

# International Refugee Rights Initiative



## *Refugee Rights News*

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### SPOTLIGHT

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### Congolese in Danger of Being Deported from Botswana

On 9 October 2009, the *Namibian* newspaper reported that 41 Congolese who were being housed in Molepolole Refugee Reception Centre near Gaborone in Botswana would be deported to the Democratic Republic of Congo. For this group, which includes both persons who had been recognised in Namibia as refugees and asylum seekers, the threat of deportation from Botswana is only the latest in a series of trials.

The group, many of whom before they arrived in Botswana had been in Namibia for nearly a decade, left Osire Refugee Camp in Namibia about three months ago and camped on the Botswana border after reportedly receiving death threats from officials of the government of Namibia. The refugees are members of the Association of the Voiceless (AV), a human rights organisation formed to advocate for the residents Osire Camp. The AV had sent a letter describing troubling conditions in the camp to the Namibian Ministry of Home Affairs and Immigration in June 2009. The letter asked that Osire Camp be closed down and its residents resettled to third countries or integrated into Namibian society.

According to the UN High Commissioner for Refugees (UNHCR), Namibia is home to roughly 8,000 refugees. Namibia requires all refugees to live in Osire Camp and retains strict control over their movement. According to the National Society for Human Rights (NSHR), a Namibian non-governmental organisation, Osire Camp, about 220 km northeast of Windhoek, is home to about 6,500 people. Roughly three-quarters of the camp's residents are

Angolan, while the remainder come from the Great Lakes region and other African countries. Namibia has filed a reservation to the 1951 Convention relating to the Status of Refugees on the right to freedom of movement, and Namibia's refugee law, the Namibia Refugees Recognition and Control Act (1999) states, "[a]ny person who, without the prior permission of the authorized officer or any other person in charge of [Osire Camp], leaves or attempts to leave [the camp] shall be guilty of an offence and on conviction be liable to imprisonment for a period not exceeding 90 days." Refugees are required to receive an exit permit to leave the camp, and only certain refugees with valid study or work permits are permitted to remain outside of the camp.

The Ministry of Home Affairs and Immigration replied in a letter to the AV members that the AV's letter "was a threat to peace and security in the settlement" and ordered them to "stop writing sensational articles . . . [a]nybody, as an individual, found continuing with that adversary [sic] type of behaviour shall be requested to leave the Republic of Namibia within a specified period." In May 2009, former Namibian President Sam Nujoma said that foreigners who did not respect the government would "face bullets in their heads". This statement caused fear in the camps, NSHR representative Phil ya Nangoloh said. "We took it as we were basically expelled by the Namibian government, and we decided to look where we could go for safety instead," said a member of AV, Bibich Mwenze. Members of the group also claimed to have been harassed and threatened by police officers in the camp and by some fellow refugees.

### *Flight to Botswana*

The 41 Congolese had taken refuge in "no man's land" between the city of Buiteos in Namibia and Mamuno in Botswana until they were arrested by the Botswana police on 29 September. Joel Kaapanda, Namibian Minister of Information and Communication Technology, said that the refugees had left Namibia without legal documents, either passports or other travel documents. He further stated that their departure was in violation of the Refugee Recognition and Control Act, as well as the Departure from Namibia Regulation Amendment Act, which require that refugees apply for exit permits to leave Osire Camp and for travel documents to leave Namibia. The Namibian government announced that it would not provide the refugees with humanitarian aid or allow them to return. The refugees and asylum seekers also expressed that they had no desire to return to Namibia. According to the US Committee for Refugees and Immigrants' World Refugee Survey, Namibia has a backlog of approximately 1,000 applications for refugee status, and though the country's refugee legislation provides that all recognised refugees should receive identification documents, the government has issued very few IDs, and the government makes travel documents extremely difficult to obtain or renew.

Until the group was arrested, Botswana had been providing humanitarian aid in the form of food, shelter, and medical treatment to members of the group. A Botswana border official stated that they could not allow anyone to enter the territory without valid documents.

