



Sudanese Public Order: A law designed to control people, not protect morality.



9 May 2019

Abstract

Since 1989, Sudan has witnessed a new era (under Inghaz Government) which based its rule on the philosophy of Political Islam, which introduced the so called "civilization project" as a political manifesto. The civilization Project aimed to enforce the 'Islamic religious State'. Religious state contradicts the cultural, social, historical and ethnic components of Sudanese society, which is characterized by pluralism and diversity, what questioned its legitimacy. The Civilization Project imposed through the rules of the Public Order as one of the supporting levers to enforce the project through the mechanisms of oppression, prevention and the separation between what has been firmly established as part of the conscience of Sudanese, Sudanese community is structurally contrary to the concept of political Islam. The norm it intends to introduce is enforced by expansion of the scope of corporal punishment (Hudod). In particular, the Public Order Law aimed to replace the historically existed cultural, social, religious and justice system that the society has been observing through established mechanisms based on social norms rather than criminalization and imposition of legal punishment. The imposed system contradicts the conscience of society which act as the "community judge". The inherited common norms gain legitimacy and power to determine the punishment on basis of common acceptance and approval.

In view of the basic objectives of the Public Order Laws, it's aim is to force the Sudanese to accept and subject to the civilization project, by aliening with the authority or by accepting its legitimacy through silence or avoid its oppression. The Public Order Law is ideologically based on the slogan that it aims to " Reformation of Sudanese Society". It defines the ruling power as more than legal system, but as mission aimed to the preservation of the public interest of the Sudanese and impose deterrence of wrong doing. The Pubic Order Law consist of a mixture of legal texts that were taken from the Sudanese Criminal Code of 1991 along with texts derived from "local orders". The penalties were limited to corporal punishment "lashing" and a fine in addition to prison as alternative punishment.

Upon studying the application of the public order laws, it revealed that there is a systematic targeting of women in the public space, through the trappings which is encouraged by the legal provisions. From legal perspective, the Public Order Law constitute a violation of Sudan's international, regional and national obligations of human rights as it enforces "special laws" which is enforced by police and courts in a summary manner that causes systematic violation of fair trial standards.

This practice has always resulted in a violation of right to privacy, freedom of expression, organisation and movement, as well as the fact that these laws represent "arsenals" impede the application of safeguards to protect women against gender based violence.

Methodology of the report

The methodology of the report applies analytical approach to the provisions and application of the public order in light of Sudan's international and regional human rights obligations, as well as highlight cases that have been brought before the law enforcement agencies in Sudan, including cases brought before Public Order Courts. The report also underpins the proceedings to concenter observance of international and national laws in the application of law and principles of fair trial its standards.

The report relied on primary sources including information obtained from human rights activists and Sudanese civil society organisations, as well as documents issued by official bodies such as the Sudanese judiciary. The report has also relied on secondary sources such as the Sudanese newspapers and electronic newspapers.

The legal framework:

Sudan's international and regional obligations:

Universal Declaration of Human Rights Article 10: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.¹ Article 11 (1 and 2): (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

International Covenant on Civil and Political Rights: Article 4 (paragraphs 1 to 7):² 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security.

African Charter on Human and Peoples' Rights: Article 7, 1. Every individual shall have the right to have his cause heard. This comprises:³

National legislations:

The Interim National Constitution. Article 27 Bill of Rights.⁴ Article 34 Fair Trial subtitles (1) an accused is presumed to be innocent until his/her guilt is proved according to the law. Article 3 In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by an ordinary competent court of law in accordance with procedures prescribed by law. Article 35 The

¹ Universal Declaration of Human Rights, Article (10)

² International Covenant on Civil and Political Rights Article (4)

³ The African Charter on Human and Peoples' Rights: Article 1,7.

⁴ Universal Declaration of Human Rights, Article (10)

right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice. Article 37 The privacy of all persons shall be inviolable; no person shall be subjected to interference with his/her private life, family, home or correspondence, save in accordance with the law.

Sudan's Code of Criminal Procedure 1991: Article 83 Treatment of the arrested, 83 (1) The arrested person shall be treated in a way that preserves human dignity...)⁵

The concept of public order

The concept of public order is generally reflected in the common legal rules as norms aimed at achieving the general interest of society. The public interest is based on achieving balance in society in order for the individual to exercise his or her rights in a way that does not interfere with the exercise of others rights, which is based on a framework of rules that helps to stabilize life and practice of rights in public and private space. Therefore, the public legal rules relating to public order were peremptory and could not be violated.

