

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Independent Expert on the situation of human rights in the Sudan; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA Sudan G/SO 214 (53-24) G/SO 214 (89-15)
SDN 9/2013

29 November 2013

Excellency,

We have the honour to address you in our capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Independent Expert on the situation of human rights in the Sudan; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 24/28, 16/23, and 23/25.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Ms. **Najlaa Mohammed Ali**, a lawyer and human rights activist; and Mr. **Amin Senada**, a human rights activist, who are allegedly at risk of corporal punishment of up to 40 lashes for riding in the same car.

According to information received:

On 21 October, Ms. Najlaa Mohammed Ali and Mr. Amin Senada were arrested by members of Sudan's police and security forces who raided their car in Port Sudan.

It is reported that Ms. Ali and Mr. Senada met to discuss the planning of a workshop, and after their meeting, got into a car Ms. Ali had used to get to their meeting point. During the journey, their driver allegedly received a phone call and stopped the car to answer it. Minutes later, two armed men reportedly approached the vehicle claiming to be from Sudan's Public Order Police, followed by another six men from the police and security forces.

Mr. Senada was reportedly first accused of placing his hand on Ms. Ali's shoulder and, based on this, they were both ordered to come to the Police Public Order Department, as well as threatened to be taken by force if they refused.

It is reported that once at the Police Public Order Department, the arresting officers also claimed they had found Ms. Ali and Mr. Senada kissing in the car.

Ms. Ali and Mr. Senada were allegedly both charged with 'indecent behaviour' under Article 152 of Sudan's 1991 Criminal Code. Article 152 states: "(1) Whoever commits, in a public space, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping, not exceeding forty lashes, or with a fine, or with both. (2) The act shall be contrary to public morals if it is regarded as such according to the standard of the person's religion or the custom of the country where the act takes place." The police reportedly refused to release them on bail, and they were only allowed to leave the next day.

According to information received, Ms. Ali and Mr. Senada's trial was scheduled to take place on 13 November, but the hearing was postponed by a judge, in order to give the court more time to consider the case. If convicted, both would be at risk of being flogged with up to 40 lashes in line with Article 152.

Serious concern is expressed regarding the physical and psychological integrity of Ms. Ali and Mr. Senada and information indicating that they could be sentenced to up to 40 lashes if found guilty.

Furthermore, we express our concern regarding the existence of legislation that permits corporal punishment, and the devastating consequences that such violence has on the physical and psychological integrity and well-being of those who suffer it. An urgent appeal expressing our concerns in this regard was sent to your Excellency's Government on 6 November 2013 by the the Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; the Independent Expert on the situation of human rights in the Sudan; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences. We regret that to date, no response has been received on this urgent appeal. Moreover, in the light of new information received, it is of concern that this is not an isolated event, and that the public flogging, particularly of women, is a continuing practice in the country.

Without in any way implying any determination on the facts of the case, we wish to make reference to paragraph 7 (a) of resolution 8/8 of the Human Rights Council which reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated

that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.

In this context, we would also like to draw your Government's attention to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's report to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of the human rights treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para.28).

Likewise, his report to the seventh session of the Human Rights Council, (A/HRC/10/44 paras. 35 - 37 and Corr.1, para. 38; 14 January 2009) states that "since corporal punishment in all its forms, as a judicial or criminal sanction, whether imposed by State authorities or by private actors, including schools and parents, has been qualified by all relevant intergovernmental human rights monitoring bodies as cruel, inhuman or degrading punishment, it follows that, under present international law, corporal punishment can no longer be justified, not even under the most exceptional situations. Already in 1988 the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that "[...] the fact that these sanctions are accepted under domestic law does not necessarily make them "lawful sanctions" in the sense of article 1 of the Convention against Torture [...] It is international law and not domestic law which ultimately determines whether a certain practices may be regarded lawful." (E/CN.4/1988/17, paras 42-44; 12 January 1988).

We also make reference to the decision of the African Commission on Human and People's Rights in *Frances Doebbler v Sudan*, regarding the application of Article 152 of Sudan's Criminal Code. The Commission found that the lashing applied by the Sudan under article 152 was in violation of article 5 of the African Charter on Human and Peoples' Rights which, similar to article 7 of the International Covenant on Civil and Political Rights, prohibits, inter alia, torture, cruel, inhuman and degrading punishment and treatment.

The offence of modesty and the penalty of flogging are disproportionately used to punish women. We would like to bring to your Excellency's government's attention article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. We also recall article 4 (b) of the Declaration which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end,

should refrain from engaging in violence against women. Article 4 (c & d) of the Declaration also notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

We would also like to recall that, as a State Party to the International Covenant on Civil and Political Rights, acceded to by Sudan in 18 March 1986, your Excellency's Government has undertaken to ensure equality between men and women in the enjoyment of all civil and political rights, including the right not to be subjected to torture or to cruel, inhuman or degrading punishment.

Finally, we wish to make reference to the Report of the Special Rapporteur on violence against women, its causes and consequences, to the 20th session of the Human Rights Council (A/HRC/20/16). In the report, the Special Rapporteur reflects on corporal punishment of women and girls and its links to the control and limit of their freedom of movement, freedom of association, as well as their personal and sexual choices. She notes that punishment usually has a collective dimension, and is public in character, as the visibility of the issue also serves the social objective of influencing the conduct of other women. In this sense, the Special Rapporteur recalls the due diligence obligations of States to modify the social and cultural patterns of conduct of men and women and eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Ali and Mr. Senada, in compliance with the above international instruments.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide information on the measures taken to ensure the safety of Ms. Ali and Mr. Senada.

We undertake to ensure that your Excellency's Government's response is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee the rights and freedoms of Ms. Ali and Mr. Senada and to ensure that all charges against them are immediately and unconditionally dropped, as these violate Sudan's obligations under international human rights law.

We would further like to reiterate our call to your Excellency's Government to engage in a comprehensive review of the provisions of Sudan's 1991 Criminal Code with a view to removing all provisions that discriminate against, or have a discriminatory impact on women, including article 152, in conformity with its obligations under international human rights law. We further reiterate our previous encouragements to your Excellency's Government to consider ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Please accept, Excellency, the assurances of our highest consideration.

Frances Raday
Chairperson-Rapporteur of the Working Group on the issue of discrimination
against women in law and in practice

Mashood Baderin
Independent Expert on the situation of human rights in the Sudan

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences