51.

159 UN, Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), 2015, rule 37, CPT 2nd General Report, CPT/Inf (92) 3, para. 55.

160 UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) A/RES/43/173, Principle 30. UN, Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), 2015 rule 37.

161 See above, Chapter III.

162 Convention on the Elimination of Racial Discrimination, Article 2.

163 UN Committee Against Torture (CAT), *General comment No. 3, Implementation of article 14 by States parties*, CAT/C/GC/3, (CAT General Comment 3), 13 December 2012, para. 25; UN Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 2004, HR/P/PT/8/Rev.1, paras. 69-73.

made by the victim, there must be an investigation where there is information to suggest that an act of torture or other ill-treatment may have taken place.<sup>164</sup>

In Sudan, the Organisation of Prisons and Treatment of Prisoners Act of 1992 sets out in broad terms the rights of prisoners and duties of the authorities. The Act's provisions mention the specific needs of female prisoners only briefly, stipulating in Article 10 that women shall be detained separately from men and in Article 11 that special treatment shall be provided for pregnant women. However, the Act's general provisions on health care,<sup>165</sup> social care and supervision<sup>166</sup> do not take into account specifically the needs of women prisoners.

The Act's provisions are meant to be implemented together with internal regulations formulated by the prison service and the Ministry of the Interior. These regulations have not been published and are therefore not publicly available, and as a result, there is hardly any external scrutiny or oversight of Sudan's prisons. Stakeholders cannot assess whether practices and procedures in these institutions as set out in the regulations meet Sudan's regional and international human rights obligations nor can they provide suggestions for improvement of identified shortcomings. Independent oversight of prisons, stipulated in international standards as an essential safeguard against torture and ill-treatment in places of detention, does not exist in Sudan.<sup>167</sup>

The research for this report has confirmed that abuse of prisoners in Omdurman Women's Prison is endemic. Common human rights violations include verbal, physical, and sexual abuse, and exploitation.<sup>168</sup> Violations of prisoners' and detainees' rights largely depend on racial, social, and economic status, as well as the alleged crime.<sup>169</sup>

Interviews with current and former inmates of Omdurman Prison confirmed that prisoners are frequently brutally flogged as a disciplinary measure.<sup>170</sup> Prison officials are vicious in their treatment of prisoners. A former prisoner recalled:

*Prison officers brutally whip prisoners; I saw them suffer. Sometimes I saw them take women out of the bathroom to beat them, for no clear reason but only to intimidate them...those women suffer with serious consequences...*<sup>171</sup>

164 CAT Article 12; UN Commission on Human Rights, Resolution 2000/43: Torture and other cruel, inhuman or degrading treatment or punishment, (Principles on Investigation of Torture), 20 April 2000, E/CN.4/RES/2000/43, principle 2.

165 The Organisation of Prisons and Treatment of Prisoners' Act of 1992, (The Prisons Act), Article 21.

166 Ibid, Article 23.

167 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (OPCAT) A/RES/57/199, Article 1; Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (Robben Island Guidelines), ACHPR Res 61 (XXXII), 2002, Guidelines 41-42; Fair Trial Guidelines, Section M(8)(a).

168 SIHA, Baseline Assessment, Report, p. 10.

169 Ibid, p. 13.

170 SIHA, Baseline Assessment, p. 10.

171 SIHA interview with former inmate, 2016.

Other forms of punishment by prison officials include beatings, denial of food and placing inmates in solitary confinement. Because abuses are relatively commonplace and widespread, many prisoners view their experiences as normal and are not aware that their human rights are being violated. They come to expect and accept flogging and other forms of abuse and insults as part of the experience of being detained.<sup>172</sup> Many of the women interviewed did not think of these severe punishments as violations of their rights but rather saw them as consequences for breaking prison rules.<sup>173</sup>

The brunt of this treatment is suffered by the most vulnerable women within prisons – alcohol sellers, migrants and women from Nuba Mountains and South Sudanese women. Women prisoners from South Sudan and Nuba mountains face discrimination from both inmates and prison guards. They have separate sleeping spaces and suffer verbal abuse based on ethnicity and racial discrimination. Ethiopian women also experience discrimination and are “subjected to abuse and sexual exploitation by law enforcement due to their vulnerability as migrants.”<sup>174</sup> Prison officials tend to order Ethiopian women, who they perceive as servants, to clean their offices.<sup>175</sup>

Abuse towards those imprisoned for public order cases is a common practice. Najwa, serving time for adultery and abortion, recounts that: “I am discriminated against and called a ‘whore’. Sometimes I am not allowed to eat with others.”<sup>176</sup>

The research pointed to instances of sexual violence in Omdurman Women's Prison perpetrated by other inmates. A former inmate has recounted that group rape by other prisoners is common in the prison and is used to weaken the victimised prisoners.<sup>177</sup> A community worker recalled that:

*A group of Ethiopian and Eritrean girls were brought in. They were very young, about sixteen years of age. Their first night there a horrible thing happened. They were all raped. They yelled very loudly. They raped them with objects and bottles. It was really horrible. They were very young. Having such a huge horrific incident, where the predators are other prisoners, raises serious questions around the level of protection afforded to women inside the prison. Migrant women are particularly left in a very vulnerable situation.*<sup>178</sup>

172 SIHA, Baseline Assessment, p. 10.

173 Ibid.

174 SIHA Interview with lawyer, Khartoum, 2016.

175 Ibid.

176 SIHA interview with inmate, Khartoum, 2016.

177 Ibid.

178 SIHA interview with community worker, 2016.

## The Economic Dimension of the Application of Public Order Laws

Beyond the severe physical and psychological harm caused by the application of the public order regime, women suspected of and convicted for public order offences suffer significant financial consequences as a result of the relentless collection of fines by public order courts and the corrupt tendencies of some public order police and judges.

### viii.1. The Impact of Court Imposed Fines on Vulnerable Women

The penalties for most public order offences are fines and flogging. Those who can afford to pay the fine are set free, whereas women who cannot afford to pay usually end up serving a prison term. The result is that the majority of women who end up in prison are generally from low-income backgrounds.<sup>179</sup>

Women who cannot afford to pay the fines may opt to borrow money from friends and family. Nahla, a university student, was fined 2000 Sudanese pounds (US\$300) for consuming shisha and 5000 Sudanese pounds (US\$750) or six months imprisonment for ‘indecent dress’ as she was in trousers at the time of arrest. She was also lashed twenty times. As she was unable to pay the fines immediately, she was placed into prison. Terrified by the prospect of further prison time and the reaction of her family if they found out she had been convicted and imprisoned, Nahla borrowed money to pay the fine. She was then released but now has to balance part-time work and studies to repay the money she borrowed.

Nahla was deeply traumatised by the experience of her arrest, lashing, and her brief imprisonment. In addition, she suffers great stress because of the debt as she is hardly making enough money to pay back her debt on time. This situation places her



at great risk as a young woman bereft of support and resources. If she had not found part time work, she would have been forced back to prison or would have had to seek risky means of making money to repay the borrowed money.<sup>180</sup>

A woman who had her fine reduced after pleas of mercy recalls that:

*The judge sentenced me to pay 4000 Sudanese Pounds (US\$600) or six months imprisonment. I have no money and am the only earner in my family. I have six children.... Selling alcohol is my only source of funds. I applied for a mercy and the fine which was reduced to 2000 Sudanese Pounds (US\$300) was paid by my family and neighbours.<sup>181</sup>*

A former inmate who could not afford to pay the fine until it was reduced recounted to SIHA interviewers that:

*The judge ordered me to pay a 5000 SDG fine (US\$750), with 6 months in prison for non-payment. I stayed in prison for 2 months. The fine was reduced to 2500 Sudanese Pounds (US\$375) which I paid.<sup>182</sup>*

Many women, who do not have family and friends to lend them money to pay court imposed fines, inevitably end up in prison. An inmate noted: *I was sentenced to pay a fine of 3000 Sudanese pounds (US\$450). Since I didn't have this amount, I am in the prison. I have two daughters; one is being looked after by my neighbours while the infant is here with me.<sup>183</sup>*

### viii.2. Revenue Accrued from Fines

In addition to the ‘moral’ justification for the (enforcement of) public order laws, there is also a significant financial motivation for the State – as well as relevant officials involved, such as judges and police – to see the public order laws enforced.