In a press release issued on 30 September, NSHR said that it had "reliably established that the refugees had been rounded up after going on a hunger strike to protest the 'inhuman conditions'" to which they had been subjected during their time at the border post. According to a NSHR representative, the group was released from jail on 1 October and sent to a refugee centre near Gaborone, the capital of Botswana. The group included 23 minors.

The group remained in the camp until Botswana's Defence, Justice, and Security Permanent Secretary Augustine Makgonatsotlhe announced that the group had been determined to be ineligible for refugee status and would be returned to the Democratic Republic of Congo. According to the *Namibian*, Marciela Rodriguez-Farrelly, the UNHCR Country Representative, declined to comment on the situation.

Both Namibia and Botswana have ratified the 1951 UN Convention relating to the Status of Refugees, its 1967 Protocol and the 1969 OAU Convention on the specific Aspects of Refugee Problems in Africa, all of which create legally binding obligations under international refugee law. Under these mechanisms Botswana is required to allow individuals access to its territory for at least as long as it will take to adjudicate their need for protection. Although Botswana has indicated that these needs have been assessed and that a negative determination has simply been made, it is particularly concerning in light of the fact that two of the families in question had been recognised as refugees in Namibia and that this decision is coming just days after UNHCR publicly warned thousands of Congolese refugees in Burundi not to return to Congo on the basis that there was ongoing military operations in their areas of origin.

Namibia also has obligations to the group. First, it is a concern that the movement of the group seems to have been triggered by the Namibian government's response to criticism about the treatment of refugees. Article 21 of the Namibian Constitution also states that the rights of freedom of opinion and expression, thought and conscience, freedom of association, assembly and movement apply to "everyone". Second, most of the members of the group were either recognised refugees or asylum seekers and should have been protected at least until their claims were heard. Although it would appear that the refugees did violate Namibian law in the process of their flight, the Namibian government should consider whether refusal to allow the refugees to re-enter was an appropriate sanction for such an offense, particularly as it may result in refoulement.

## **ACTION AND ADVOCACY**

### **Continued Consideration of RtoP Proves a Success at UNGA Debate**

The long awaited United Nations (UN) General Assembly debate on the Responsibility to Protect (RtoP) was held on 23-28 July, and civil society groups around the world rallied together to ensure that dialogue on the norm was advanced. The debate marked Member States' 2005 commitment to undertake "continued consideration" of the norm, as well as providing a forum for discussion on the UN Secretary General's 2009 report, *Implementing the Responsibility to Protect*, which seeks to begin the process of clarifying mechanisms for implementing this commitment in practice. On 14 September 2009, the General Assembly adopted its first **resolution** on RtoP, based on the positive outcome of the debate and discussion of the Secretary General's report.

During the session, civil society organisations called on States to carefully consider the Secretary General's report and to engage constructively in the debate. For its part, the International Refugee Rights Initiative (IRRI), a member of the International Coalition for the Responsibility to Protect (ICRtoP), signed on to ICRtoP's **letter to all Ambassadors**, as well as coordinating an **Africa-focused letter**, which was sent to African Union member states and signed by 18 organisations. Additionally, IRRI co-Director and Darfur Consortium co-Chair Dismas Nkunda spoke at an ICRtoP hosted event on 20 July, entitled "**The Responsibility to Protect: A Dialogue with Civil Society in Advance of the UN General Assembly Debate**". On 15 September, the ICRtoP released the *Report on the General Assembly Plenary Debate on the Responsibility to Protect*.

The RtoP is an international human rights and human security norm designed to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity. Should any of these mass atrocity crimes occur, States have the responsibility to protect populations, and the four crimes must trigger reaction when States' are unable or unwilling to protect their populations. The Secretary General's report focuses on three pillars of response to the four designated crimes. These pillars consist of:

- 1) State responsibility: an obligation of each state to protect its own people from mass atrocity crimes;
- 2) Assistance to states: the responsibility of all states to assist others in enhancing their protection capacities; and
- 3) Timely and decisive action by the international community: to prevent and halt atrocities when the state in question is manifestly failing to do so.

