



Beyond Trousers:

The Public Order Regime and the Human Rights of Women and Girls in Sudan

A Discussion Paper

**Submission to the 46th Ordinary Session
of the African Commission on Human
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Summary and Recommendations

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Public order laws exist in most countries to ensure security, maintain general order and create a framework for a mutually rights-respecting public life. Sudan is no different. However Sudanese public order law also contains a set of concepts, laws and mechanisms which are aimed at imposing particular values about the proper place of women within society and the role of the state in the regulation of personal “morality”. This aspect of the public order regime—taken together in its underlying values, prohibitions, enforcement mechanisms, and penalties—has a significant negative impact on the lives of many women from all walks of life in Sudan, most particularly the poor, the marginalised and those who challenge the *status quo*. It constitutes a daily challenge for women’s personal, social, economic, professional and public engagement.

- *Personal, religious and cultural expression and private, family and social life:* The public order regime inserts itself within a range of spaces within the realm of the private, family and social lives of women. It creates vaguely worded prohibitions and enforces them arbitrarily through criminal sanction and fear in areas including, for example, choice of dress and hair style; taking public transport or walking on the street; access to education; developing friendships; sending texts messages, going to the cinema and attending private and public parties and dancing. The public order regime as a result has a profound impact on the psychological and psycho-social development of the people of Sudan—both its women and its men.
- *Economic and professional life:* Poor women and women from marginalised communities are often forced to engage in work and places of work which can attract accusations of behaviour contrary to the public order regime. They are also often among the members of society who are most vulnerable to abuses of power. Under the public order regime even a professional office can be considered a place of prostitution, turning the workplace into a space where a woman must be continually on guard.
- *Public and political life:* The broad ambit of discretion given to the police and judiciary in the administration of the public order regime can be deployed strategically to control—and punish—particular individuals or groups of women or men who challenge those in power whether socially, or politically. There have been concerns expressed that the public order regime will be a factor in preventing the full and free exercise of the right to vote and to participate in the upcoming elections – the first in 27 years.

The operation of the public order regime in a number of its characteristics inherently restricts the exercise of fundamental freedoms guaranteed by the African Charter on Human and People’s Rights (the African Charter).

- The criminalisation of behaviour which in most jurisdictions would not be considered appropriate to subject to criminal penalty: The public order regime criminalises and

imposes severe penalties for behaviour which does not cause loss or damage to others persons or property—behaviour which would be permissible in most states in Africa. In a democratic order restrictions on fundamental freedoms, in particular through imposition of criminal penalty, must be required by exigencies of security, public safety, health or other clearly defined objectives relating to collective interest. The African Commission has itself called for the immediate amendment of “the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments”¹.

- The uncertain scope of offences: Sudanese men and women are unable to predict consistently what behaviour, either in public or private, may or may not attract the censure of the authorities. Early this year the journalist Lubna Hussein was convicted of the crime of “indecent or immoral dress” when she wore an outfit which is worn daily by millions of Khartoum’s female residents. Thousands of women are lashed or fined or imprisoned every year for contravention of the same ill-defined provision of the Criminal Act. The vague descriptions of public order offences in the Criminal Act and public order acts, tied to completely subjective standards of assessment both in law and in how the public order police is directed to enforce them, contravene the basic principle of legality in a democratic society and the right to liberty and security of the person as provided for in the African Charter.
- The arbitrary and discriminatory application of the law: The ideology underpinning the public order regime results in its disproportionate use against women and marginalised groups. In particular, different standards are applied to the behaviour of men and women in public and in private, violating a range of guarantees in the African Charter from the right to equal protection of the laws to non-discrimination or distinction in the enjoyment of rights. The result is diminished economic, social and political participation of women from all backgrounds in Sudan in public life.
- Enforcement of the public order regime by a police and judicial system lacking basic safeguards of due process and oversight: The public order regime enforces its prohibitions (primarily) through a specialised police force (the public order police) and special courts (the public order courts). The operation of these organs, both in law and in practice, violate a variety of basic rights in the Charter, including the right not to be arbitrarily detained, the right to have ones case heard, the right to a defence and to legal representation.
- The imposition of penalties which amount to prohibited treatment under the African Charter: The penalty of lashing, a common punishment for violations of the public order regime, is unlawful and contrary to the African Charter. In fact the African Commission has specially stated that the punishment of lashing as imposed in the context of the Sudanese Criminal Act 1991 (the principal statutory pillar of the public order regime) is contrary to Article 5 of the Charter: “[t]here is no right for [...] 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*

¹ *Curtis Francis Doebbler v. Sudan*, Communication No. 236/00 at paragraph. 44.

nature of this human rights treaty" (emphasis added).² Other penalties imposed under the public order regime may also be subject to the same assessment.