Statistics collated in October 2015 indicate that almost sixty percent of the sentences in public order courts were fines. The average monthly revenue through the collection of fines in a Khartoum State public order court is 12,000,000 Sudanese Pounds (US\$759,494).<sup>184</sup> Police, prosecutors and judges have ‘pre-established financial targets’ they must achieve through fine collection from convictions.<sup>185</sup> Officials who reach these targets are paid an incentive in addition to their monthly salary. There is therefore a financial motivation for officials working within sections of the public order regime to “arrest, detain and charge large numbers of vulnerable people to meet financial targets.”<sup>186</sup>

180 Ibid.

181 SIHA interview with a former prisoner, Khartoum 2016.

182 SIHA interview with former inmate, Khartoum 2016.

183 SIHA interview with inmate, Khartoum 2016.

184 Alwan Daily, *Statistics Related to Women Prison and Detention: Omdurman Women's Prison*, October 2015, p. 2.

185 Ibid.

186 SIHA, Baseline Assessment, p. 14.

179 SIHA interview with lawyers, Khartoum 2016.

### viii.3. Corruption by Police Officers and Judges

Community members interviewed believe that the application of the public order regime is not about preventing crime but rather collecting money from disadvantaged women for private gain of public order police and judges. Bribes levied by public order police and judges constitute a significant source of income and grants them power which they use to control and oppress poor people.<sup>187</sup>

A woman working in Khartoum stated that police “fabricate cases” against women who do not pay them.<sup>188</sup> Public order police have also been known to extort money from women suspected of making alcohol as the price of non-interference with their trade. Refusal to pay bribes results in being charged and possible prison time. Therefore, there is a strong incentive for women to pay bribes to public order police.<sup>189</sup>

The corruption of public order police is not limited to ensuring that criminal cases are not pursued or that sentences are lenient in exchange for money, but appears to extend to sexual favours. A paralegal and activist remarked that during the raids, police “blackmail women either to pay money or to have sex with them so they can be released before going to the station”<sup>190</sup> and once these payments stop “police usually come to blackmail them some more.”<sup>191</sup> Women held in police stations have been blackmailed by police officers who told them they will be released if they have sex with them.<sup>192</sup>

Corrupt public order police also take advantage of migrant women who do not speak Arabic. A lawyer working with Ethiopian and Eritrean refugees has explained that, in some cases, police officers issue fake fines to those already acquitted as a form of blackmail.<sup>193</sup> There have also been reports of corrupt judges. In one case, a woman charged with zar, a ritual celebration banned by the Khartoum Public Order Act, narrated to SIHA interviewers that the judge appointed to consider her case was known for taking bribes.<sup>194</sup>

It is apparent that marginalised women endure financial and other hardships as a result of the application of public orders laws while the police and the public order judiciary benefit from the functioning of the current set up. Corruption in the administration of justice therefore proves to be a key barrier to justice for women suspected of public order offenses.<sup>195</sup>

187 Ibid.

188 SIHA interview with affected community member, Khartoum 2016.

189 SIHA, Baseline Assessment, p.14.

190 SIHA interview with paralegal, Khartoum 2016.

191 SIHA, *The Application of the Public Order Regime*, p. 14.

192 SIHA interview with paralegal, Khartoum 2016.

193 SIHA interview with lawyer, Khartoum 2016.

194 SIHA, *The Application of the Public Order Regime*, p. 23.

195 For a detailed examination of corruption in judicial systems see, Transparency International (2007), *Global Corruption Report 2007: Corruption in Judicial Systems*.

## Consequences of the Application of the Public Order Laws

Challenges arising from the implementation of the public order regime are woven into the lives of women in Khartoum and the wider Sudan.<sup>196</sup> The uncertainty surrounding these broad laws and their arbitrary application, without notice and with little chance of challenge or redress, leaves women vulnerable and unprotected.<sup>197</sup> The susceptibility of women to violations of these laws is compounded by the laws’ vague provisions lending them to opportunist interpretation and making it impossible to regulate one’s behaviour so as to comply with the laws. The result is a climate of profound uncertainty and fear.<sup>198</sup>

### ix.1. The Impact of Public Order Laws on Public Life

As outlined throughout this report, wearing what is considered an ‘indecent outfit,’ women’s rights and student activism and selling of alcohol in Khartoum are all activities which potentially lead to arrests and oftentimes, fines, corporal punishment and imprisonment. The application of the public order regime affects various aspects of women’s lives and has alienated women from the authorities who should ordinarily protect them. The relationship between women and law enforcement officials, in particular public order police in Khartoum is fraught with suspicion.