The difficulty to precisely define the public order is connected to the fact that it is flexible rules, in the sense that it is a relative idea that changes according to place and time. It differs from one society to another and from time to time in one society.

The Sudanese Public Order Law consist of a combination of provisions drawn from the Criminal Code of 1991 as well as from local orders that were imposed by the Sudanese legislatures which reveal in its general sense the ideological motivation behind its promulgation and enforcement. It reflects the desire of the ruling authority to enforce its narrow definition to social values, aiming to control public and private space to maintain its political objective. Corporal punishment is imposed as penalties for violating these provisions and enforced in a manner that violates the privacy of people. The law criminalized the public life in both private and public space by presenting patterns of behavior that should not be violated and limitations that should be observed. The public rejection of the Public Order Law by the Sudanese people in 1994 at the beginning of the application of Public Order Law, was based on the stance that, the values of public life of the Sudanese society doesn't need legislation to be observed as it historically observed without law.

Historical background of cruel punishments in Sudan

The historical background of the Cruel punishment in Sudan, goes back to the legislations enforced in the era of pre-independence and post-independence, laws were promulgated in the period of the Mahdist state (1885-1898), which was based on Islamic law. The cruel punishment was introduced such as lashing. In (1898-1956), the cruel punishment applied under colonial domination legal

⁵ Article (83) of the Code of Criminal Procedure of Sudan 1991. Treatment of arrested person.

authority and continued in the post-independence law of 1974 as an extension of its predecessor of 1925 Act.⁶

Public Order Law

Public order law is similar to the laws of (Alamr Bil-marof Wal-nahi An Al-munkar) ‘Promotion of Virtue and Prevention of Vice’ of 1983, which was one of the laws issued in conjunction with the legal changes enforced under the name of the of Islamic Shari’a law. These laws are widely known as “September Laws of 1983” The preamble of the law,⁷ which contains "11" article introduced the new state jurisdiction. The law was politically motivated as evidenced by the installation of the late President Jafar Mohamed Namir as Imam of Muslim’s Umama.

The law was adopted in a discriminatory manner by referring to Islamic Share'a as its sole source thus, limited the powers of its interpretation and implementation to the Islamic clerics. The provisions of the law has exposed the political objective of the ruling regime. For instance, Article 2 of the law stipulates that "obedience to the guardian, as long as he obeying God and implementing Share'a"⁸. Article (4) stipulates that the only source of legislation and behavior is the Quran⁹, what opened the door to the violation of privacy and confine human behavior within a religious framework that aim to protects the president (Article 4 forbade anything that contravenes the provisions imposed by God or causes injury or harm to the individual or group or to any of its meaning. The provisions of the law were made loose to ensure their grip on the public space such as the text of Article 4/2 / e (not to undermine the public street or public places in any form).

After the law was passed by the legislator, as a religious text, it gave the political authority the political powers in addition to the clerics (guides, imams of mosques, sheikhs of al-Khalawi and the Sufi sheikhs) became guardians of behavior and the public street. They were given powers to impose and determined pattern of due orders and acts of abstention. The law did not include penalties. Article 5/1 states that "the matter of virtue and forbidding evil must be done with wisdom and good advice."¹⁰ The Hudod crimes were exempted and ordered the public to report it with consideration to avoid espionage or intervene on the freedoms of others.

The historical background of the public order:

The year 1994 marked the beginning of the enforcement of the Public Order Law in Sudan, as written texts. The implementation of the Public Order Law varied from state to another. The Public Order Law was first announced in the state of South Darfur in 1994¹¹. It is worth noting that the

⁶ No more cracking of the whip: Time to end corporal punishment in Sudan, The Redress Trust , Project of Legal reform in Sudan. www.pclrs.org. <http://www.pclrs.com/downloads/Corporal%20Punishment%20-%20English.pdf>

⁷ Law on the Promotion of Virtue and Prevention of Vice-Sudanese in 1983

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Monitoring the development of the Public Order Court in Nyala, South Darfur

court in South Darfur State used to hold its sessions in public places, in the Red Sea State, eastern Sudan, the law came into effect on 4 December 1995. The law was amended twice, first on 4 April 2005, and on 22 July 2005, where the name was also amended to be The law of the Community Security. In Kosti State, the Public Order Court was established on 20 August 1995. This Court was an extension of the Court of Emergency, which was established on July 30, 1989, to deal with cases related to price violations' in 1991. In addition to applying local orders,¹² The General Law of the State of Khartoum was promulgated in 1996.¹³

