



Sir Nigel Rodley
Chairperson, Human Rights Committee
Office of the High Commissioner for Human Rights
UNOG-OHCHR
CH 1211 Geneva 10
Switzerland

9 August 2013

Dear Sir Nigel,

109th SESSION OF THE HUMAN RIGHTS COMMITTEE – PRE-SESSIONAL MEETING ON SUDAN

We are writing with a view to the pre-sessional meeting of the country report task force on Sudan during the forthcoming 109th session of the Human Rights Committee from 14 October to 1 November 2013.

Please find below a brief update of recent developments pertaining to the main concerns of REDRESS, the Sudanese Human Rights Monitor, the Africa Centre for Justice and Peace Studies and FIDH in relation to the state party's implementation of the International Covenant on Civil and Political Rights (ICCPR). Further detailed information on each of these issues can be found in the publications referenced.

I. New and ongoing conflict, serious human rights violations and impunity

The situation in Sudan since 2007, when the Human Rights Committee last considered a report by the State party, has been characterised by serious ongoing human rights violations in conflict and non-conflict settings, impunity for human rights violations, and a weak rule of the law. Most of the concerns identified in the 2007 Concluding Observations of the Human Rights Committee have not been addressed, and several new issues of concern have arisen since.

The long-standing armed conflict in Darfur continues to devastate the lives of civilians and cause mass forced displacement. New conflict broke out in South Kordofan, which has now spread to other parts of Kordofan, and Blue Nile States in June and September 2011 respectively, between the Sudanese Armed Forces and the Sudan Peoples' Liberation Army Northern Sector (SPLA-N). Various sources have documented serious human rights violations, such as extrajudicial killings, enforced disappearances, torture and ill-treatment and large-scale displacement committed in the course of armed conflicts in Darfur, South Kordofan and Blue Nile States.¹ The United Nations High

¹ *Interights, Human Rights Watch, Sudan Democracy First Group, and REDRESS v. Sudan*, Communication 402/2011 (pending before the African Commission on Human and Peoples' Rights), see <http://www.redress.org/case-docket/redress->

Commissioner for Refugees estimates that “some 2.3 million people continue to remain displaced” in Sudan², while the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that “since the beginning of 2013, more than 300,000 people have been forced to flee their homes” in Darfur and more than 50,000 people sought refuge in Chad as a result of tribal battles in Darfur, being the largest influx of refugees from Sudan into Chad since 2005.³ Increased fighting in South Kordofan and Blue Nile reportedly led to the displacement of around 400,000 people in the first five months of 2013.⁴ These conflicts are due to a combination of factors but many observers have attributed them to ethnic and religious discrimination and marginalisation, and the lack of respect for minority rights.⁵

Sudan has since 2003 failed to take effective measures to hold accountable the perpetrators of serious human rights violations amounting to international crimes and to provide reparation to the victims, with the exceptions of some limited measures taken pursuant to various peace agreements relating to Darfur. This failure has led to the resignation of four public prosecutors in Darfur since 2005. While Sudan has refused to cooperate with the International Criminal Court notwithstanding its obligations under the governing UN Security Council resolution 1593 (2005), it has also not taken any domestic steps that have translated into effective investigations and prosecutions. The 2009 amendments of its Criminal Act incorporating international crimes are partly flawed (using definitions of these crimes that differ from those concerned in the Armed Forces Law of 2007 and the ICC Rome Statute), and do not remove barriers to accountability, particularly the principle of non-retroactivity, amnesties and immunities.⁶ Sudan has also not acted upon the recommendations of the African Union High Level Panel on Darfur to set up a mixed tribunal to try those bearing the greatest responsibility for serious crimes.⁷ No steps are known to have been taken to investigate allegations of conflict-related violations in South Kordofan and Blue Nile. Equally, there have been hardly any investigations and prosecutions into allegations of torture or other serious violations, leading the African Commission on Human and Peoples’ Right to conclude that Sudan’s legal system does not provide effective remedies for victims of human rights violations.⁸

Restrictions on the rights to freedom of expression, association and assembly have increased since the cessation of South Sudan in July 2011. The documented restrictions are manifold: journalists

[sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta](#)

² United Nations High Commissioner for Refugees, ‘Sudan: 2013 UNHCR country operations profile’, at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483b76&submit=GO>.

³ United Nations Office for the Coordination of Humanitarian Affairs, ‘Sudan: Old Crisis, new challenges in Darfur’, at <http://www.unocha.org/top-stories/all-stories/sudan-old-crisis-new-challenges-darfur>; and Radio Dabanga, ‘Sudan: Tribal Violence Claims Dozens More Lives in Central Darfur’, at http://allafrica.com/stories/201307300220.html?aa_source=mf-hdlns.

⁴ Internal Displacement Monitoring Centre, ‘Sudan: A worsening displacement crisis in need of a comprehensive response’, 9 July 2013, at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/37E599F7703006B9C1257BA300576CA8/\\$file/sudan-overview-9jul2013.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/37E599F7703006B9C1257BA300576CA8/$file/sudan-overview-9jul2013.pdf).

⁵ AUPD’s mandate *Darfur: The Quest for Peace, Justice and Reconciliation*, Report of the African Union High-Level Panel on Darfur (AUPD), PSC/AHG/2 (CCVII) (29 October 2009), 2, para.9, referred to the situation as the “Sudanese crisis in Darfur” but this characterisation applies equally to several other parts of the country.