The public order regime limits women’s participation in public and social life as its aggressive implementation has led many women to take the decision not to walk on the street at all in Khartoum, insisting on driving even very short distances, or being accompanied.<sup>199</sup> Families have become fearful of encouraging or indeed allowing their daughters to engage in public life - with

this affecting not only women and girls’ social development but also, by implication, the fabric of Sudanese society.<sup>200</sup>



196 SIHA, *Beyond Trousers*, p. 16.

197 Ibid.

198 Ibid, pp. 16-17.

199 Ibid.

200 Ibid, p.19.

The presumptuous sexualisation by the State of all encounters between women and men has a serious impact on the physiological, psycho-social and community development of young Sudanese men and women and more generally, the Sudanese social and cultural fabric since 1989 when the public orders laws were first enacted.<sup>201</sup>

### **ix.2. The Impact of Public Order Laws on University Life**

The public order regime limits student interaction at higher institutions of learning where interaction between female and male students is frowned upon. University public order police patrol campuses to monitor what students wear. This interference into campus life diminishes the university experience, curtails collegial friendships and negatively affects social interaction among students.<sup>202</sup> Where female students are caught up in the public order regime, for instance when arrested and convicted for indecent dress, this may impact their ability to continue their studies. Their families may request them to return home, as in their view arrest and conviction would shame the family.<sup>203</sup>

### **ix.3. The Impact of the Public Order Laws on Family Life and Livelihood**

Mere suspicion of having committed a public order crime can have devastating consequences on women's family lives.<sup>204</sup> Hayat, from Nuba Mountains, was ostracised from her local community on the basis of mere suspicion that she was an alcohol seller. She was harassed by community members and exposed to racist comments. Even though Hayat was found not guilty by a public order court, her neighbours voiced their complaints to the local administrator, Motamad, who without the authority to do so, evicted Hayat along with her husband and seven children.<sup>205</sup> Additionally, her husband, an employee of a railway company, was dismissed from his work because of the accusations against his wife.

SIHA reached out to Hayat, and helped her institute a case to challenge these injustices. Her case progressed to the Constitutional Court in Khartoum, where it was pending at the time of writing. Hayat is now the sole earner of the family household, working as a tea and food seller, and barely able to support her seven children. Her husband cannot find any work due to the political influence of Motamad and local officials. Until the case is resolved, Hayat and her family will not be able to return to their family house as she struggles to make ends meet.

This case highlights the depth of the stigma surrounding the implementation of the public order regime in Sudan. It also highlights societal approval of flawed laws, normalising obvious breaches of citizens' rights.

201 Ibid.

202 Ibid, p. 20.

203 SIHA interview with university student, Khartoum 2016.

204 SIHA, *Beyond Trousers*, p. 12.

205 SIHA interview with Hayat, Khartoum 2016.

### **ix.4. The Intersection of the Public Order Justice System and Poverty**

The enforcement of public order laws has far reaching consequences on women's experiences with judicial processes. Lack of awareness of rights and the inability to afford bail results in women being detained pending trial; the inability to pay court imposed fines leads to imprisonment. The majority of women who cannot afford to bribe officials to avoid arrest are charged and prosecuted under public order laws. Most are convicted in flawed, summary trials but also because they are most likely to plead guilty in the hope of getting less severe sentences. These experiences deter women from accessing justice. They also discourage women from relying on a judicial system they view as corrupt.

The often exorbitant fines levied on vulnerable women add a burden to their already precarious situations. In addition, their ability to generate income is curtailed as soon as they are arrested. This especially affects single women and their children.

### **ix.5. The Impact of Imprisonment and Abuse in Detention**

The vast majority of women who have been detained have experienced trauma and require psychosocial support. Those who suffered abuse or other violations of their rights in detention cannot seek redress as no independent complaint mechanisms exist. This entrenches impunity of police and prison officials, contributes to the continuation of abuse and serves to undermine faith in the justice system. Imprisonment can rupture families and deeply affects the tight knit communities within which these women live. Children from single parent households risk being left homeless and destitute, and infants end up in prison with their mothers.<sup>206</sup>

Women have to live with the stigma of imprisonment and need to try to rebuild their lives. Alcohol sellers will sometimes return to the trade, as for some this is the only way to earn a regular income to sustain themselves and their families. The lack of training and education in prisons also means that women are worse off, in terms of skills, upon their release.

206 SIHA interviews with inmates and affected community members, Khartoum 2016.

# Consideration of the Public Order Regime by Regional and International Human Rights Mechanisms

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Regional and international treaty bodies and mechanisms have recognised, in their consideration of the human rights situation in Sudan, that the public order regime results in violations of women's human rights. Complaints have been filed before the African Commission on Human and Peoples' rights due the inability of the national judicial system to afford victims appropriate remedies.

## x.1. The African Commission on Human and Peoples' Rights

As the main regional human rights body and guardian of the African Charter, the African Commission has a crucial role to play in ensuring that States Parties including Sudan adhere to their obligations enshrined in the Charter. The Commission has received a large number of cases alleging violations of the Charter by Sudan, including cases that concern Sudan's public order laws. In *Curtis Francis Doebler v Sudan*,<sup>207</sup> a case in which university students were sentenced to corporal punishment for indecent dress and immoral behaviour at a picnic, the African Commission ruled on the incompatibility of lashes with Sudan's obligations under Article 5 of the African Charter (prohibition of torture and ill-treatment) and other international instruments. The African Commission determined that lashes violated Article 5 and urged Sudan to immediately amend the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments and abolish the penalty of lashes. The Commission also urged Sudan to take appropriate measures to ensure that the victims receive compensation.



Several cases involving the violations of women's rights in Sudan as a result of the enforcement of public order laws were pending before the African Commission in September 2017. The case of *Meriam Yahia Ibrahim* concerns the sentencing of Ms Ibrahim to the death penalty (eventually commuted) and 100 lashes for apostasy and adultery, and also covers the conditions of her detention in Omdurman prison

207 African Commission, *Curtis Francis Doebbler v. Sudan*, Communication 236/2000 (2003), para. 34.

together with her son and while being pregnant.<sup>208</sup> *Safia Ishaq Mohammed Issa v Sudan* concerns the arbitrary arrest and detention of a student activist who was raped by security officials.<sup>209</sup>

During a mission to Sudan in May 2015, the African Commission noted various challenges that inhibit the enjoyment of human rights by women in Sudan. These included the existence of legal provisions which limit women's rights, arrest and detention, over-crowding in the Omdurman Women's Prison as well as the application of various forms of violence on women including corporal punishment and torture and ill-treatment in some places of detention.<sup>210</sup>

After consideration of Sudan's State report in 2012, the African Commission recommended that the Government of Sudan ensure that conditions of arrest, preliminary interrogation and detention of suspects comply with the principles of the Robben Island Guidelines.<sup>211</sup> The African Commission advised that Sudan authorities ensure that judges, prosecutors, lawyers, police and prison officials receive training on human rights law and that reforms are introduced to strengthen the judiciary.<sup>212</sup> It recommended that the Robben Island Guidelines be incorporated into the human rights programme of the Sudan Police College and the training of prison officers.<sup>213</sup> In relation to the improvement of prison conditions, the Commission urged the government to adopt a holistic approach to decongestion and conditions of detention in the prisons, ensuring that the Prison Service receives adequate resources, including funding to improve living conditions and access to health care in prisons and places of detention.<sup>214</sup> It also advised that the State should end the application of Sharia law to Christians and other non-Muslims groups.<sup>215</sup>

## x.2. United Nations Treaty Bodies

The Human Rights Committee, the Committee on the Rights of the Child and the Committee on Economic Social and Cultural Rights have all considered the application of public order laws on the enjoyment of human rights in Sudan.

### x.2.1. The Human Rights Committee

The Human Rights Committee has expressed concern about some of the violations highlighted in this report. In its concluding observations on Sudan's State report in 2007, it recommended that in order to prevent torture and ill-treatment, specifically

208 See further, REDRESS, at <http://www.redress.org/case-docket/meriam-yahia-ibrahim-daniel-wani-and-their-two-children-martin-wani-and-maya-wani-v-sudan>.

209 See further, REDRESS, at <http://www.redress.org/case-docket/safia-ishaq-mohammed-issa-v-sudan>.

210 African Commission, *Press Release on the Human Rights Promotion Mission Undertaken by the African Commission on Human and Peoples' Rights to the Republic of The Sudan from 22 to 28 May 2015*, 01 June 2015, at <http://www.achpr.org/press/2015/06/d266/>.