The nature of public order laws

As explained earlier, the laws of the public order represent a mixture of texts that have been selectivity taken from other criminal legislations. There is no legal justification for this selectivity. For instance, some of the texts of Chapter II, "Consumption of Alcohol in Public), (Gambling) and some of the provisions of Chapter 3, "Food, drinks and medicine and public morality and reputation crimes " of the Sudanese Criminal Code 1991 in addition to texts of local orders authorised by the state legislatures,¹⁴

The public order courts consider cases in summary manner, which violate Article 27 of the Bill of Rights of the Sudanese Constitution of 2005, which provides for the right to a fair trial, which is denied by summary trials. The Public Order Law is enforced along with existence of the Criminal Law of 1991 which is the statute law that has the primary jurisdiction. In the daily practice, a person may be subject to trial before public order court while another person facing the same charges is tried before a competent criminal court which apply fair trial standards in contrast to Public Order Court.

On the substance, the local orders which are part of the Public Order Law violate the human rights standards, for example, article 15/2 of the Public Order Law of the Khartoum State of 1996 restricts ownership of women's hair dressing shop to older women. It stipulates that "the shop must be run by a woman who is not less than thirty-five years old"¹⁵ which is a violation of both the Constitution and the Criminal Code by violating the freedoms it guaranteed and regulated.

The political Objectives of the Public Order Law

The historical background of the rules of Public Order Law is characterized by the practice of raid arbitrary arrest, stop and search, property and house search, violation of the rights of detainees, summary trials, intimidation, financial exploitation through fines and confiscations. These characteristics, reveals the common nature of the Public Order Law which aim to achieve the political goals of the ruling authority, that is striving to control the behavior of women and men in

¹² Information obtained by the ACJPS.

¹³ Issued by the Legislative Council of Khartoum, "State Law No. 5 of 1996

¹⁴ As pointed that the nature of the Public Order Law is a state law issued by the state legislatures.

¹⁵ Article / 15/2 of the Public Order Law of the State of Khartoum 1996.

their private and public lives. In the sense that the Public Law in Sudan is consistent with the ideology of “Islamization of the society”, which require reinforcing the rule of political ideology.

The Public Order Law advocates the necessity of the law to preserve chastity and virtue and preserve the individual and society according to the perceptions of the state "the ruling regime". The objectives can be summarized in the following points:

Monitor and control people’s behavior in the public space:

The political ideology of the ruling party aimed at applying the model of the Islamic religious state, based on the application of texts that specify the allowed behavior that men and women could exercise in their personal and public lives and subject them to censorship and control by law¹⁶

The law aims to limit all perceived resistance to political power. It suppresses people by making the public street a precarious place. It exploits its political and religious power, which encompass cultural, social and economic which it uses to control the ordinary people’s life. The personnel entrusted to enforce the Public Order Law including police officers, prosecutors and judges are exercising the legal control. The Public Order Law represent the criteria uses to determine allowed and prohibited acts in public space. It determines conditions and "barricades", which have reached the point of forcing women to disappear from the public life, due to the prohibitions surrounding the public street which became precarious area. For women to go on the street, they should carry official documents issued by the state such as marriage document, birth certificate to proof that they are not out to break the Public Order Law.

Restrictions against political dissents:

The inclusion of some articles of the Criminal Law of 1991 under the jurisdiction of the courts of the Public Order Courts is intended to restrict the freedom of expression, organisation and association. Both law and practice are jointly intended to associate the exercise the fundamental rights with the commission of crimes against the state, such as of disturbance of public safety. These restrictions have proved its effectiveness to limit freedom of expression, association and assembly. The legal restrictions are manifested in denial of the right to fair trial, subjecting people to arbitrary arrest and corporal punishments. The selection of specific articles of the Criminal Code of 1991 to be used by the Public Order Courts has been pursued to serve the political objective of impediments to the enjoyment of the recognized international human rights and the national constitution of 2005 and its Bill of Rights. In such environment, most of accused are subjected to the "templates" trials that end with the enforcement of immediate corporal punishments or fines.

¹⁶ Strategic Initiative for Women in the Horn of Africa (SIHA): Beyond Trousers: The Public Order law and the Rights of Women and Girls in the Sudan, a research paper submitted to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, Gambia, 12 November 2009. Strategic Initiative for Women in the Horn of Africa SIHA.

Public oppression of those who work in the public street:

This report will focus on particular groups that subject to disproportionate enforcement of the Public Order Law which is:

The first group: defined by the International Labor Organization (ILO) as workers in the informal economic sector.¹⁷ These groups represent in the case of Sudan the victims of State neglect, including those affected by lack of development, imbalanced development, and lack of basic services and victims or survivors of armed conflict. This category faces regular administrative campaigns organised by a special police forces to carry out local orders and refer them to the courts of Public Order Law, where they are either punished by imprisonment or fines beyond their capacity, what render them to languish in prisons for prolonged periods. These sorts of oppressions serve the objectives of the political system, which aim to keep them unable to stand for their rights including political, economic and calling for justice and rule of law.

The second group “beggars”:

They are requested by the Public Order Law to obtain Identity Cards, issued upon payment of fee. This measure aims to control their movements and keep them away from the public street. They also subject to intimidation by the security forces which, recruit them to serve as sources of information. The security forces order them to track people and monitor the movement of political activists, the demonstrations, besides being subject to various forms of exploitations. Some are recruited to work in military, especially children and boys above 18 who are classified as homeless, some of them are subject to sexual abuse in places where they are forced to sleep at night in the markets areas.¹⁸

The third group the general public:

The control of the public is done by sever and continuous oppression and disproportionate violence in the public street exercised by the Public Order Police to curb protest against the government in addition to local orders which require the public to obtain written permission to organize cultural activities or a concert.¹⁹ Dancing in concerts is prevented based on the criteria of political Islam to determine which sort of dance is allowed²⁰. The haircut styles are also subject to political Islamic criteria that criminalize specific haircut styles specially, those preferred by women and men the same way.

¹⁷ Informal Economy, International Labor Organization ILO , <http://www.ilo.org/employment/units/emp-invest/informal-economy/lang--en/index.htm>.

¹⁸ This is common practice enforces by the Public Order Police in some states by assembling homeless children at night in places designated to keep them under their supervision.

¹⁹ Article 6 of the Public Order Law of the State of Khartoum 1996, which prohibits the public to held any "special concert" only with the approval of the authorities and the notification of the Public Order Police.

²⁰ Article 7 (1) states that "Any person who intend to organise a concert must observe the following rules, paragraph (b) is (not to allow mixed dancing between women and men or to allow women to dance infront of men).

The forth group: “women”:

Women are subject to persecution as part of the society. However, women are subject to disproportionate suppression in contrast to other groups. The report will give special consideration to the sorts of persecutions women faces under the Public Order Law. While was speaking at a workshop held at the Grand Hotel de Ville, Ms Al-Fadil, stated that “the Public Order Law should be amended because it is used against women”.²¹ The targeting was based on religious and political ideology aimed at separating women from men in public space through loose accusations such as indecent dressing. In October 2018, Sudanese singer, Ms. Muna Majdi Salimat was arrested by the public order police of Khartoum and charged with indecent dressing under Article 152 of the Criminal Procedure Act 1991. Ms Muna’s charge was based a photo, anonymously posted on social media that showed the singer wearing a trouser and a white long-sleeved blouse²². Women accused of committing sexually provocative walk, indecent dance where targeted by police and administrative campaigns in public places. On the hand, they continued to be targeted in private places, for example, vague definition of prostitution as illegal mix of women with men in one private place, making or dealing in alcohol and singing in concerts without license. In view of the Sudanese political, economic and social unbalanced development and lack of development, all of these factors contribute to conflict as central government tend to resolved conflicts by military interventions specially when it turned to political and armed movements claiming a share of wealth and powers. The impact of conflict and economic crises is manifested in a steady increase in the numbers of women employed in occupations performed in streets due to poverty. The government intervention came under pretext to organise their work but, it ironically exploited them for financial gain that goes to government departments.

Targeting of women and men has been carried out with political planning. This plan goes back to 1989, where specific seats were designated for women in public transport in an attempt to separate them from men and at the same time to inflate the idea of sensitivity around women body, which government uses to justify restriction to their presence in the public life. Such policies were meant to associate women with weakness and advocate disparity between men and women. Working women are forced to wear uniforms called "Islamic dress", which may not be commensurate with the nature of many professions they perform. This led to classification of work and determines types of work that women should do and what not do.

Women were banned from work in markets, public fuel and service stations while allowed to perform hard work such as work in the field of construction or bricks manufacturing, these policies

²¹ Bashir regime is moving to amend the Public Order Law and says: 88 articles need to be amended to harmonize with international conventions and Sudanese laws to guarantee all rights, Al-Rakubah electronic newspaper, April 3, 2012.

