

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
SDN 5/2015:

16 July 2015

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, 27/29, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **arrest of 12 female students and charges against ten of them for "indecent dress"**, under Article 152 of Sudan's 1991 Criminal Act.

According to information received:

On 25 June 2015, the Public Order Police arrested twelve female students between 17 and 23 years old, all Christians, originally from the war-torn Nuba Mountains in South Kordofan State. They were taken by Police at 10 p.m. in front of the Evangelical Baptist Church in Khartoum North, where they had attended a ceremony, and were brought to a local police station in Khartoum North. At the time of their arrest, some were wearing trousers and others skirts. It is reported that the Police subjected the students to degrading treatment and humiliating verbal abuse during their detention. Two of the students were released about four hours after their arrest. The ten others were released on bail at around 10 a.m. on 27 June 2015 but charged with "indecent dress" under Article 152 of Sudan's 1991 Criminal Act which gives the Police extensive powers to arrest any person under that ground. The punishment, if they were to be found guilty, is 40 lashes, or a fine, or both. In practice the law has been reported to be used exclusively against women.

These 10 women were taken to court on 28 June 2015 where the charges against them were confirmed and court dates set. One student, Fardos Al Toum, 19, appeared in court on 6 July 2015, wearing another dress deemed indecent by the judge who, disregarding any due process, immediately sentenced her to a fine of 500 Sudanese pounds (\$83) or a month in prison. Her fine was paid by human rights defenders and she will appear in court again in relation to the original charge. Another student, aged 17, appeared in court on 7 July 2015 and, because of her age, was transferred to a Juvenile Court. The following nine students, Fardos Al Toum, [REDACTED], Rehab Omer Kakoum, [REDACTED] – have appeared or will appear in court on 9, 13, 16 and 17 July according to their lawyer.

While we do not wish to prejudge the accuracy of these allegations, we are very concerned at the physical and psychological integrity of the ten women arrested, both with regard to the allegations of degrading treatment and humiliating verbal abuse in detention, and to the allegations that they face the risk of being sentenced to up to 40 lashes and/or fines if found guilty. We would also like to express our serious concern that the offence of modesty and the penalty of flogging are disproportionately used to punish women and that the public flogging of women is a continuing practice in the country.

Furthermore, we reiterate concern expressed in communications JUA SDN 8/2013 and JUA SDN 9/2013 with regard to the existence of legislation that permits the corporal punishment of women, and the devastating consequences that such violence has on women's physical and psychological integrity and well-being.

In this regard, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified, inter alia, in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Sudan signed on 4 Jun 1986. We recall that, as a State Party to the International Covenant on Civil and Political Rights, 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. Furthermore, 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.

We would also like to bring to your Excellency's attention articles 1 and 4 (b) of the United Nations Declaration on the Elimination of Violence against Women 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. In that respect, we note the statement by the Special Rapporteur on violence against women, its causes and consequences, at the end of her visit to Sudan in May 2015, through which concern was raised that article 152 of the Criminal Law on 'indecent behaviour' has a disproportionately negative impact on the lives of women and girls. 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 the Sudanese Criminal Law of 1991. The Commission found that the lashing applied by the Sudan under Article 152 for alleged "indecent and immoral dress" was in violation of Article 5 of the African Charter on Human and Peoples' Rights which, similar to Article 7 of the ICCPR, prohibits, inter alia, torture, cruel, inhuman and degrading punishment and treatment.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 the above-mentioned person(s) in compliance with international instruments.

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:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case.
3. Please provide information on the measures envisaged to ensure that Sudanese legislation is in compliance with international human rights law and in particular, including the repealing of Article 152 of the Criminal Code and the abolition of the penalty of flogging, which violates the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of and to ensure that all charges against them are immediately and unconditionally dropped.

On the long-term, we would also encourage 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 Your Excellency's Government obligations under international human rights law. We further reiterate our previous encouragements for your Excellency's Government to consider becoming a State party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

We might decide to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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discrimination against women in law and in practice

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