- The creation of state practice which constitutes gender based violence: There is a strong argument that many aspects of the public order regime and how it is implemented constitute **a state practice** of gender based violence as defined in the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (the Sexual Violence Protocol), a regional human rights instrument which Sudan not only signed but **ratified** last year. This serious matter must be must be urgently considered in the current program of law reform.
- The overall environment created by the public order regime itself which diminishes enjoyment of fundamental rights: The existence and operation of the public order regime as a whole restricts the full enjoyment of a range of other rights by women (and men) in Sudan from access to education to the right to freedom of assembly and political participation, to the right of every human being to "economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" (Article 22, African Charter).

RECOMMENDATIONS

Recommendations to the Government of Sudan:

As the Commission held in the first communication to be considered on its merits before the Commission on the general regime of detentions, torture and state of emergency in Sudan in the period post coup, ratification of the Charter, "obliges a State to diligently undertake the harmonisation of its legislation with the provisions of the ratified instruments".³ In order to bring Sudan into compliance with the provisions of the African Charter, and to contribute to an environment which permits a free and fair election, SIHA urges that Sudan:

- 1) Reform the Sudanese Criminal Act, 1991.
 - a. Remove from the criminal law offences which violate the principles of non-discrimination, legality, equality before the law and the equal protection of the laws, and, which by their definition, inappropriately restrict the exercise of fundamental freedoms.
 - b. Sections 151 to 156 must be subject to particular scrutiny.

² *Ibid.*, at paragraph 42.

³ See *Four communications case, op cit.*, at paragraph 40.

- 2) Reform the public order laws.
 - a. Criminalisation of behaviour which constitutes the exercise of basic personal freedoms—unless its prohibition can be shown to be necessary and proportionate in a democratic society—must end.
 - b. Civil law procedures and penalties can be used to govern regulation of many public order matters.
 - c. Provisions which restrict the right to work of women on the grounds of public order, either explicitly or implicitly, and in ways which violate the Charter, must be abolished.

- 3) Abolish the public order courts (POCs)
 - a. The summary procedures in operation before the POCs violate fair trial standards, the principle of equal protection of the laws and the right to liberty and security of person.
 - b. In reporting on its obligations under the International Covenant on Civil and Political Rights in 2007 to the United Nations Human Rights Committee, the Government of Sudan claimed to have abolished the public order courts. Sudan must now finally act on its own acknowledgement that these courts operate in violation of its international and constitutional obligations⁴.

- 4) Reform and consider the abolition of the public order police (POP).
 - a. Many in Sudan, and particularly women, perceive and experience the POP, not as guardians of community safety, but as feared and arbitrary abusers of their fundamental freedoms.
 - b. The Government of Sudan has itself acknowledged the existence of “abuse of powers or authority by some members of the police”. Efforts at reform to date, however, have been inadequate. Directives to the POP continue to encourage an unlawful level of discretion in their operation.
 - c. Reform of the POP must reflect and embody the basic principles and practice of just and rights-respecting policing in a democratic order, subject to independent oversight. This is an urgent aspect of police reform—and reform of the criminal law—as a whole in Sudan.
 - d. It may be that the history of the public order police and its embedded ideology render it impossible to reform the unit in the context of the need for a complete re-orientation of the basic principles of criminal law and law enforcement in Sudan to accord with constitutional requirements. Abolition of the POP may be the only way forward to recreate a bond of trust between the state, the police force as a whole, and the community.

- 5) Abolish penalties which violate the protections against torture in the African Charter:
 - a. The penalties of lashing and of stoning must be immediately removed from the penal framework.

⁴ See Consideration of reports submitted by States Parties under Article 40 of the Covenant, Third periodic report of states parties due in 2001, Sudan, CCPR/C/SDN/3, 10th January 2007, at paragraph 30.