### *Presentation of Secretary-General Ban Ki-moon on Implementing the Responsibility to Protect*

The debates were preceded by a presentation by UN Secretary General Ban Ki-Moon of his report on 21 July 2009. In a brief overview, Secretary-General Ban Ki-moon endorsed the concept of "sovereignty as responsibility", indicating that sovereignty and responsibility are "mutually reinforcing principles". He highlighted three main points, the first of which was to reiterate that the report seeks to "situate the Responsibility to Protect squarely under the UN's roof and within our Charter, where it belongs". Secondly, Ban emphasized that prevention based upon moral and practical reasoning should be the most important element of RtoP. A balanced, nuanced approach to prevention and protection could be achieved through fully utilizing the tools at the UN's disposal. Thoughtful policy development provides a way for the international community to support States in meeting their obligations to protect their populations. Finally, he expressed the hope that states will engage to strengthen capacities in early warning and prevention in order to ensure an early and flexible response in country specific situations. Force should only be utilized as a last resort, and in conformity with the relevant provisions of the UN Charter. Ban challenged Member States to "resist those who try to change the subject or turn our common effort to curb the worst atrocities in human history into a struggle over ideology, geography or economics. What do they offer to the victims of mass violence? Rancor instead of substance; rhetoric instead of policy; despair instead of hope."

The Secretary General's Special Advisor with a focus on the Responsibility to Protect, Dr. Edward Luck, offered a similar introduction of the report at the ICRtoP civil society dialogue where he highlighted the role of NGOs in ensuring the implementation of the RtoP through advocacy and research. Dr. Luck clarified that through his mandate to conceptualise RtoP and suggest policy guidelines for implementation, he was cognizant that RtoP means different things to different people, States, and regions. In his opening remarks to the General Assembly in the Informal Interactive Dialogue on 23 July, **Dr. Luck commented** that the debates had the opportunity to dispel some of the myths that have surrounded RtoP since its inception – that RtoP is synonymous to humanitarian intervention, that sovereignty and responsibility are incompatible – and begin a dialogue to facilitate the sharing of best practices and what kinds of assistance and capacity building best enhance states' abilities to avert future rounds of violence and social fragmentation. In fact, RtoP serves to 'discourage unilateralism, military adventurism, and an overdependence on military responses to humanitarian need', and sovereignty must be understood by Member States as being mutually reinforcing principles to strengthen state capacity.

Though by and large UNGA Member States view RtoP as a balanced package and support the first two pillars of state responsibility and assistance to states respectively, the issue of use of coercive force under the third pillar of reaction remains controversial, with some States demanding further discussion on use of force criterion and Security Council protocol. The report endeavours to encourage learning and experience sharing amongst networks, and as Dr. Luck noted, civil society will be crucial actors in mobilizing this sharing and applying it in an integrated, creative, and holistic way.

### *Gathering Consensus on Issues of Sovereignty, Responsibility, and the RtoP*

At the meeting in July, with the exception of a handful of delegations, UN member states affirmed that the World Summit Outcome Document was not up for debate. Benin and Lesotho noted that mass atrocities within state borders could constitute threats to international peace and security, while many other states noted the importance of grounding RtoP in the UN Charter and international humanitarian law. Legitimate concerns about RtoP were raised by some governments, who worried about the misuse of RtoP to justify coercive unilateral interventions, and the scenario that the UN Security Council would be blocked by veto or be unjustifiably selective in its interventions. However, states such as Chile concluded that it would be morally and politically wrong to conclude that because the international community did not act somewhere, it should not act anywhere. Lesotho argued that RtoP made the Security Council more accountable, by

clarifying standards for intervention. Other Member states were not as constructive, with Sudan calling for the General Assembly to be the sole body authorised to use force, as giving the Security Council control of RtoP measures was equivalent to “giving the wolf the responsibility to adopt a lamb”.

