

THE USE OF LAW AS AN INSTRUMENT OF POWER IN SUDAN AND SOUTH SUDAN

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Speakers: Ali Agab (Sudanese Human Rights Lawyer)
Discussant: Mashood Baderin (CAS/SOAS)
Chair: Lutz Oette (Centre for Human Rights Law, SOAS)

Multiple regimes have used law as an instrument of power in Sudan. The present regime in Sudan has from the very outset used decrees and legislation to entrench and broaden its power. It has also employed the law as a means to pursue its project of building an Islamic State by adopting Sharia law. As part of the Sudan & South Sudan Seminar series, in collaboration with the SSSUK, this fourth and last of the 2015/16 academic year seminar series examines the resistance to the use of law as an instrument of power in Sudan and South Sudan, and challenges faced by those advocating legal reforms and greater rights protection. It also reflected on the nature, underlying rationale and impact of the use of law in the greater Sudan (Sudan and South Sudan) since 1989, including the roles of Judiciary and other actors. It considers emerging parallels in South Sudan, such as the broad National Security Services Law adopted in 2015. The Seminar also reflected on resistance to the use of law as an instrument of power in the Sudans, and the challenges faced by those advocating legal reforms and greater rights protection.

The Chair, Dr Lutz Oette warmly welcomed the audience to the last seminar of the series on Sudan and South Sudan. He pointed out that, when you hear about development in Sudan and South Sudan especially from the media, most they talk about is the lawlessness in these countries. However, this is exceptionally misleading because if you look at Sudan's history going back to colonial times as noted by Professor Mashood Baderin in his book, law has always played a very important role, different regimes have used law to gain or even maintain their legitimacy. The seminar will focus on the current regime particularly on how the current regime has used law as an enabling device to facilitate its powers but also as a disabling device in the sense of fending off accountability. In addition, the discussion also looks at the development in South Sudan. Although the development in South Sudan is still in its early days, there have already, in its first five years of existence since its independence, already been some issues of concern that has emerged. He then introduced the main speaker Ali Agab, a Sudanese Human Rights lawyer and discussant, Professor Mashood Baderin (SOAS/CAS Chair).

In his presentation, Ali Agab took the audience through a brief historical development of law in Sudan i.e. the common law, Sharia, customary and the civil law ingredients which continue to influence the current law in the Sudans. His presentation however concentrated on examining how law has been used by different interest rulers in Sudan. For example, Mohamad Ali Bashir through Egypt, the interest was to get slaves from Sudan to use in Egypt's military to fight its warfare. The interest was therefore not to enact law but rather to ensure control over the country. The British and Egyptian (condominium rule) on the other hand were interested in the wealth of Sudan in regards to Agriculture and Land. Since there was no central government, the British were force to start the enactment of the law from the scratch, building capacity of Sudanese by training Sudanese lawyers on the British common laws who later replaced the British in implementing the common laws in Sudan.

Although the Sudan Islamist (Hassan 'Abd Allah al-Turabi) introduced the Sharia laws, the ingredients of the British common law are still strongly visible in the Islamic laws. If we are to look at how the

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law have been used as a tool for power and the national government use of power is the legitimate use of law itself. However the experience of Sudanese with regards to law as a tool of power is different. That is, from the independence, the leaders have used democracy which uses constitution and the military rulers' use of Presidential decree by President Gaafar Muhammad an-Nimeiry (1969 - 1985) and the current President Omar Hassan Ahmad al-Bashir which abolishes the national constitution and the parliament which upholds the rule of law and used the Presidential decree to rule the country. This was to allow them rule the country without adhering to the principles enshrined in the rule of law.

Even later when the constitutional court was established as a result of the Comprehensive Peace Agreement (CPA) of 2005, the most powerful constitution Sudan has ever had, its formation was a bargain between the SPLA and the Government of Sudan (NCP). The implication is that Judges who sit at the constitutional court are there to not necessarily protect and defend the national constitution but rather the parties' interest.

Ali Agab then concluded with the use of the famous Public order law used by the current regime to control the population but most importantly women and girls by giving the police the power to decide and punish girls and women who are not morally dressed. This demonstrates a clear evidence of Sudan's use of law as a tool of power.

Speaking as an independent expert in Sudan, Professor Mashood presented that Sudan's legal system is a complex pluralist one and that sometimes rather than complying with the principles of rule of law, governments can rule by law using the law to promote their interest. However, as most lawyers or academics of law, we always forget the fact that law itself is very authoritarian. Law must promote good and it does not do this automatically. Law must therefore not be looked at only from the formal perspective with the presumption that when we talk about rule of law we mean rule of good law which in practical terms is not always the case. He sighted the notoriously controversial National Security Act of 2010 as an example of the law that has been challenged locally, regional and internationally. However, the law was arguably passed through National parliament and when the rule of law is looked at from the natural perspective, it is a valid law. He therefore calls for a counter legal engagement to challenge the normative validity of such laws in regards to the national constitution. And provision of technical assistance to the institutions in Sudan to improve the administration of the rule of law.