



Sudan Law Reform Update

November-December 2010

Welcome to the eleventh issue of the Sudan law reform update. The Project for Criminal Law Reform in Sudan (PCLRS) provides this regular service with a view to informing those working on, and interested in, law reform and human rights of relevant developments. The update includes a comment on recent developments as well as a summary of the news (largely based on English language media sources) on law reform and other developments. It aims to serve as a platform for sharing of information, comments and opinions on any issues related to law reform and human rights in Sudan. This issue covers developments up to 21 December 2010.

Yours,

Lutz Oette

For further information, please visit our website at www.pclrs.org. Please contact Lutz Oette (REDRESS) at lutz@redress.org (Tel +44 20 7793177) if you wish to share information or submit your comments for consideration, or if you do not wish to receive any further issues of the update.

I. Corporal punishment and the referendum

The video showing the public flogging of a woman by two police officers in Omdurman (see links below) is a graphic reminder of the practice of corporal punishment in Sudan. For all the painful viewing, the surfacing of the video is a welcome development that casts the spotlight on a situation in which the police seemingly wields broad and arbitrary powers to punish and humiliate hundreds if not thousands of men and women each year (exact data on the extent of floggings is not available but anecdotal evidence suggests that it is routine practice). Legislation that sanctions such punishments, their routine imposition for a wide range of offences related to 'public morals' and their arbitrary execution have been of long-standing concern; the video encapsulates these concerns and triggered protests on the streets of Khartoum and elsewhere. The partner organisations responsible for the Project for Criminal Law Reform in Sudan (PCLRS) join the calls for an end to corporal punishment, which the project has identified as one of the areas in need of reform. Corporal punishment is incompatible with article 27 (3) of the Sudanese Bill of Rights and international standards binding on Sudan. Indeed, there is a growing trend to abolish this type of punishment in Africa and elsewhere. Significantly, Sudan itself has outlawed corporal punishment of children in schools and as punishment for offences in its recent Child Act but has yet to take the next step of extending this ban to judicial sanctions for adults.

Following the public protests and condemnation of the flogging, Sudan's President al-Bashir reportedly defended the practice and made remarks to the effect that Sudan will be fully governed by Islamic laws should the South become independent (see link below). This statement is of concern because references of this kind have been used at several times in Sudan's history to justify the imposition of harsh corporal punishments as a means of repression. It is particularly ominous for those who fall foul of perceptions of public morals and are therefore most at risk of floggings. This development reflects broader concerns as to whether the human rights protection provided for in the Bill of Rights will be honoured in future constitutional arrangements and practice, which includes respect for Sudan's international obligations.

Human rights treaty bodies have repeatedly highlighted the incompatibility of corporal punishment with international human rights law and called on Sudan to abolish it. The African Commission on Human and Peoples' Rights has already ruled on a case concerning the lashing of students in Khartoum under article 152 of the 1991 Criminal Act. In *Curtis Francis Doebbler v. Sudan* (236/00), the Commission held in 2003 that: "There 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." Having found a violation of article 5 of the African Charter on Human and Peoples' Rights (prohibition of torture), the Commission requested "the Government of 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; Abolish the penalty of lashes; and to Take appropriate measures to ensure compensation of the victims."

The UN Human Rights Committee, in its concluding observations on Sudan's state party report under the International Covenant on Civil and Political Rights, expressed its concern in 2007 that: "... the scale of values applied to punishment in the State party's legislation. It considers that corporal punishment including flogging and amputation is inhuman and degrading." It therefore recommended that "The State party should abolish all forms of punishment that are in breach of articles 7 and 10 of

the Covenant.” This recommendation was rejected by Sudan in its response to the Human Rights Committee in 2009: “...It [Sudan] views the penalty of flogging, which is carried out on condition that it does not cause excruciating pain or leave a mark and only after consultation with a doctor, as a much better option than the alternative, namely, imprisonment, which has social consequences and wastes employment opportunities. Moreover, flogging is not carried out in public.”

The flogging video illustrates the challenges ahead following the referendum and the end of the Comprehensive Peace Agreement (CPA) interim period in mid-2011. For all its apparent shortcomings, the CPA has provided an important framework in which to articulate human rights concerns. Civil society in the North, communities demanding equal rights and political forces open to reform will need to build on the progress made in a difficult political environment. The immediate challenge posed by the referendum from a human rights perspective is the prevention of violence and the protection of citizenship rights for Southerners living in the North. In case of the expected outcome of a vote for independence, the South will face a very different task of building a nation and a functioning state in which human rights can be guaranteed. Legal and institutional reform, including the envisaged constitutional review, will be particularly important in this regard.

Whichever the outcome, the referendum is a momentous event for Sudan and the region. It is also itself an important exercise of human rights, i.e. the collective right to self-determination. This exercise, and the multiple challenges following it, will need sustained and critical support by national, regional and international actors that is based on clear human rights standards and takes the plurality of Sudanese voices into consideration. The African Union in particular plays a critical role when engaging in this process. This includes the need to work towards implementing the recommendations of the AU High-Level Panel on Darfur and to ensure respect for the African Charter on Human and Peoples’ Rights and other relevant instruments in all parts of the future Sudan(s).

II. LAW REFORM

12th December 2010

Mbeki's report shows little success in implementing recommendations on Sudan
<http://www.sudantribune.com/Mbeki-s-report-shows-little,37250>

III. OTHER NEWS

Human Rights Situation

19th December 2010

Sudan's Bashir endorses lashing of YouTube woman, says North will transform into Islamic state
<http://www.sudantribune.com/Sudan-s-Bashir-endorses-lashing-of,37345>

19th December 2010

Khartoum criticizes UN independent human rights expert
<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR19Dec10.pdf>

18th December 2010

Sudan's security services arrest civil society activist after flogging protest
<http://www.sudantribune.com/Sudan-s-security-services-arrest,37335>

17th December 2010

UN rights expert urges trial or release of Darfur activists and journalists
<http://www.sudantribune.com/UN-rights-expert-urges-trial-or,37320>

14th December 2010

Over forty women arrested after anti flogging protest
<http://www.sudantribune.com/Over-forty-women-arrested-after,37282>

14th December 2010

Nada M. Ali, Sudan: Flogging and Harassment of Women Continue
<http://www.sudaneseonline.com/cgi-bin/sdb/2bb.cgi?seq=msg&board=310&msg=1292351191>

12th December 2010

VIDEO: Sudan's judiciary orders probe into video of woman being flogged
<http://www.sudantribune.com/Sudan-s-judiciary-orders-probe,37253>

12th December 2010

Police seek source of video showing girl being flogged
<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2012%20Dec%2010.pdf>

8th December 2010

Sudan men fined over "indecent" fashion show makeup
<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2009%20Dec%2010.pdf>

5th December 2010

Civil society organizations launch campaign for dual nationality
<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%205%20Dec%2010.pdf>

2nd December 2010

Women activists say changes to law and funding needed to fight gender violence
<http://www.sudantribune.com/Women-activists-say-changes-to-law,37155>

10th November 2010

Sudan urged to protect citizenship rights regardless of referendum outcome
<http://www.sudantribune.com/Sudan-urged-to-protect-citizenship,36889>

Referendum

21st December 2010

Sudan's SSRC working on response to legal challenge before constitutional court
<http://www.sudantribune.com/Sudan-s-SSRC-working-on-response,37354>

20th December 2010

Constitutional Court receives cases against government and the SSRC
<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2020%20Dec%2010.pdf>

19th December 2010

UN referendum panel begins third visit to Sudan
<http://www.sudantribune.com/UN-referendum-panel-begins-third,37332>

16th December 2010

UN and Carter center say South Sudan registration process was credible
<http://www.sudantribune.com/UN-and-Carter-center-say-South,37309>

16th December 2010

UNSC calls for peaceful and credible South Sudan referendum
<http://www.sudantribune.com/UNSC-calls-for-peaceful-and,37308>

14th December 2010

Sudan's constitutional court agrees to hear challenge against referendum commission
<http://www.sudantribune.com/Sudan-s-constitutional-court,37277>

11th December 2010

Pro-government body files lawsuit against Sudan's SSRC & SPLM
<http://www.sudantribune.com/Pro-government-body-files-lawsuit,37232>

10th December 2010

SSRC chief says constitutional court has no power to review voter registration
<http://www.sudantribune.com/SSRC-chief-says-constitutional,37223>

18th November 2010

NCP, SPLM agree on framework document to resolve pending issues – Taha
http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR_18_Nov_10.pdf

IV. DOCUMENTS

17th December 2010

UN expert on human rights in Sudan calls for release of detained journalists and human rights activists
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10602&LangID=E>

16th December 2010

Human Rights Watch, Sudan: Guarantee Post-Referendum Citizenship rights
Parties Should Protect Minority Communities, Allay Public Fears of Mistreatment

<http://www.hrw.org/en/news/2010/12/16/sudan-guarantee-post-referendum-citizenship-rights>

15th December 2010

Human Rights Watch, Sudan End Lashing, Reform Public Order Rules
Arrest of Women's Rights Activists, Flogging of Woman Violate Basic Rights

<http://www.hrw.org/en/news/2010/12/15/sudan-end-lashing-reform-public-order-rules>