⁶ See REDRESS and KCHRED, *Comments on the Proposed Amendment of the Sudanese Criminal Act*, Position Paper, September 2008, at

http://www.pclrs.org/downloads/Miscellaneous/Penal_Code_Amendment_Position%20Paper%20_2_.pdf

⁷ AU High-Level Panel Report, above note 5, paras.246-254.

⁸ *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan*, Communication 379/09, Admissibility Decision, August 2012. See <http://www.fidh.org/African-Commission-on-Human-and-12386>

and media houses have been harassed, intimidated and subjected to pre-and post-print censorship; civil society organisations (CSOs) have been forced to close;⁹ members of political opposition parties and those perceived to be affiliated to political opposition parties have been detained for prolonged periods by the National Intelligence and Security Service (NISS) without formal charges lodged and without access to lawyers or their families;¹⁰ and individuals participating in public protests or forums or accused of organising such events, particularly student activists, have been harassed and detained without charges by the NISS.¹¹ Anti-government protests which were held throughout 2012, and intensified in June-August 2012, were reportedly met with excessive use of force, including extra-judicial executions and mass arbitrary detentions. Testimonies from detainees released pointed to the systematic use of torture and ill-treatment of protestors and protest organisers. Human rights defenders, including journalists and lawyers monitoring the detentions were also subject to harassment, intimidation and detention by the NISS.¹²

Sudan has failed to bring legislation in line with international human rights treaties and has in fact introduced new legislation which contravenes the Covenant. Of priority concern is the National Security Act of 2010 which governs the operation of the NISS. The National Security Act of 2010 provides exceptionally wide powers of arrest and detention and allows, *inter alia*, incommunicado detention without prompt access to a lawyer or judicial body as well as immunity for officials (see Sections II, V, VI below). Despite the widely documented systematic use of arbitrary detention, torture and ill-treatment by NISS, there have been no known prosecutions of NISS officers. In 2013 the UN Independent Expert on the situation of human rights in the Sudan expressed concern that “violations of human rights by the NISS has been raised consistently by most stake holders I met during this visit [to Sudan]” and urged “the Government to take this matter seriously”.¹³ In the latest legislative development, on 3 July 2013, Sudan’s parliament approved an amendment to Sudan’s armed forces law of 2007, that envisages subjecting civilians to the jurisdiction of military courts for a series of broad offences, including “undermining the constitutional system,” and the “publication of false news” on the grounds of protecting “state security”.¹⁴ The amendment, which entered into force following the President’s signature on 21 July 2013, is incompatible with several rights guaranteed under the Covenant, particularly the right to fair trial.

⁹ See ACJPS, ‘Civil society organisations closed in renewed clamp down on freedom of association in Sudan’, 9 January 2013, at <http://www.acjps.org/?p=1346>. See also Human Rights Watch, ‘Sudan: End Crackdown on Civil Society’, 13 January 2013, at <http://www.hrw.org/news/2013/01/13/sudan-end-crackdown-civil-society>. For an overview and analysis of documented restrictions on freedom of expression, association and assembly, see ACJPS, ‘Sudan: No space for free expression’, 11 April 2013, at <http://www.acjps.org/?cat=5>.

¹⁰ For example, see ACJPS, ‘Government of Sudan continues to subject political opposition members to arbitrary detention’, 14 May 2013, at <http://www.acjps.org/?p=1405>; and, ACJPS, ‘Sudanese political opposition leaders detained incommunicado and at risk of torture’, 15 January 2013, at <http://www.acjps.org/?p=1280>.

¹¹ See REDRESS, African Centre for Justice and Peace Studies and Sudan Democracy First Group, *Comments to Sudan’s 4th and 5th Periodic Report to the African Commission on Human and Peoples’ Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment*, April 2012, at <http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf>.

¹² See ACJPS, *Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan*, 27 July 2012, at <http://www.acjps.org/?p=1060>.

¹³ United Nations, ‘Press Statement issued by the UN Independent Expert on the situation of human rights in the Sudan, Professor Mashood Adebayo Baderin, at the end of his second mission to the Sudan Khartoum’, 10 February 2013, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12979&LangID=E>.

¹⁴ See REDRESS and Sudanese Human Rights Monitor, *Sudan: Amendment of Armed Forces Act runs counter to international standards and risks fostering further human rights violations*, at http://www.redress.org/downloads/Submission-on-Amendment_Sudan-Armed-Forces-Act_23July2013.pdf; ACJPS and Human Rights Watch, ‘Sudan: New Law Allows Military Trials of Civilians’, 9 July 2013, at <http://www.acjps.org/?p=1465>.