211 African Commission, *Sudan: 4th and 5th Periodic Reports, 2008-2012: Recommendations*, at <http://www.achpr.org/states/sudan/reports/4thand5th-2008-2012/>, para. 2.

212 Ibid, paras. 3-4.

213 Ibid, para. 9.

214 Ibid, para. 14.

215 Ibid, para. 32.

in prisons, the Government of Sudan should guarantee that all allegations are investigated by an independent body, that perpetrators are punished and that victims are provided with reparations. It also advised that the State should improve the training of State agents so that arrested or detained persons are informed of their rights.<sup>216</sup>

In 2014, the Human Rights Committee urged Sudan to promote equality between men and women by raising awareness about women's rights amongst the public and officials, particularly judges, prosecutors and the police.<sup>217</sup> The Committee raised concerns about the persistence of discriminatory provisions against women in legislation, noting in particular the vaguely worded article 152 of the 1991 Criminal Code, on indecent conduct.<sup>218</sup> It recommended that Sudan strengthen its efforts to guarantee *de jure and de facto* equality between men and women<sup>219</sup> and to speed up the review of its domestic laws, including those governing the family and personal status and those concerning public indecency, in order to bring them into full conformity with articles 3, 23 and 26 of the Covenant.<sup>220</sup>

The Committee was concerned that violence against women was “still a serious problem.”<sup>221</sup> It recommended Sudan to facilitate the reporting of rape and ensure that all cases of violence against women are promptly and thoroughly investigated, that perpetrators are brought to justice and adequately sanctioned, and that victims have access to adequate reparations and means of protection, including access to specialised shelters or centres.<sup>222</sup>

The Committee also expressed concern about the application of corporal punishment and advised Sudan to abolish corporal punishment in the penal system and to act vigorously to prevent any use of such punishments pending the repeal of the relevant legislation.<sup>223</sup>

#### x.2.2. The Committee on the Rights of the Child

After consideration of Sudan's report in 2016, the Committee on the Rights of the Child expressed unease about the poor living conditions of young children and their incarcerated mothers in Khartoum prisons.<sup>224</sup> The Committee recommended Sudanese authorities to take effective and urgent measures to ensure that living

216 Human Rights Committee, *Consideration of reports submitted by states parties under article 40 of the covenant: Concluding observations of the Human Rights Committee – Sudan*, UN Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007, paras. 16(a) & 16(b).

217 Human Rights Committee, *Concluding observations on the fourth periodic report of the Sudan*, UN Doc. CCPR/C/SDN/CO/4, 19 August 2014, para. 10.

218 Ibid, para. 10.

219 Ibid.

220 Ibid.

221 Ibid.

222 Ibid, para. 12.

223 Ibid.

224 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Sudan*, CRC/C/SDN/CO/3-4, 22 October 2010, para. 62.

conditions for children in prison with their mothers, including access to health and education services, are adequate for the child's physical, mental, moral and social development in accordance with article 27 of the Convention.<sup>225</sup>

The Committee advised Sudan to seek alternative measures to institutional confinement for pregnant women and mothers with young children and ensure that the best interests of the child is carefully and independently considered by competent child professionals prior to and during their stays with their detained mothers. It urged Sudan to ensure that all children whose mothers have been executed are released into a safe care environment; and that it seek technical assistance from UNICEF and other relevant partners in this regard.<sup>226</sup>

#### x.2.3. The Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights in its consideration of Sudan's State report in 2015 considered the status of women and the need for capacity building of legislators. The Committee was troubled “at the inferior status of women in the family and in the society in the State party, which is reflected in several legal provisions limiting their rights” and also “the negative impact of this status on women's access to education, employment, health (including women's autonomy in regard to their health) and vulnerability to violence”<sup>227</sup>

The Committee recommended Sudan to raise awareness among lawmakers of equality between men and women and repeal laws that do not conform to article 3 of the Covenant and promote women's equal representation in public office and decision-making bodies.<sup>228</sup> Sudan was encouraged to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>229</sup>

### x.3. UN Charter Mechanisms

The Independent Expert on the situation of human rights in the Sudan highlighted the need for appropriate judicial training in Sudan especially at the lower bench of the judiciary, which is closer to the population.<sup>230</sup>

After her mission to Sudan in 2016, the Special Rapporteur on violence against women, its causes and consequences issued a report and recommendations echoing this report's findings. She observed that many women were being “sentenced and incarcerated for minor crimes.”<sup>231</sup> She was disturbed that imprisoned pregnant women were giving birth without adequate access to medical care.<sup>232</sup> The Special

225 Ibid, para. 63.

226 Ibid.

227 Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of the Sudan*, UN Doc. E/C.12/SDN/CO/2, 27 October 2015, para. 29.