²² ACJPS, Sudan charges a female musician for indecent dressing based on a social media post, 25 October 2018, <http://www.acjps.org/4795/>

are intended to consolidate the structure of difference but did not care about women. It requires separation on bases of sexes for political purposes, "If the Public Order law, genuinely claims to be based on Islamic slogans, it is necessary to emphasize that the cultural values governing the general popular behavior, and what is required to be expressed, are not based on the "legitimacy of power" existing in purely authoritarian self-assessments, but rather on the "legitimacy force" in the Muslim mind, "says ustaz Kamal Jizouli²³

Public Order Law and it's enforcement

The Public Order Law enforcement can be viewed as developing phenomena which experienced gradual changes in term of its implementation. Fourteen years after the date of its enforcement, it is possible to observe that the behavior of the Public Order Law enforcement have reached its expected stage of corruption. Corruption became a new dimension in the way they perform their roles as they focus on their personal interest in enforcing the law. In conjunction with serving the objectives of the political power, some of the law enforcement may not be of the ideological link to the authority, but their financial interests are linked to the authority. To study these changes the report will look at the historical background of the developments let to these stages:

From 1989 to 1999, the ruling party in Sudan applied the so-called dismissal for public interest, the regime's term for "arbitrary dismissal" of non-loyalists of the ruling party. Thousands of civil servants were dismissed and loyalist appointed to replace them, in particular in the Ministry of Justice and the Sudanese judiciary. In this period, the family law judges are the preferred to remain in the judiciary. This period defined in the Sudan politics as "the period of empowerment", it was associated with "appointment" or access to employment restricted on the condition of belonging to the ruling party beside other conditions such as engaging in fighting in the civil war in Southern Sudan at the time "Jihad"

The second period began after 4 April 1999, the period of the spilt of the ruling party. In this period, the employment opportunities were restricted to the political loyalty and tribal influence of the leaders of the ruling party of the Islamic movement. These political developments manifested in the lack professional and independence of the law enforcement. Wide political immunity replaced the laws in order to ensure far control.

In the period 2005 to 2009, the period of the Comprehensive Peace Agreement between the ruling party and the Sudan People's Liberation Movement (SPLM), the new rulers abandoned criteria of "competence, professionalism and experience against the background of political quotas such as holding the posts of the Sudanese Constitutional Court, these changes in practice reflected the political will of the ruling party in violation of the principles of integrity, independence and justice.

²³ In the political economy of the Public Order Law of 1996 Model, Kamal al-Jazuli Newspaper of the Huriat electronic Newspaper, : Articles n 24 July 2013

In practice, it has considerable impact on the level of respect to human rights, fair trial standards, lack of attention to allegations of torture, and the spread of death sentences in political trials.

Public order and the rights of non-Muslims

The Public Order Law of the State of Khartoum, issued in 1996, included 4 Articles that constitute explicit violations of the rights of non-Muslims,²⁴ it restricted ‘the access to services in public places’, in manifestations of discrimination indicating the predominance of the Islamic religion over the other religions. Article (21) provided that ‘It is not permissible to open shops in the time of Friday prayers’, where the text of the article stipulates (shops may not be opened or sell between 12pm and 2 pm on Friday). Article (24) stipulates: (The owners of restaurants or buffets and cafeterias and anyone who works in the sale of food or drink may not work during the day of Ramadan). Article (25) stipulates that ‘it is not permissible to issue commercial licenses for shops or commercial places if it is incompatible with values, customs and beliefs. Article 26 stipulates penalties imposed by law in case of violation of any provisions of the law ranging from imprisonment to five years - fine or two penalties together - lashing - confiscation of tools used in the violation - withdrawal of license or closure of the shop for a period not exceeding two years.

Public order and refugee rights

In view of the situation of refugees in Sudan, there are large numbers of refugees’ sneaks to the cities due to poor services, care and protection in the camps. As camps are subject to Public Order campaigns, trafficking gangs, human trafficking, enforced displacement of asylum seekers, refugees work in restaurants and coffee shops. These places have become subject to systematic campaigns that end with arrest and trials, where they face punishment with big fines.²⁵ On the other hand, weak protection and illegal status sometimes make women vulnerable to exploitation. In some cases, such as in big cities and capital Khartoum, refugees are subject to monthly payments to ensure police protection or to be informed of the time of campaign to avoid them.²⁶

Vague scope of the crimes

The courts of public order have consistently enforced Articles 152 (violation of public morals and scandalous acts)²⁷ article 155 (management of prostitution place)²⁸, in view of those articles, which included broad wording, it appear that it aim at opening the door to violation of privacy and private places by interfering in the style of dress and as there is no precise reference to what is meant by the prostitution referred to in the article, it is subject to perceptions related to the Islamic religion

²⁴ Articles 21, 24, 25 and 26 of the Public Oredr Law of the State of Khartoum for 1996.

²⁵ In some jurisdictions, some courts have imposed high penalties on foreigners. In the case of the conviction that (shisha) has been provided to the public, the "narghile" has reached a fine of 5000 Sudanese pounds, equivalent to the 200 US dollars.

²⁶ One of the aspects of the Public Order Corruption

²⁷ Indecent and scandalous acts, Article 152 of the Sudanese Criminal Code 1991

²⁸ Management of prostitution, article 155 of the Sudanese Criminal Code 1991

and left to be interpreted and identified by the police and the prosecution who act as legislator in that sense. The interpretation is based mostly on the ideological views of the ruling authority, which allow what it perceives as Islamic dress (Hijab) and prohibit everything else, such as trousers considered as indecent dress, it determines the dress code and behavior. The provision has allowed the law enforcement of the Public Order Act to represent the community and determine what constitute violation of its values. Article 152 (violation of public morals and scandalous acts), (1) Any person who commits in a public place a behavior that is scandalous, or immoral, causes annoyance to the public, is punishable by whipping not more than forty lashes or a fine or both. (2) The act shall be deemed to be violating public morality if it is also in the criterion of the religion of the actor or the country in which the act occurs. Article 155 provides for "the management of prostitution", (1) Whoever manages a place for prostitution or rents a place or permits its use, knowing that it will be used for prostitution, shall be punished by lashes not exceeding 100 lashes and imprisonment for a period not exceeding five years, the place may be closed or confiscated. Offender who convicted for a second time under the provisions of section (1) shall be punished by flogging not exceeding one hundred lashes and imprisonment for a period not exceeding ten years with the confiscation of the shop. (3) If the offender is convicted for the third time, he shall be sentenced to death or life imprisonment with the confiscation of the shop. (4) Shop shall not be confiscated unless the offender is the owner of the shop or the owner knew it is used for that purpose.

Considering the wording of the Article, it aims to separate men and women in public life, the article can apply to private places as well including any assemblies in cars etc. The wording of the article gave the law the right to violate privacy by imposing vague discretions.

In the continuation of the legal irregularities and loose wording of crimes, the public order courts have begun to punish people for acts which is not criminalized such as 'waiting for the sunrise' by the bank of the Nile River in Khartoum. On March 13, 2018, the Court of public Order in Omdurman sentenced 12 young men and women to three months in prison and fine of 5000 Sudanese pounds. The young people were arrested when they were sitting by the Nile bank near the suburb of Berry in Khartoum, where they were convicted under Article 152 of the Criminal Code. The convicted are university students who stated that they were arrested by the police when they were sitting by the Nile bank as they celebrated finishing final exams.

Treatment of people arrested by police:

In view of the treatment of the detainees which is stipulated in the criminal law and its procedures of 1991 and practice, the irony is clear where there is no convergence between what is provided and the practice where the campaigns of the arrest and defamation of those arrested accompanied by putting them in open cars and driving them on public streets, forcing them to sit on the floor of the car in degrading manner, subject to verbal abuse by police officers, beatings and physical torture.

The Code of Criminal Procedure states in Article 38 that the arrested person shall be treated in a way that preserves the dignity of the person and should not be harmed physically or psychologically, and provided with appropriate medical care. The arrested person shall not be subjected to the limitation of his freedom for more than is necessary to prevent his escape.

The arrested person has the right to contact his lawyer and the right to meet with the prosecutor or the judge. The arrested person shall be placed in the custody of the police, a person arrested or interrogated should not be transferred or placed in any other place except with the consent of the prosecution agency or the court.²⁹

The detainee has the right to inform his family or where he belongs and to communicate with it with the consent of the prosecution or the court. If the arrested person is a child, suffering from mental disability or any illness, he can contact his family, the criminal police, prosecution or court shall inform the family or where he belongs.

The arrested person shall have the right to obtain a reasonable amount of food, clothes and entertainment items at his own expense, subject to conditions related to security and public order. The arrested person shall abide by the rules of public morals and conduct. However, in practice, the guards are not subject to standards. The detainee is condensed in a poor environment in terms of cleanliness, ventilation and facilities. It can be noted that the states of Eastern Sudan have witnessed the death of those arrested by the public order police inside the cells as a result of the sun strikes.