The dialogue between Member States was an important step forward in generating greater support for the implementation of RtoP, as well as dismissing rhetoric by some states who continued to equate RtoP to humanitarian intervention and neo-colonialism. These states attempted to undermine the dialogue by debating the meaning and merits of the norm, misrepresenting valid critiques of the RtoP, or rehashing decades-old arguments.

### *Emphasis on the Normative Entrenchment of the Responsibility to Protect in Africa from Member States and Civil Society*

Both African and non-African governments alike recognized the role of African regional and sub-regional organizations, and credited the Economic Community of West African States (ECOWAS) and the 2000 Constitutive Act of the African Union as fundamental in the promotion of R2P. Secretary General Ban Ki-moon himself stated that “RtoP emerged from the soil, spirit, experience, and institutions of Africa”. The need to prevent incitement of the four crimes and prevention through quiet diplomacy were exemplified through the recent success stories of Cote d’Ivoire and Kenya.

Ninety-two states (and two observers), including 16 from Africa spoke during the debate. A welcome change in stance came from South Africa, who emphasised the myriad of UN Charter instruments applicable to RtoP of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resorting to regional and sub-regional arrangements. Ghana challenged the conception that sovereignty could operate as a shield for mass atrocity crimes, and suggested that sovereignty was an instrument and that states were only credible when they recognized the human rights and dignity of their citizens. The Gambia suggested that depoliticising the architecture of RtoP could help to bridge a “deficit of trust” amongst member states, while Nigeria emphasised the importance of capacity building and integrating the work of the AU’s Framework for Post-Conflict Reconstruction and Development into the Peacebuilding Commission. South Africa and Ghana also mentioned the importance of the African Peer Review Mechanism, while Sierra Leone noted the importance of Africa’s Continental Early Warning System, and the AU’s Consultative Panel of the Wise.

A powerful aspect of the debate came when Member States that had suffered greatly from large scale violence issued a call for implementation of RtoP. The Permanent Representative of Rwanda to the UN Eugene-Richard Gasana stated “it is our considered view that the debate on the Secretary-General’s report on implementing the responsibility to protect should not be an exercise in intellectual posturing or an opportunity to grind political axes or to engage in polemics; it is simply about the value we place upon human life”.

At the ICRtoP Civil Society Dialogue, Jaqueline Murekatete, a Rwandan Genocide Survivor, Fellow at the Miracle Corners of the World, and Director at Jacqueline’s Human Rights Corner, and Dismas Nkunda also embodied the voices of those who had directly witnessed mass atrocity crimes. Ms. Murekatete called on listeners to think critically about the concept of RtoP as enhancing protection to individuals, to acknowledge what the framework of the RtoP means to victims and survivors of the crimes that the concept seeks to address, and for the future of humanity. Though the concept is a huge step forward in genocide prevention, it is undermined by the international community’s failure to prevent current atrocities, notably in Darfur.

Mr. Nkunda highlighted Africa’s pioneering role in support of RtoP, mentioning the Conflict Prevention Framework of ECOWAS, adopted in 2008, and the Constitutive Act of the African Union, adopted in 2000.

He also noted that in 2007, the African Commission on Human and Peoples' Rights passed a resolution to strengthen RtoP in Africa. The International Conference on the Great Lakes Pact on Security, Stability and Development in the Great Lakes Region was another example of regional commitment. Particularly relevant was Sudan's ratification which, according to Mr. Nkunda, provides a way to hold Sudan accountable for mass atrocity crimes in Darfur, namely through the protocol on the prevention and punishment of genocide, war crimes, and crimes against humanity, which also explicitly states that the leaders of member states responsible for these crimes may be held responsible.

### *Next steps: Implementation*

The General Assembly debate on RtoP provided an opportunity for a genuine, constructive dialogue, and for Member States to address how they were going to fill the gaps in capacity, will and imagination in preventing mass atrocities. Many of the statements by Member States also included pragmatic examples of how governments were already at work at enhancing the norm in their own region and at national levels. States also raised recommendations regarding the veto powers of the permanent five members of the Security Council, and the need to come to a consensus around abstention and the use of veto power in the Security Council in the event of mass atrocity crimes, as well as formulating use of force criterion.

At the international level, Member States recommended strengthening early warning systems through bolstering the offices of the Special Advisor on the Prevention of Genocide, Francis Deng, and that of Dr. Luck's, and establishing an inter-agency mechanism to assess early warning monitoring information. This would imbue the UN system with mass atrocity checks and balances, and provide system wide coherence in policy-making. Additionally, the Peacebuilding Commission's (PBC) work should be linked to that of the preventative aspects of RtoP, as lack of post-conflict reconstruction makes the return to conflict nearly inevitable. At the regional and sub-regional level, there must be increased support to political processes, strengthening existing structures and creating regional standby forces for rapid reaction should peaceful means fail.

At national and domestic levels, acceleration and domestication of state ratification of the Rome Statute increases accountability, and as Bosnia-Herzegovina stated 'becoming party to international human rights instruments, international humanitarian law, refugee law and above all the Rome Statute of the International Criminal Court should be seen as a factor for stability for every state'. Enhancing national capacities through fulfilling and improving upon national constitutions, legal regimes, transparency, and good governance was noted by Tanzania and Swaziland. Finally, assistance programmes for building the capacity for protection would greatly reduce the risk of future mass atrocity crimes under the first two pillars of RtoP.

### *Conclusions*

It was heartening for advocates that countries that had previously been sceptical, such as Indonesia, Brazil, India, Algeria, China, Ecuador and the Philippines, delivered constructive statements during the debate. Ms. Thelma Ekiyor, Executive Director of the West Africa Civil Society Institute and Chair of the ICRtoP, summed up the challenge: "while clarifying continuing misconceptions through education and outreach is essential, now the challenge for civil society groups worldwide is to improve and build the capacity of sub-regional, regional and international institutions to ensure that the norm is working properly to protect populations from mass atrocities."

## FEATURES AND ANALYSIS

### The United Nations Extends UN-AU Force Mandate in Darfur

In August 2009, the military head of the United Nations and African Union Mission in Darfur (UNAMID), General Martin Luther Agwai, said "as of today, I would not say that there is a war going on in Darfur." The situation on the ground, however, remains far from peaceful. Millions remain displaced and millions more are still dependent on humanitarian assistance for their basic needs. The situation on the ground remains extremely insecure and, although large scale attacks on civilians on the scale of the 2003-2004 period of the conflict are not occurring, more diffused patterns of violence have continued. And UNAMID is at the forefront of responding. Created and authorized in July 2007, UNAMID's main purpose is to protect civilians and promote peace in Darfur. At full strength, it is set to have 26,000 military, police and civilian personnel, making it the largest peacekeeping mission in the world.

In September 2009, the African Centre for Justice and Peace Studies reported significant attacks on the Korma areas of Darfur. A press release issued in early October by Human Rights Watch on the violence in the Korma areas of Darfur stated that "recent clashes between the governing party-led Sudan Armed Forces and rebels in September and the use of indiscriminate bombings demonstrate that the war is not over. Government air and ground attacks on villages around Korma North Darfur on September 17 and 18 reportedly killed 16 civilians, including women, and burned several villages."

Civilians in Darfur have looked to the international community for protection, particularly through the deployment of peacekeepers. However, despite significant international efforts, security on the ground remains elusive and access for humanitarian agencies has become more difficult. In the midst of these security challenges, the people of Darfur and the international community must continue to rely on UNAMID.

On 21 July 2009, the African Union Peace and Security Council (PSC) in its 198<sup>th</sup> meeting decided to extend UNAMID's mandate for an additional 12 months based upon the UN Security Council Resolution 1769 of 31 July 2007, and requested the UN Security Council to do the same. On 30 July 2009, the UN Security Council agreed to extend the work of the joint United Nations-African Union peacekeeping operation in Darfur for another year. Specifically, as recorded by the UN News Service, Security Council members voted unanimously to keep UNAMID in place through the end of July 2010 and stressed the importance of protecting Darfur's civilian population by ensuring humanitarian workers have unhindered access to those in need.