- 6) Take measures to promote and encourage the engagement of women in the public sphere and redress the discrimination suffered by women.
- a. The Sudanese Interim National Constitution provides that the State “shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life” (article 15 (2)). It also commits the State to “promote woman rights through affirmative action” (article 32 (2)). Article 25 of the Charter further obliges States to promote and ensure respect for rights and freedoms through “teaching, education and publication”.
 - b. The public order regime expresses and affirms a view of women as having a fundamentally different role in personal, social and public life than men, with a consequent impact on women’s access to the equal protection of the laws. Reform of the POR must be accompanied by reform of those other realms of Sudanese law and policy which are infused with this conception, from labour law to the law regulating personal and family relations. All national legislation and policy must respect and reflect women’s human rights and the role and potential of women to contribute to national development.
 - c. National budgets must reflect the need to specifically alleviate poverty among women.
 - d. Those aspects of the national education curriculum which undermine women as equal in dignity and capacity, and which deny their participation and contribution to community, social and public life, must be removed.
 - e. New policies and laws must support more effective access by women to the national justice system, in a way which maintains their respect and dignity.
 - f. Training of law enforcement officers and the judiciary must promote a positive culture and orientation which emphasises respect for the rights and dignity of Sudanese women and girls.
 - g. A national dialogue on the role of women in Sudanese society should be opened.

Recommendations to the African Commission on Human and Peoples’ Rights:

In order to assist Sudan and the Sudanese people in achieving the full enjoyment by women and girls in Sudan of the rights protected in the African Charter, SIHA urges the African Commission to:

- 1) Take into account this submission on the impact of the public order regime on the rights of women and girls in Sudan in its:
 - a. consideration and preparation of observations in the context of its recent promotional mission to Sudan; and
 - b. consideration of the situation of human rights in Sudan during the examination of state reports in the next reporting cycle.
- 2) Request the Special Rapporteur on the Rights of Women in Africa, in line with Article 45 (1) b of the African Charter, and in furtherance of her mandate under Resolution ACHPR/rs.38 (XXV) 99, to:
 - a. call attention to the impact of the public order regime in Sudan on the human rights of women and girls; and
 - b. engage with the Government of Sudan to offer assistance in the development of law reform proposals which will ensure more effective promotion and protection of

the rights of women and girls in Sudan, particularly with respect to the public order regime.

- 3) Recall Sudan's obligation to implement the recommendations of the African Commission with respect to reform of the criminal law and enforcement mechanisms in Sudan, including those specifically relating to the operation of the public order regime which were concluded in the Communication *Curtis Francis Doebbler v. Sudan*.

About the Strategic Initiative on Women in the Horn of Africa (SIHA)

The Strategic Initiative for Women in the Horn of Africa (SIHA), is a network of civil society organizations from North and South Sudan, Eritrea, Ethiopia, Djibouti, Somalia and Somaliland. Founded in 1995 by a collection of women's groups with the view of strengthening their capacity, SIHA has grown over the years and is now comprised of 28 member organizations.

SIHA is advocating for social change and gender equality for men and women in the Horn of Africa and working specifically on: gender equality, eliminating violence against women and girls, promoting human rights, peace building and conflict transformation, enhancing women's leadership and political participation and production and dissemination of knowledge. SIHA's biggest campaign is on Violence against Women (VAW); this programme began in 2004 and will end in 2011. SIHA's other projects include: Women access to justice works on mapping women in the Horn of Africa means of access to the justice system , developing strategies and advocacy plans with members across the sub region, The SIHA research on the implications of custom and traditions on women rights is part of the SIHA's programme of documentation of knowledge as well SIHA research on the advocacy strategies against violence against women in the Horn of Africa as well as the documentation of the Somali women organisation work on conflicts Somalia. In Sudan SIHA works on women's rights civic education program working with community groups at the grassroots level in; Blue Nile, Nuba mountings and South Sudan Bahr Al Ghazal and Juba area ; SIHA's Darfur programme which tackles gender based violence and violence against women in the conflict torn region political participation.

The experience of SIHA since it was initiated strongly reflects the commitment of the founders of the network. Since its establishment SIHA has overcome many challenges. Identifying a country location in the Horn of Africa for the Network's Secretariat was one of the main obstacles in an environment where political disputes and stability dominate the politics of the region.

During the period of 2003 to 2006 SIHA managed to gain the trust of many international donors and to develop various programmes as well as to expand its membership.

As an indigenous network SIHA is certainly on the right track. The lessons we have learned from our past experience are: to be highly consistent with our objectives and vision, to directly link our work to the communities across the sub region - thus SIHA has been interested in working directly with groups who has constituencies on the ground, and bring the voices of women across the region to the main international and regional agenda.

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