Search, intrusion and privacy

The evidence obtained by the Public Order Police has often been tempered, such as the search orders in accordance with the Code of Criminal Procedure, as some of powers have been taken from the prosecution and given to the police, who receive search orders after it has been signed by the competent authority with blank space to be filled by the police such as time limit, place and what constitute serious legal violation. This practice lead to the invalidity of the evidence obtained, this is in addition to the ideological influence associated with such practices as we highlighted earlier. There is also the personal financial interest associated with the public order personnel, police, court, civil administration, and the local authorities. The courts have always been motivated by the political goals to issue the search orders, so that the line between the political and police authorities and the court is almost disappeared. The public Order Courts have become financially dependent on the money obtained from the trials, which can be called "the economy of human rights violations", the use of force for search provided for in Article 91 of the Code of Procedures, used to facilitate such practices, "Promotion of Virtue and Prevention of Vice." This article is used

²⁹ ²⁹ Detainees die following detention and flogging by Public Order court in Port Sudan < African center for Justice and Peace Studies < 8 August 2014

to break into private places in ways that violate privacy. However, the courts do not pay attention to this violation.

The Evidence law of 1994 Article 10³⁰ gave wide discretion to the judge in accepting the evidence obtained by illegal procedures. Accordingly, public order personnel found justification for violating the law to enforce the culture of oppression. Moreover, the immunities granted to the police in accordance with article 45 of the Police Act 2008, which has been strengthened by corrupt application, where the political authority has intended to make the Public Order Police and Courts an ideological body that implements some of the objectives of the political program.

Torture

Torture has been widely practiced by the Public Order Police. According to credible reports, the search and break-in continues to be carried out on daily basis in violation of the law. The detainees are subjected to physical and psychological torture, which is characterized by verbal abuses that vary according to the reason arrested.

Those accused of alcohol-related offenses are subjected to verbal abuse by calling them (Alcohol addict- Sakara), those arrested on sexual related acts, or attending or participating in mixed dances are verbally abused as (lewd), "prostitutes" or homosexuals. In the Islamic law, homosexuality is a sin. The word "prostitute" is also used in the case of those subjected to the examination of virginity. Sometimes, the detainees are forced by the police to perform dances while police take their video and publishes it on the social media.

Torture is usually by beating using water hoses, hands slaps, kick by guns, forced dancing in the presence of police officers who turn around in mockery, forced standing for long hours, and policemen questioning about the dress worn by a detainee in the case of arrest for perceived scandalous dressing, forced haircut by the police and hanging by the ceiling or the fan called ('Tayara Gamat' plane take off).

Torture continued to enjoy a further immunity from investigation. Where detainees requested to visit the doctor for medical examination, they are again subjected to torture to withdraw the request or are threatened with facing fabricated evidences and threats of telling off, particularly in the case of women's sexual relations, to use the social stigma around the sexual relations which made most of the arrested prefer the swift penalty.

³⁰ Article 10 of the Sudanese Evidence Act 1994 - Evidence obtained by an illegal procedure. (1) With due consideration to the admission and inadmissible evidence, the evidence is not rejected merely because it was obtained by an illegal procedure when the Court is satisfied that it is independent and admissible. (2) The Court may, when it deems it appropriate to achieve justice, not to convict according to the evidence referred to in item (1) unless it is corroborated by another evidence. Article 45 (Application for permission to take criminal action against a policeman) of the Sudanese Police Forces Act 2008

In the case which was known as the case of the journalist Lubna Ahmed Hussein, three other girls were arrested along with Lubna by the Public Order Police. The girls preferred to be punished and the case to be closed rather than to be subject to social stigma and refused to appeal as they will be subject to harassment and rearrested in reprisal by the police³¹. While Lubna preferred to go to the court and launch a campaign against the Public Order Law.

Trials in public order courts

The President of the Judiciary issues decrees to the establishment of the Public Order Courts, which shall regulate their work, in term of jurisdiction, powers and level of appeals. Judges assigned to public order courts have the powers of the first degree to exercise the powers provided for by the Code of Criminal Procedure of 1991. Their powers are provided for by Article 102³² which states: the first instance court can pursue cases in summary manner. It can impose any of the following punishments (A) imprisonment for a period not exceeding one year; (b) a fine not exceeding the amount determined by the President of the Judiciary, shall not exceed eighty lashes; (d) extermination, compensation and care and reform measures.

The Decree determines the summary trials and one stage of appeal before the Court of Appeal that issues a final decision. The power to dispose money received by the courts in terms of fines and confiscations to granted to the President of the Judiciary in the state, subject to the regulations and internal orders.

Accordingly, a bank account shall be set separate from the accounts of the federal judiciary and assign civil servants and special police to public order under the administration of the courts police. The head of the judiciary is concerned with the disposal of fines and confiscated funds where incentives are allocated to the judge of the court and the employees, accountant and clerks and warehouse and the police of the public order and local county in the jurisdiction of the court and some of the money is allocated at the disposal of the presidency of the judiciary for the purpose of disbursement in facilitating the work of the courts, including for the purchase of fuel and maintenance of the campaign's and Judge's car, office stationeries and whips made of "hippopotamus" used in the punishment of lashing.