Although on the whole the text of UN [Resolution 1881](#) remained consistent with the resolution which had authorised the mission the previous year, it included some progressive new provisions. The resolution, like its predecessors, emphasised "the importance of developing realistic and achievable goals against which to measure the progress of peace operations," and tasked Secretary-General Ban Ki-moon to submit a work plan and updates on UNAMID's progress in implementing its mandate. A new element in Resolution 1881, as noted by the British Ambassador to the UN John Sawers, was that the UN Security Council specifically welcomed "the important role of the African Union and the improved cooperation between the Government of Sudan and UNAMID."

While acknowledging the positive contribution of UNAMID many NGOs, including the Save Darfur Coalition, have criticized the joint force as failing to deliver fully on its mandate. They point out for instance that UNAMID still lacks the resources and capacity to operate at full strength. At the end of July, it had just 13,430 uniformed personnel, most of whom are ex-AU forces from the African Union Mission in the Sudan

(AMIS). The mission also continues to face serious deployment and logistical challenges including difficult terrain, the remoteness of Darfur and a lack of basic equipment such as helicopters and vehicles.

NGOs are concerned that the international community's stewardship of UNAMID is repeating the same mistakes that plagued AMIS, namely a failure to guarantee funds, equipment, personnel and political support to the mission. Although AMIS made some positive progress early on, the mission was ultimately unable to protect civilians. UNAMID cannot be left to suffer the same fate. In fact, UNAMID is faced with a tougher challenge and must do much more, including responding to attacks immediately, maintaining a presence in particularly sensitive areas such as IDP camps, managing Darfurian expectations and building confidence.

The world must make good on its promises to the people of Darfur and assist the struggling UN-AU mission. First, as analyzed by 22 NGOs in their strategy paper entitled "[Building a Better UNAMID](#)," western powers like the United States, Britain, France and Canada must support train-equip-deploy efforts, prioritise mandate interpretation, and ensure that leadership on the ground promotes robust implementation of the UNAMID mandate. As the UN Secretary-General urged, "in the following months, 24 helicopters including 18 transport and 6 tactical helicopters must be delivered and operated effectively across the Darfur region." "Countries with capacity must show the political will," he added. Susanna Malcorra, the UN Under-Secretary-General for Field Support, echoed this call, saying that "we need member states to the United Nations to provide more to guarantee UNAMID ability to react swiftly to the security incidents in Darfur. We also hope that 90-95 per cent of the 26,000 soldiers can be deployed before the end of 2009." Experts such as Jerry Fowler, who is the President of the Save Darfur Coalition, have urged that the international community honour its commitment to resource and deploy UNAMID fully. UN member states, international donors and troop-contributing countries must ensure outstanding resources are immediately donated to the force.

Second, Sudanese authorities must immediately cease their obstruction of UNAMID operations and deployment and ensure that government troops, police and allied militias do not harass UNAMID personnel and allow the force to move freely throughout Darfur. As the UN Secretary-General reported in November 2009, "[s]ince January 2009, there have been at least 42 incidents in which a UNAMID patrol was denied passage by a Government official, including incidents in which Government officials specifically threatened the safety of UNAMID staff and equipment."

Third, in spite of the fact that more hybrid peacekeepers and troops will be deployed in Darfur, even a fully resourced and deployed UN mission will not transform the conflict on its own. A full and robust deployment must form only one element of a broader strategy including the promotion and facilitation of political dialogue, protecting civilians (including, but not limited to, through support for UNAMID) and promoting accountability for previous and present human rights violations. A just and sustainable peace is needed and can only be pursued through a multi-faceted strategy