II. Lack of adequate implementation of the Covenant in Sudan's constitutional and legal framework (article 2(1) of the Covenant)

Constitution

Article 27 (3) of Sudan's Interim National Constitution of 2005 (INC) provides that "[a]ll rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill [of Rights]". Beyond this formal recognition, several factors undermine the effective implementation of the Covenant in Sudan.¹⁵ The Bill of Rights - of which article 27 (3) forms an integral part - lists a number of rights, many of which are also contained in the Covenant, but adopts definitions that diverge from the Covenant. For example, article 31 on equality before the law does not refer to "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" as grounds of discrimination, therefore seemingly narrowing the scope of prohibited grounds. Rights such as the right to liberty (article 29) and the right to a fair trial (article 34) do not extend the full guarantees as provided in the Covenant (articles 9 and 14 respectively). This includes the right not to be subject to arbitrary arrest or detention, the right to be brought promptly before a judge and the right to an independent tribunal. The absence of these guarantees has resulted in concerns about forced confessions and unfair trials.¹⁶ In contrast to article 7 of the ICCPR, article 33 of the Bill of Rights omits cruel, inhuman or degrading punishment, such as flogging, which is still frequently used in judicial practice, and amputations.¹⁷ Rights such as freedom of expression (article 39) are subject to limitations to be determined 'by law' that may be overly restrictive. An example is the law governing assemblies that has been used to forcibly break up public demonstrations before the 2010 General elections.¹⁸ Emergency laws such as the Emergency and Safety Act of 1997 permit further limitations.

The current constitutional review process necessitated by South Sudan's independence is widely seen as lacking transparency and adequate public consultation. There are further concerns that the Government has publicly declared that the future constitution will be based on *Shari'a* (Islamic law) without public consultation.¹⁹ Civil society groups have called for an "inclusive and transparent public consultation on the future constitution to ensure the constitution that is adopted reflects the country's diversity, promotes equality, and protects the human rights and fundamental freedoms of all Sudanese."²⁰

¹⁵ See REDRESS and Sudanese Human Rights Monitor, *Criminal Justice and Human Rights: An agenda for effective human rights protection in Sudan's new constitution*, March 2012, at <http://www.pclrs.org/downloads/1203%20Sudan%20Criminal%20Justice%20and%20Human%20Rights.pdf>

¹⁶ See for example, Opinions adopted by the Working Group on Arbitrary Detentions, *Opinion 38/2008 (Sudan)*, UN Doc. A/HRC/13/30/Add.1, 2 March 2010, 166-181.

¹⁷ See on Sudan's position, *Information received from Sudan on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/SDN/CO/3)*, UN Doc. CCPR/C/SDN/CO/3/Add.1, 18 December 2009, Recommendation No.10, para.14. On 2013 amputation case, see Redress, ACJPS, Physicians for Human Rights and Human Rights Watch, 'Sudan: Doctors Perform Amputations for Courts', 27 February 2013, at <http://www.acjps.org/?p=1317>.

¹⁸ *Report of the independent expert on the situation of human rights in the Sudan*, Mohammed Chande Othman, UN Doc. A/HRC/15/CRP.1, 14 September 2010, para.22.

¹⁹ See 'Sudan's upcoming constitution will be 'Islamic' Bashir says', Sudan Tribune, 8 July 2012.

²⁰ ACJPS, 'Adoption of Declaration of Guiding Principles for Constitution Making in Sudan', 18 June 2013, at <http://www.acjps.org/?p=1440>.

Statutory law

Legislation that has been adopted has several shortcomings. The Armed Forces Law of 2007 and the Police Act of 2008 retains immunities of officials, the National Security Act of 2010 does not include a number of guarantees against arbitrary arrest and detention, and equally contains immunity for officials. The Children's Act of 2010, or any other legislation for that matter, does not fully criminalise all forms of female genital mutilation. The amendment to the Armed Forces Law (see below on article 14) does not conform to the right to a fair trial.

Sudan has not enacted (or repealed) the requisite laws to bring Sudan's legislation in conformity with the Covenant. There has been no comprehensive review of the compatibility of Sudan's laws with its international obligations. Reforms undertaken have not addressed a number of critical areas, such as women's rights (non-discrimination, protection against sexual violence), leaving significant gaps in recognition and protection. As set out below, the Criminal Act of 1991 and Criminal Procedure Act of 1991 and other laws, such as the Anti-Terrorism Law of 2001, regional public order laws, including the Khartoum Public Order Act of 1998, the Trade Union Act of 2010, the Press and Publication Act of 2009 and the Voluntary and Humanitarian Work (Organisation) Act of 2006 retain provisions that are incompatible with, or raise concerns regarding their compatibility with the rights guaranteed under the Covenant, particularly articles 7, 9, 14, 15 and 19-21. The Constitutional Court has on a number of occasions made rulings that are seemingly incompatible with the rights guaranteed in the Covenant, which has undermined its role as "guardian and protector" of these rights.²¹

III. Discrimination, lack of equality between men and women and inadequate protection against sexual violence (articles 2,3 and 26 of the Covenant)

Sudan's Bill of Rights recognises equality before the law and equal rights of men and women.²² However, Sudan's statutory law discriminates against women and fails to provide equal protection, which has been the subject of sustained protests and advocacy for reforms.²³

Several provisions of the 1991 Personal Status Law of Muslims governing marriage, divorce and inheritance grant women inferior rights compared to men and constitute *de jure* discrimination.²⁴ In the applied law of evidence, for some offences, such as adultery, only men can provide admissible evidence which amounts to *de jure* discrimination.²⁵ Public order laws and provisions, such as article 152 of the Criminal Act 1991 that makes the wearing of "indecent" or "immoral" dress punishable by whipping, have a disproportionate impact on women who are *de facto* the sole targets of this

²¹ See REDRESS and Sudanese Human Rights Monitor, *Arrested Development: Sudan's Constitutional Court, Access to Justice and the Effective Protection of Human Rights*, August 2012, at http://www.pclrs.org/downloads/Resources/1208arrested_development_sudan.pdf

²² Articles 31 and 32 respectively.