The financial interest policy has made the courts of public order to adopt the principle of conviction at all cost to gain financial fines for personal interest of those associated to increase the percentage of incentives, which is reflected in the violation of the principle of reform related to the punishment and achieving private and public deterrence through the summary trials.

Courts more often rely on police as witnesses who have direct interest in the conviction, while the courts tend to accept the flawed evidence in accordance to the Sudanese Evidence Act of 1994

³¹ The judge who issued the acquittal said that article 152 of the Criminal Code on women's clothing is "loose and does not unequivocally specify the nature of the indecency," indicating that there is suspicion that the communication is fabricated against the accused.

³² Article 102 of the Criminal Procedure Act of 1991.

which stipulate in Article 10³³ that ‘the evidence collected by illegal means, taking into account the admission and unacceptable evidence, the evidence is not rejected merely because it was obtained by an incorrect procedure when the court is satisfied that it is independent and admissible, (2) The Court may, when it deems it appropriate to achieve justice, not to convict under the evidence referred to in clause (1) unless otherwise incorporated by another evidence.

For the summary nature of the trials, the punishments are carried immediately. Men are subject to the punishment of flogging by police officers while women are subject to flogging by women and in some cases by police officers. In such cases, they are whipped in public usually in the courtyard. Convicts do not undergo a medical examination prior to flogging to determine the fitness.

It is also often cause injuries. It may expose the flogged person to blood transmitted diseases due to repeated use of the whip on large numbers of people at the time.

The practice has proven that financial corruption extended to the Police of the Court. The police who execute the punishment of whipping received a financial payment for the lashing to be carried out with the slightest pain, but the practice extends to payment of money to the police to obtain information about the dates of the campaigns to avoid them.

Trials and social network:

During the 2017-2018 period, people were put on trials for being caught in possession of videos after it been shared via social media. The video in concern are for people dancing at public concerts or private gatherings. No one could say how these videos were leaked, even though they all indicate that their recording and publication were done in a violation of privacy.

Despite the fact that those who appeared on these videos were prosecuted and flogged in public order courts, the violation of privacy in recording and publication is not considered by the courts as defence. This practice constitutes a new trend of transformation of social media into another sphere for Public Order control.

Imprisonment sentence is the alternative punishment, namely, imprisonment in case of non-payment of fine. For example, in the case of conviction under article 77 of the Criminal Code 1991, dealing in alcohol, the courts impose an alternative imprisonment punishment of not less than three months, which it uses as pleasure to force the convicted person to pay the fine. In the cases where the punishment is 1500 Sudanese Pounds, the alternative punishment will be between 3-6 months. In the case of late payment, the amount of days spent by the convicted in prison is deducted from the fine, indicating a process of set-off between the "fine and imprisonment"

Mr Mahmoud (not real name) a lawyer and a human rights defender said that “the use of alternative prison punishment by the courts for long periods of time was a pressure on the convicted to look for resources to pay the fines, this situation encouraged a state of solidarity among the

³³ Article 10 of the Evidence Act of 1994

members of the society around the victim to raise money to avoid staying in prison, especially as most of those subject to these punishment are women who face financial difficulties in the absence of the role of the state in providing services, on the other hand, it reflects the economy of oppression, which is financed by the victims who are subject to unfair trials and torture to enhance the political objectives of the Public Order Law while the powerful people are untouched”.³⁴

Recommendations to the Government of Sudan;

- Immediately repeal the Public Order Law and abide by the statute laws passed by parliament.
- The Sudanese Ministry of Justice and the Sudanese Parliament should review the Sudanese laws in particular, the Sudan Criminal Code 1991, and repeal provisions in contrary to the Bill of Rights enshrined in the 2005 Interim Constitution.
- Immediately repeal Articles 152/151 of the Criminal Code 1991 and all provisions that discriminate against women.
- Urge the Sudanese Parliament to ratify the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- The Sudanese Ministry of Justice must thoroughly and impartially investigate the violations related to the implementation of public order law, and to publish the results of the investigation, prosecute the perpetrators, provide financial and moral compensation for victims.
- The Ministry of the Interior must work to rehabilitate the criminal police, to ensure they perform their duties in accordance to highest standard of professionalism.

³⁴ Interview with Sudanese lawyer, human rights defender preferred his name to be withheld.