## **LAW AND POLICY DEVELOPMENTS**

### **Lubna Hussein's Trial Highlights Repressive Public Order Law in Sudan**

In September 2009, Sudanese journalist and former UN staff member Lubna Ahmed Hussein went on trial before a North Khartoum Court for wearing trousers in violation of the country's public order law following her arrest on 3 July 2009. On 7 September 2009, the court ordered Hussein to pay a \$200 fine, but she was spared the usual sentence of 40 lashes. The case, which gained widespread international attention, served to highlight a law which is being increasingly used against mostly poor or ethnically marginalised

women. It is also being deployed as part of a broader crackdown on civil society and voices of criticism of the government in response to the arrest warrant for President Omar al-Bashir by the International Criminal Court in March and the upcoming elections scheduled for early 2010. As we wrote in the April issue of *Refugee Rights News* a number of human rights activists reported that they have been subject to increased scrutiny and government harassment (see: [“The Reaction to the Arrest Warrant against Sudanese President Al-Bashir.”](#))

### *Hussein's Arrest and Trial*

Hussein was wearing green slacks, a blouse and a headscarf when she was arrested on 3 July 2009 by a group of roughly 20 members of the public order police. She was charged under Article 152 of the Criminal Act (1991), which provides that a person who “commits an indecent act or an act that breaches public morality or wears clothes that are indecent or would breach public morality which causes annoyance to public feelings is liable to forty lashes or fine or both punishments”. She was one among a group of 13 Sudanese women and girls arrested in *Kawkab Alsharq*, a popular café in Khartoum. Ten of the group pled guilty and were flogged and fined 250 Sudanese pounds (roughly \$100). After demanding legal representation Hussein was taken to her hearing before the *nizam al-'aam*, the public order court, a court with police and judges, but no witnesses and restrictions on legal representation. According to its January 2007 report to the Human Rights Committee, the UN body charged with monitoring state adherence to the International Covenant on Civil and Political Rights (ICCPR), Sudan claimed to have shut down these public order courts, where their lack of due process are in violation of requirements for fair trials under the ICCPR.

Hussein is a well-known public figure as she previously worked at the Khartoum-based newspaper *Al-Sahafa* and penned her own column, called “Men Talk”. Unlike the other women and girls arrested she was fortunate to be granted a lawyer and hence a trial. She subsequently embarked on a comprehensive media strategy. She told the *Telegraph* that she would appeal up to the constitutional court if possible and that she was “ready to be whipped not 40 but 40,000 times” if that would advance women's rights in the country. She sent invitations to about 40 journalists, civil society members and government ministers and e-mailed invitations to over 400 to attend her hearing. Three of the printed invitations were sent to the presidential palace. She decided to raise public attention on her case by issuing the invitations because she believed that were she to write an article, it would not be published as a result of stringent censorship laws in Sudan.

During Hussein's hearing on 4 August 2009, the judge adjourned Hussein's trial for the second time until 7 September 2009 to decide whether Hussein's job as a press officer for the UN Mission in Sudan (UNMIS) granted her immunity. (Lubna had declared that she did not want immunity and resigned from her job) Judge Madathir Rashid of the North Khartoum Court awaited an opinion from the Sudanese Foreign Ministry on whether Hussein's resignation from UNMIS revoked her immunity, and if so, when the waiver of immunity became effective. The African Centre for Justice and Peace Studies bimonthly human rights monitoring report on Sudan commented that “[t]he delay in continuing the trial [wa]s a calculated attempt to wait for the public uproar over the issue to die down.”

On 4 August, the courtroom was packed and many of Hussein's female supporters attended wearing trousers. Outside the courthouse, about 100 women protested, some carrying signs saying that Sudan was going back to the Dark Ages. Riot police fired tear gas and bullets into the air to disperse the crowd and beat some of the protestors. Journalists attempting to cover the trial were harassed, detained and had their equipment and notes confiscated. One of Hussein's attorneys, a woman named Manal Awad Khogali, was beaten by police outside the courthouse.

During Lubna Hussein's appearance in court on 7 September 2009, diplomats and human rights workers were in attendance. Roughly 150 protesters were heckled by a smaller number of counter-protesters following the ruling. At least 40 protesters, many of them women wearing trousers in support, were arrested and released on bail. According to BBC, one woman was hit eight or nine times by police with truncheons. Following the sentencing, Hussein's lawyer said she would appeal to both the Court of Appeal and the Constitutional Court and she was determined not to pay the fine in order not to give the verdict any legitimacy, despite her lawyers' advice to the contrary.