²³ See Asma Abdel Halim, 'Gendered Justice: Women and the Application of Penal Laws in the Sudan', in Lutz Oette (ed.), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate, Farnham, 2011), pp. 227-241.

²⁴ See Zeinab Abbas Badawi, 'Needed Reforms in Family Muslim Laws and Customary Laws in Sudan', in Akolda Tier and Balghis Badri (eds), *Law Reform in Sudan* (Ahfad University of Women, Khartoum, 2008), pp. 207-237.

²⁵ Article 149 Criminal Act 1991. See REDRESS/KCHRED, *Time for Change: Reforming Sudan's Legislation on Rape and Sexual Violence*, November 2008, pp. 28, 29, at www.pclrs.org/downloads/Miscellaneous/Position%20Paper%20Rape.pdf

provision.²⁶ Women's testimonies show that the enforcement of public order laws by the public order police has frequently been discriminatory and arbitrary.²⁷

The laws on sexual violence fail to provide equal and adequate protection of women's right to physical and mental integrity, which constitutes both discrimination and a failure to implement positive obligations arising from article 2 of the Covenant, particularly in conjunction with article 7. Article 149 of the Criminal Act defines rape with reference to adultery, which creates confusion over evidentiary requirements for a prosecution (adultery requires four male eye-witness of the act) and puts a woman at risk of facing prosecution for adultery if she cannot prove rape.²⁸ The definition of rape is narrow in scope and does not reflect legislative reforms and best practices elsewhere.²⁹ There is only one offence covering all other forms of sexual violence, which carries an inadequate maximum punishment of two years imprisonment. In addition, rape in marriage, forms of sexual harassment and certain types of female genital cutting/mutilation are not criminal offences.³⁰ The Government of Sudan has discussed the reform of rape laws but effective steps have yet to be taken in this regard.³¹

IV. Lack of effective remedies in case of violations of Covenant rights (article 2(3) of the Covenant)

Article 35 of the Bill of Rights provides that "[t]he right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice". However, the Constitutional Court has failed to act as a constitutional protector of rights and remedies provided for in statutory law have proved largely ineffectual.³² In practice, there is an almost complete absence of cases that have resulted in compensation or other forms of reparation being awarded to victims of torture and other serious human rights violations. While compensation as one form of reparation can be claimed in the course of criminal proceedings, Sudanese criminal law does not recognise violations such as torture as defined in international law as criminal offence. Immunities, short statutes of limitation and lack of adequate protection significantly limit the prospect of successfully bringing a compensation claim as part of criminal proceedings. A victim of human rights violations may claim damages for tort under civil law³³ but due to immunities and lack of investigations there is virtually no practice of victims having effective access to justice and obtaining reparation.

²⁶ See Strategic Initiative on Women in the Horn of Africa (SIHA), *Beyond Trousers: The Public Order Regime and the Human Rights of Women and Girls in Sudan*, A Discussion Paper, Submission to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 12 November 2009.

²⁷ *Ibid.* See also ACJPS' bi-monthly Sudan Human Rights Monitor (SHRM). In its March-April 2013 issue, ACJPS documented one case in which 150 women working as tea sellers in Nyala, South Darfur, were prosecuted under Article 152 of the Sudanese Penal Code 1991 (Indecent or immoral acts) and ordered to pay a fine of 300 SDG (approximately \$69) each for wearing tight clothes and not wearing socks. See ACJPS, SHRM March-April 2013, at <http://www.acjps.org/?p=1493>.

²⁸ *Concluding observations of the UN Human Rights Committee: Sudan*, UN Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007, para.14 (b).

²⁹ REDRESS/KCHRED, *Time for Change*, above note 25, pp. 28, 29.

³⁰ *Ibid.*, pp. 55-58.

³¹ *UN Human Rights Committee: Sudan*, above note 28, paras. 13-15 and *Information received from Sudan on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/SDN/CO/3)*, UN Doc. CCPR/C/SDN/CO/3/Add.1, 18 December 2009, para.24.

³² See REDRESS and Sudanese Human Rights Monitor, *Arrested Development*, above note 21.

³³ Article 153(1) Civil Transaction Act of 1984.

V. The right to life: Death penalty and lack of fair trials (article 6 of the Covenant)

Sudanese forces are alleged to have been responsible for extrajudicial killings of civilians in the course of the various conflicts (see I above) and of using disproportionate force, killing unarmed protesters, which have been followed by announced inquiries whose outcome remains unclear.