228 Ibid, para. 30.

229 Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of the Sudan*, UN Doc. E/C.12/SDN/CO/2, 27 October 2015, para. 57.

230 Human Rights Council, *Report of the Independent Expert on the situation of human rights in the Sudan*, Mashood A. Baderin, UN Doc. A/HRC/27/69, 4 September 2014, para. 45.

231 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to the Sudan*, UN Doc. A/HRC/32/42/Add, 18 April 2016, para. 30.

232 Ibid.

Rapporteur was informed of alleged cases of arbitrary detention of women human rights defenders, including students and women belonging to ethnic and/or religious minority groups<sup>233</sup> “and their intimidation and torture and other cruel inhuman or degrading treatment or punishment, including being raped in some instances.” Women were also “allegedly threatened upon their release, and warned about reporting the violations or seeking medical care.”<sup>234</sup>

The Special Rapporteur expressed her concern about the public order laws, which she considered to be disproportionately applied against women, and “is used to regulate freedom of dress, movement, association, work and study.” She noted the violation of due process laws for public order offences and expressed alarm “about its application to poor and vulnerable women who work in informal sectors of the economy.”<sup>235</sup>

The Special Rapporteur recommended that Sudan “follow up on all recommendations of the legislative review process regarding laws that discriminate against women and that the government should protect human rights defenders from harassment, intimidation, arbitrary arrest and detention, as well as torture and ill-treatment.”<sup>236</sup> She advised that the Government should repeal laws that allow for capital punishment or punishment that includes lashes for women sentenced under the Criminal Act.

By September 2017, Sudan had not complied with the recommendations issued by the various bodies and mechanisms.

233 Ibid, 32.

234 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to the Sudan*, UN Doc. A/HRC/32/42/Add, 18 April 2016, para. 32.

235 Ibid, para. 85.

236 Ibid, para. 105.



The atmosphere created by the application of the public order laws is one of fear, apprehension and self-censorship as women are never aware of when or for what they might be arrested. The criminalisation of daily aspects of women’s lives contravenes Sudan’s obligations to guarantee non-discrimination, equality before the law, freedom from torture and ill-treatment and due process guarantees as provided for under regional and international instruments and, to some extent, Sudan’s 2005 Interim Constitution.

The public order regime is hinged on the control of women and the wider population through the discriminatory application of vague legislation. Its enforcement is a hindrance to Sudan’s national development as it prevents women – a large part of its population – from full participation in public life.

Sudanese authorities should engage in an honest national debate about the negative impact of the public order regime on various aspects of Sudanese life. Stakeholders should consider exploring ways of separating public order principles from contemporary religious interpretation. Any debates for change should involve and include groups most affected by the public order regime’s application.

## XII.1. To the Government of Sudan

### Law and institutional reform

- Comply with recommendations from regional and international human rights mechanisms
- Take immediate measures to end the activities of the Kasha of women and girls in public raids and their random pickup and detention
- In consultation with and participation of all relevant stakeholders such as civil society, the judiciary, relevant ministries and affected communities, establish a committee to review all public order laws to determine their consistency with constitutional, regional and international human rights obligations
- Repeal all public order laws and provisions found to be in breach of Sudan's obligations as recognised by regional and international human rights mechanisms
- Review the national strategy on women's rights to ensure it covers the protection of women's rights in the criminal and public order justice systems
- Carry out a country-wide mapping of the application of public order laws to date and document experiences of individuals and communities affected
- Grant the committee established to review public order laws the mandate to assess the compatibility of public order institutions such as courts and police with Sudan's constitutional, regional and international human rights obligations
- Undertake mandatory training for judges, prosecutors, police officers and other law enforcement officials with support from civil society organisations on the principles of equality and non-discrimination, and Sudan's regional and international human rights obligations to protect women's rights
- Ensure systematic and mandatory capacity building for judges, prosecutors, lawyers, police officers and healthcare providers, to ensure all victims of violence arising from the application of the public order laws are approached in a gender-sensitive manner.