According to the African Centre for Justice and Peace Studies' newsletter, *Sudan Human Rights Monitor*, the Sudanese government issued orders to the Sudanese media not to publish any information on Hussein's trial. The *Sudan Tribune* reported that the Sudan official news agency (SUNA) published news that there was a forum held on 5 August 2009 to discuss the statute and to discuss provocative dress by women, though no explicit mention of Hussein was made. According to the *Guardian*, another female Sudanese journalist who wrote about the case is currently facing trial for criticising the government in an article.

### *Legal Background on Issues of the Trial*

*Sharia*, the basis of much of Sudan's law, rose to prominence in Gaaffar Numeiri's presidency when he amended a wide range of laws to enshrine *sharia* principles in September 1983. These laws subsequently became known as the "September laws". Prior to 1983, most civil and criminal matters were governed by English common law, with the exception of family law, which was governed by *sharia*. In 1991, the Criminal Act and Criminal Procedures Acts were replaced with acts that maintained crimes based on *sharia*. In 2005, the National Interim Constitution established a new governance framework that divided sources of law depending on the region and level: national, Southern Sudan, state and local. Article 5 of that constitution states that the principal source of law for Northern Sudan is "*sharia* and the consensus of the people". *Sharia* has been a contentious issue in the North-South war. Under the Comprehensive Peace Agreement signed in 2005, *sharia* is meant to apply only to Muslims, and measures are to be taken to ensure the rights of non-Muslims in the nation's capital. Several of the women who have already been flogged are Christians from Southern Sudan, a move which Southern Sudan's semi-autonomous government severely criticised. Yasir Arman, a senior member of the Sudan People's Liberation Movement, called for an investigation into the case to assess why the Southern Sudanese members of the group were not granted greater protections.

The African Commission on Human and Peoples' Rights (African Commission), charged by the African Charter on Human and Peoples' Rights with *inter alia* promoting, protecting and interpreting the contents of the African Charter, has already ruled that state-sanctioned flogging is a violation of Article 5 of the African Charter, which outlaws "[a]ll forms of exploitation and degradation ... particularly ... torture, cruel, inhuman or degrading punishment and treatment". In 2003, the communication *Curtis Francis Doebbler v. Sudan* dealt with the case of eight students who were arrested and subsequently flogged for disturbances of public order, including such acts as "girls kissing, wearing trousers, dancing with men, crossing legs with men, sitting with boys and sitting and talking with boys". The Commission found that, "[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 nature of this human rights treaty*" (emphasis added). Among the recommendations of the African Commission, were to "[a]bolish the penalty of lashes", and "[i]mmediately amend the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments".

### *Conclusion of the Trial*

According to Najlaa Al Maahi, one of Hussein's legal team, "the proceedings were hastily conducted and the defence was not allowed to make its case. The general sentiment was that the guilty verdict and the sentence, a fine of \$200, had been decided in advance, and the trial was merely a formality. The goal was to tar Hussein as indecent but not resort to lashing, but not enact a brutal punishment while the world watched."

Upon refusal to pay the fine, Hussein was taken to the women's prison in Omdurman, but freed the following day after the Sudanese Journalists Union paid the fine against her wishes. In a statement to *Asharq Al-Awsat*, a major pan-Arabic newspaper, Hussein said "I thank Tetawi, Head of the Union, for his visit but not for paying the fine."

In a column published in the UK's *Guardian* newspaper a few days before the sentencing, Lubna Hussein, a widow, wrote: "[w]hen I think of my trial, I pray that my daughters will never live in fear of these police... We will only be secure once the police protect us and these laws are repealed."

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Emily Cody, Yuhan Zhang and Stephen Tumwesigye, interns, and Soo-Ryun Kwon, a fellow based in the Kampala office, as well as IRRI staff contributed to this newsletter.

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