The State has not yet made public the findings of public inquiries announced into the deaths of protestors following action by Government forces to disperse two protests, in Al Jazeera and South Darfur States in 2012. On 6 and 7 December 2012, four students were found dead in an irrigation channel (tura) on the campus of Al Jazeera University, following joint action by the Central Reserve Police and NISS to break up a student meeting on 5 December. The exact circumstances of the deaths are unclear.³⁴ Earlier in the year on 31 July 2012, ACJPS had documented the deaths of twelve individuals, ten of whom reportedly under the age of 18, who sustained gun shot wounds and wounds caused by sharp weapons after the police and NISS used excessive force and fired live ammunition during public protests in Nyala, South Darfur.³⁵

The death penalty remains in force for numerous offences, including on a mandatory basis and for those that cannot be considered to be the most serious³⁶ - some of which also violate other rights such as the crime of apostasy (article 126 of the 1991 Criminal Act, which is incompatible with article 18 of the Covenant, freedom of religion). The rule that the death penalty can only be imposed in accordance with the law does not provide sufficient safeguards, given that some of these laws, such as the National Security Act of 2010, are incompatible with the Covenant, as it allows, *inter alia*, incommunicado detention without prompt access to a lawyer or judicial body. Sudan's courts have imposed the death penalty in several instances where the defendants have been held incommunicado and alleged that they had been tortured into making confessions.³⁷ These cases, as well as convictions pursuant to trials under the anti-terrorism law,³⁸ raise serious concerns over their compatibility with the right to life.³⁹

VI. Prohibition of torture and ill-treatment: Shortcomings in the legal framework, inadequate safeguards, barriers to accountability and reparation as well as recourse to corporal punishment (article 7 of the Covenant)

Persistence of torture and ill-treatment in various contexts

A number of well-documented cases⁴⁰ show that torture and ill treatment is systemic and has been used predominantly to suppress opposition, to obtain confessions or to discriminate against

³⁴ ACJPS, 'Call for immediate independent investigation into student deaths and excessive use of force by Sudanese authorities', 10 December 2012, at <http://www.acjps.org/?p=1127>; Human Rights Watch, 'Sudan: Justice Needed for Student Deaths', 10 December 2012, at <http://www.hrw.org/news/2012/12/10/sudan-justice-needed-student-deaths>.

³⁵ ACJPS, 'Twelve dead, including ten children, and over eighty injured following police and NISS excessive use of force in Nyala', 2 August 2012, at <http://www.acjps.org/?p=150>.

³⁶ Human Rights Committee, *General Comment No. 6: The right to life (art. 6)*, 30 April 1982, paras.6,7.

³⁷ See for example *Paul John Kaw and others vs (1) Ministry of Justice; (2) Next of kin of Elreashed Mudawee*, Case No. MD/QD/51/2008, Constitutional Court, Judgment of 13 October 2009, confirming the death sentence of six men accused of murder committed in the Soba Aradi riots of May 2005. See also Opinion No.38/2008 of the Working Group of Arbitrary Detention, above note 16.

³⁸ See *Report of the Special Rapporteur on the situation of human rights in the Sudan*, Sima Samar, UN Doc. A/HRC/11/14, 14 June 2009, para.30.

³⁹ See Human Rights Committee, *General Comment 6*, above note 36, para.7.

⁴⁰ See REDRESS, ACJPS and SDFG, Comments, above note 11. See also ACJPS, *Excessive force, mass arbitrary detentions, ill-*

marginal groups, including Darfurians and Southerners who are often also internally displaced persons (IDPs). Political opponents, students, journalists and human rights defenders have been particularly at risk of torture because of their background, (perceived) affiliation, or conduct (or all of these factors taken together). In several instances, individuals are believed to have been tortured to death or tortured before being killed. The cases also show that the authorities have used excessive force during demonstrations that amounted to ill-treatment.

Despite the Committee's 2007 request that Sudan provide "detailed information on complaints filed in connection with such acts [of torture or cruel, inhuman or degrading treatment], the number of persons prosecuted and convicted, including members of national security forces, and the reparations paid to victims"⁴¹ in its next report, Sudan does not appear to have furnished this information.

Lack of a criminal offence making torture subject to adequate punishments

The Bill of Rights prohibits torture but there is no criminal offence of torture in line with international standards.⁴²

Lack of custodial safeguards

Article 83 of the Criminal Procedure Act of 1991 provides for several custodial safeguards concerning the treatment of detainees, including the right of access to a lawyer, right to inform a family member and provision of medical care. However, the wording of the provision casts doubt on the effectiveness of these safeguards, particularly contacting a lawyer from the very beginning of proceedings and the fact that the prosecution can extend the initial 24 hours period of arrest to an unduly long period of 96 hours, i.e. the latest point by which a detainee has to be brought before a judge.⁴³ The period enhances the risk of torture at a time when arrested and detained persons are known to be most vulnerable.

The new National Security Act adopted in 2010⁴⁴ largely fails to address the concerns that had been expressed in respect of its predecessor, the 1999 National Security Forces Law:⁴⁵ "In Khartoum and other parts of Northern Sudan, the National Intelligence and Security Services (NISS) systematically use arbitrary arrest and detention against political dissidents. According to allegations received by [UN] human rights officers, NISS detention can typically be accompanied by additional serious human rights violations such as incommunicado detention, ill-treatment, torture or detention in unofficial places of detention. The human rights concerns related to the NISS are longstanding and institutionalized problems that could be addressed through institutional reform."⁴⁶

treatment and torture used to crack down on popular protests in Sudan, July 2012, at <http://www.acjps.org/?p=1060>

⁴¹ UN Human Rights Committee: Sudan, above note 28, para.16 (c).

⁴² Article 115 of the Criminal Act 1991 stipulates that '1. Whoever intentionally does any act which tends to influence the fairness of judicial proceedings relating thereto, shall be punished with imprisonment for a term not exceeding three years or with fine or with both. 2. Every person who, having public authority entice or threaten or torture any witness or accused or opponent shall be punished with imprisonment for a term not exceeding three months or with fine or with both.'