### Fair trial guarantees

- Pending the repeal of the public order laws, ensure that pre-trial and trial rights are guaranteed before public order courts in accordance with constitutional provisions and international standards.
- Pending repeal of relevant legislation, ensure that corporal punishment is no longer imposed as a sentence by any court, and hold accountable any officials who inflict corporal punishment.

- Provide adequate forms of reparation for any individuals subjected to corporal punishment, including access to medical treatment where necessary.
- Build the capacity of the judiciary and familiarise relevant officials with principles of regional and international human rights standards to ensure their professionalism, independence and impartiality.
- Develop sentencing guidelines for judges to end discriminatory sentencing practices

### Improvement of prison conditions

- Ensure that conditions in detention centres comply with international standards, particularly the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, and that women have full access to healthcare, including sexual and reproductive health services, nutrition and hygiene
- Ensure that women in prison are provided daily with necessities such as adequate food, clothes, and medical supplies
- Ensure that pregnant prisoners are provided with required medicine and food, and breast-feeding women with milk, food, and soap
- Provide psychological, health, and other in-kind support for women in prison
- Protect women prisoners from rape, sexual assault and other violence in prison by prison staff and other prisoners by putting in place complaints mechanisms that are gender sensitive and accessible for victims of sexual violence and other forms of violence in prison
- Provide adequate forms of reparation for any victims of rape, sexual violence and other violence in prison, including access to medical treatment where necessary
- Ensure that the full range of needs of children in prison with their mothers are met, including medical and psychological treatment. Special provision should be made for mothers prior to admission, so they can organise alternative childcare for children left outside
- Engage with prison authorities and relevant line ministries to update existing prison internal rules and regulations.

### Access to justice for victims

- Ensure victims of torture and ill-treatment, including sexual violence and other forms of violence, have access to an effective remedy and full reparation
- Investigate alleged abuses and hold those responsible to account
- Increase the numbers of women police officers and provide regular gender training and develop anti sexual harassment laws and policies to protect women and girls when approaching law enforcement institutions
- Ensure victims have access to comprehensive medical treatment, mental healthcare, and psychosocial support by appropriately trained professionals
- Adopt gender-sensitive procedures to investigate sexual violence, conducting training and adopting gender-sensitive codes of conduct and protocols for public order police, prison staff, judges and prosecutors

- Protect victims and witnesses from reprisals whenever they seek to access justice or cooperate with the judiciary
- Repeal relevant legislative provisions providing officials with immunity for acts such as torture, rape and other violent acts

#### **Development of programmes to empower vulnerable women**

- Connect refugee, internally displaced and migrant women detainees to specialised support
- Collaborate with civil society and development partners to support and build the capacity of vulnerable women with skills and sustainable livelihood opportunities.
- Ensure that South Sudanese, Ethiopian and Eritrean refugees and other migrants are strategically connected to UNHCR, IOM, and other organisations working with migrants
- Work with stakeholders and international partners to explore and develop initiatives to support, empower and build the capacity of women from marginalised communities to understand and claim their rights.

#### **Awareness raising, sensitization on principles of equality and non-discrimination**

- In collaboration with civil society and other stakeholders, craft public awareness campaigns on equality and non-discrimination that target persons of all genders.

#### **Ratification of regional and international human rights instruments**

- Ratify the Convention against Torture and other Cruel, Inhuman or Degrading and Treatment or Punishment and its Optional Protocol
- Ratify the Convention on the Elimination of All Forms of Discrimination against Women without reservation, thereby accepting the internationally accepted minimum standards pertaining to women's human rights
- Ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

### **XII.2. To the African Commission on Human and Peoples' Rights**

- Continue engaging with the Government of Sudan on:
  - the need for reform of public order laws, institutions and provisions
  - violations committed as a result of the public order laws' application and Sudan's obligation to afford victims with their right to redress
  - the protection of women's rights in Sudan
- Provide technical assistance to Sudan on specific issues pertaining to the protection of women's rights, fair trial rights and prison reform
- Follow up with Sudan on the failure to implement the Commission's decisions and recommendations.





**SIHA Regional Office**  
**Plot 3 Katalima Bend Naguru**  
**P.O. Box 2793, Kampala - Uganda**  
**Tel: +256 712 442 912, +256 706 442 912, +256 414 286 263**  
**Email: [siha@sihanet.org](mailto:siha@sihanet.org)**

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