⁴³ *General Recommendations of the Special Rapporteur on Torture*, UN Doc. E/CN.4/2003/68, para. 26 (g).

⁴⁴ Its text is available at www.pclrs.org/smartweb/english/bills-and-laws.

⁴⁵ See REDRESS/SORD, *Security for All-Reforming Sudan's National Security Services*, October 2009, at www.pclrs.org/downloads/Resources/Resources/Security%20for%20all%20Final.pdf

⁴⁶ Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, *Arbitrary arrest and detention committed by national security, military and police*, Geneva, 28 November 2008, 3.

Article 50 of the National Security Act of 2010 retains the power to arrest and detain a person on vague grounds for an initial period of up to thirty days (forty-five days upon renewal) and a possible total of four and a half months. Article 51 of the Act grants the right to communicate with family members or a lawyer which is however conditional upon not prejudicing the investigation. The NISS may therefore still hold detainees without contact to the outside world (incommunicado) where it sees fit. Detainees do not have access to a judge or the right to file a habeas corpus petition within the period of forty-five days or four and a half months respectively, depriving them of any judicial protection.

Use of evidence alleged to have been extracted under torture

There have been a number of recent cases, including death penalty cases, where courts dismissed allegations raised by defendants that confessions had been extracted under torture.⁴⁷ Article 20 (2) of the Evidence Act of 1993 stipulates that confessions in criminal matters will be invalid if they are the result of coercion. However, article 10 of the same Act creates an exception as it allows the court to admit evidence – even where it was obtained in breach of recognised procedures – if it is confident that the evidence is independent and acceptable. The court may also require corroborating evidence to rely on such evidence as a basis for conviction. The lack of clarity in the Evidence Act runs counter to international standards according to which confessions or statement obtained as a result of torture or ill-treatment are void and inadmissible.⁴⁸ Concerns have also been raised that regulation 25 adopted under the Anti-Terrorism Law of 2001, which empowers courts to convict persons on the basis of confessions, has resulted in the use of evidence that has been obtained in contravention of article 7 of the Covenant (see at IX. below).

Legal barriers to effective investigations and prosecutions

- Immunity

The granting of immunities for officials in Sudanese laws is a long-standing concern. Effectively, authorities are given the right to police themselves as there is no effective oversight. This has resulted in a lack of accountability – not one case of prosecutions of a NISS member is known – which in turn perpetuates human rights violations. The UNHRC, the African Commission, various UN bodies, the AU High-Level Panel on Darfur and others have called on Sudan to abolish immunities.⁴⁹ Sudan had the opportunity to do so in the Armed Forces Act of 2007, the Police Act of 2008, and the National Security Act of 2010, but has opted not to do so. The Sudanese Constitutional Court has justified immunities by emphasising their conditional nature and the possibility of judicial review.⁵⁰ However, in practice, immunities have frequently led to impunity, including for serious human rights violations, and legal remedies are neither clear nor effective.⁵¹ By maintaining the current system,

⁴⁷ See above at V.

⁴⁸ See for a recent regional affirmation of this principle, African Commission on Human and Peoples' Rights, Communication 334/06: *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt* (2011), paras.212-219.

⁴⁹ See e.g. *UN Human Rights Committee: Sudan*, above note 28, para.9 (e) and AU High-Level Panel Report, above note 5, 56-63, paras.215-238; and 91, 92, para.336.

⁵⁰ *Farouq Mohamed Ibrahim Al Nour v (1) Government of Sudan; (2) Legislative Body*; Final order by Justice Abdallah Aalmin Albashir President of the Constitutional Court, 6 November 2008.

⁵¹ *UN Human Rights Committee: Sudan*, above note 28, para.9 and OHCHR, Report, above note 46.

the state party fails in its positive obligation to prevent, investigate and prosecute serious violations and in providing effective remedies to victims thereof.⁵²

- Statutes of Limitation

The passage of time has constituted an additional obstacle to the investigation and prosecution of torture cases, particularly where the authorities have to date failed to take any action.⁵³ The criminal offence of torture is subject to a limitation period of two years (article 115 (2) of the Criminal Act of 1991) and/or, the offence of hurt for a maximum period of five years (article 142 (2) *ibid.*) pursuant to Article 38 (1) (b) of the 1991 Criminal Procedure Act of 1991. These periods are unduly short given the seriousness of the crime of torture, which should not be subject to any limitation periods.

- Lack of victims and witness protection

Individuals who allege that they have been tortured, such as Monim Elgak, Osman Hummeida and Amir Suliman in 2009 and Safia Mohammed Ishag in 2011,⁵⁴ received threats that prompted them to leave Sudan. Article 4(e) of the Criminal Procedure Act of 1991 provides that witnesses should not be subject to any injury or ill-treatment. Beyond this general prohibition, Sudanese law does not provide for the effective protection of victims and witnesses in torture cases.

- Special Courts

Both the Police Law of 2008 and the National Security Act of 2010 provide that members of the respective forces are subject to the jurisdiction of special police and security courts respectively,⁵⁵ which runs counter to recognised best practices.⁵⁶

Prohibition of cruel, inhuman and degrading punishment

The recognition of corporal punishment (stoning, amputation, cross-amputation and whipping) in Sudanese law has been a long-standing concern.⁵⁷ Sudanese courts imposed the sentence of stoning in two recent judgments.⁵⁸ Whipping is routinely meted out, immediately following summary trials in which the accused are not informed of their right to appeal. This punishment is disproportionately applied to women under gender discriminatory legislation and law enforcement practice related to the defence of “public morality”, in particular ill-defined legislation related to “indecent and immoral” acts or dress that is deemed contrary to public morality or public feelings.⁵⁹ This practice continues in defiance of the UN Human Rights Committee’s and the African Commission on Human

⁵² See above at I.

⁵³ *Farouq Mohamed Ibrahim Al Nour v (1) Government of Sudan; (2) Legislative Body*, above note 50.

⁵⁴ See case of Monim Elgak, Osman Hummeida and Amir Suliman, above note 8 and *Case of Safia Mohammed Ishag v. Sudan* (application to African Commission on Human and Peoples’ Rights on file with REDRESS).

⁵⁵ Articles 46 (1) (2) and 48 of the Police Act of 2008 and Articles 75-81 of the National Security Act of 2010.

⁵⁶ Principle 9 of the UN Principles Governing the Administration of Justice Through Military Tribunals, at <http://www.dcaf.ch/Publications/International-Standard-Principles-Governing-the-Administration-of-Justice-Through-Military-Tribunals>.

⁵⁷ *Curtis Francis Doebbler v Sudan*, African Commission on Human and Peoples’ Rights, Communication No.236/2000 (2003); *UN Human Rights Committee: Sudan*, above note 28, para.9. See also REDRESS and Sudanese Human Rights Monitor, *No more cracking of the whip: Time to end corporal punishment in Sudan*, March 2012, <http://www.pclrs.org/downloads/Corporal%20Punishment%20-%20English.pdf>.

⁵⁸ See SIHA, ‘Second Woman Sentenced to Death by Stoning for Adultery’, 23 July 2012, at

<http://www.sihanet.org/content/second-woman-sentenced-death-stoning-adultery>.

⁵⁹ See Part XV, Sudanese Criminal Act of 1991, in particular Article 152, Indecent and Immoral Acts.

and Peoples' Rights recommendation to repeal relevant legislation.⁶⁰ Despite hopes that a de facto moratorium had been in operation since 2001 on the execution of amputation sentences, the implementation of a penalty of cross-amputation was reportedly carried out by Government doctors on 14 February 2013.⁶¹ In response to public concern related to the case, Sudan's Deputy Chief Justice Abdul Rahman Sharfi is reported to have confirmed at a press conference on 11 March 2013 that 16 cases of amputation had been carried out by the authorities since 2001.

VII. Right to liberty and security of person: Inadequate legal framework (article 9 of the Covenant)

The Criminal Procedure Act of 1991 does not provide for prompt access to a lawyer of one's choice, fails to provide that an arrested person should be brought before a judge promptly (normally within the first 48 hours) and does not provide for an unequivocal right of compensation for arbitrary arrest and detention.⁶² The National Security Act of 2010 does not clearly stipulate the need for "reasonable suspicion" as a ground of arrest and/or detention, does not provide an unconditional right to see a lawyer, and fails to grant access to a judge promptly or even within a reasonable time (a person can be held for up to four and a half month without any judicial supervision).⁶³ This lack of custodial safeguards creates an environment conducive to torture and ill-treatment. Further, these extraordinarily wide powers make it virtually impossible that any detention under the National Security Act is considered unlawful, which renders a right to compensation for a breach of article 9 illusory. In practice, detention under the National Security Act is reportedly used systematically against members of political opposition parties and others perceived to be affiliated to the political opposition (see at VI. above). The harassment of victims of torture, human rights defenders and others is incompatible with the right to security as interpreted in the Committee's jurisprudence.⁶⁴

VIII. Inhumane Prison Conditions (article 10 of the Covenant)

Conditions in detention facilities in Sudan are reportedly very poor, and lack adequate health care and food supplies, in particular police detention centres and women's prisons, which is due to inadequate resources being made available, resulting in the perpetuation of a poor overall infrastructure of the system.⁶⁵ Treatment of prisoners often runs counter to international standards, including being routinely shackled or subjected to solitary confinement in small cells. The 2010 prison law provides the Minister of Interior and the General Director of Prisons broad powers to impose and issue special orders and regulations.⁶⁶ The law does not envisage a system of independent oversight. Application of cruel and degrading or inhumane punishments against

⁶⁰ *UN Human Rights Committee: Sudan*, above note 28, para.9; and African Commission on Human and Peoples' Rights, *Concluding Observations and Recommendations on the Third Periodic Report of the Republic of Sudan (2003-2008)*, (2009), para.54.

⁶¹ Redress, ACJPS, Physicians for Human Rights and Human Rights Watch, 'Sudan: Doctors Perform Amputations for Courts', 27 February 2013, at <http://www.acjps.org/?p=1317>.

⁶² See Nabil Adib, 'At the State's Mercy: Arrest, Detention and Trial under Sudanese Law', in Oette, above note 23, pp. 121-138, at pp. 122-133.

⁶³ See articles 50, 51 National Security Act, 2010.

⁶⁴ *Rajapakse v. Sri Lanka*, UN Doc. CCPR/C/87/D/1250/2004, 26 July 2006, para.9.7.

⁶⁵ Draft report on Sudan's prison system (on file with ACJPS).

⁶⁶ Article 48 and 49 of the National Prison and Treatment of Inmates Act of 2010.

prisoners who are accused of committing offences in breach of the law is reportedly common, as are reports of torture and ill-treatment in prison.⁶⁷

IX. Right to a fair trial: Resort to special and military courts (article 14 of the Covenant)

The Combating of Terrorism Act of 2001 establishes a system of ‘Special Courts’ set up by the Chief Justice, which have the power to impose and confirm the death penalty. The operation of these courts has been of concern, such as in the case of *Kamal Mohammed Saboon v Sudan Government*.⁶⁸ The case concerned the raid by forces of the Darfurian Justice and Equality Movement (JEM) on Omdurman in 2008, which was followed by the arrests of thousands of suspects of Darfuri origin. Several hundred of these persons were charged to stand trial before six special courts in the capital. The Chief Justice and Minister of Justice formulated the rules of procedure of the trial courts (Oder No.82, 2008) pursuant to the provisions of the Combating Terrorism Act but in breach of the principles of the independence of the judiciary. The Rules themselves restrict the right of the defence to meet the accused person, permit trials in absentia, empower courts to convict on the basis of (retracted) confessions without investigating the circumstances under which they have been made, and limit the right of appeal to the Special Court of Appeal (rather than the Court of Appeal and Supreme Court). It is apparent that these rules raise serious concerns regarding their compatibility with the right to defend oneself and the right to a fair hearing, including the inadmissibility of confessions obtained as a result of torture or ill-treatment.

In April 2012 the Sudanese government declared a state of emergency along the borders with South Sudan eventually the chief justices issued a decree in formation of special courts according to the decree the courts are based in White Nile, South Kordofan and Blue Nile states.⁶⁹

The 2013 amendment to the Armed Forces of 2007 envisages subjecting civilians to the jurisdiction of military courts for a broad range of vaguely worded offences. This sweeping measure runs counter to article 14 of the Covenant. It covers offences under chapters 5-7 of the Criminal Act 1991 and newly established offences, which themselves raise concerns over their compatibility with the principle of legality.⁷⁰

X. Freedom of expression, association and assembly (articles 19-22 of the Covenant)

Government restrictions on freedom of expression, association and assembly in Sudan have been increasing at a time when Sudan is drafting a new permanent constitution and preparing for its first national elections since the secession of South Sudan, scheduled for 2015 (see above at I).

Broad and vaguely worded offences, such as the “publication of false news” have been used to stifle freedom of expression. For example, ten journalists were prosecuted and tried for reporting on the

⁶⁷ Draft report on Sudan’s prison system (on file with ACJPS).

⁶⁸ *Kamal Mohammed Saboon v Sudan Government*, Constitutional Court No.60 of 2009.

⁶⁹ Chief Justice issues decree establishing special courts for combating terrorism, see 17 April 2012, <http://www.sunanews.net/english-latest-news/23151-chief-justice-issues-decree-establishing-special-courts-for-combating-terrorism-.pdf>

⁷⁰ See REDRESS and Sudanese Human Rights Monitor as well as ACJPs and Human Rights Watch, above note 14.

case of Safia Mohamed Ishag who alleges that she was raped by NISS members in February 2011.⁷¹ The press has been subjected to repeated censorship and is subject to a series of restrictions, including pre-and post-print censorship, under the Press and Publications Act of 2009.⁷²

Civil society organisations and human rights defenders have been subject to a range of measures incompatible with their freedom of expression, association and assembly. Several organisations have been shut down and some have had their assets confiscated. In 2009 three domestic non-governmental organisations (NGOs) were forcibly closed and ten international NGOs expelled from Sudan, in response to the issuance of the International Criminal Court's arrest warrant against Sudan's President Bashir. A new wave of closures in December 2012, including the closure of three civil society organisations and one literary forum, raised further concern about restrictions on the operation of civil society.⁷³ A number of peaceful activities of human rights defenders, such as meetings, have been cancelled or stopped by the NISS.⁷⁴ In addition, several human rights defenders have reportedly been subjected to arbitrary arrest and detention, as well as torture and ill-treatment.⁷⁵ A series of peaceful demonstrations were broken up, with the Sudanese authorities using excessive force in the process. This included protests against the national security law in 2010, for greater political freedoms in 2011 and against the deteriorating economic conditions over the last three years.⁷⁶

The freedom of association of other groups, such as trade unions, which are subject to the Trade Union Act of 2010, is restricted.⁷⁷

XI. The rights of minorities (article 27 of the Covenant)

Minorities have reportedly been subjected to discrimination and various forms of ill-treatment. This applies in particular to those considered to be South Sudanese who have been stripped of their Sudanese citizenship following the independence of South Sudan in July 2011⁷⁸ and are reported to be vulnerable to harassment and other forms of ill-treatment on account of their origin.⁷⁹ Concern has arisen in 2013 of heightened restrictions and forced closures of civil society organisations and other entities led by Christian minorities in Sudan.⁸⁰

⁷¹ Amnesty International, *Annual Report 2012-The state of the world's human rights, Sudan*, at <http://www.amnesty.org/en/region/sudan/report-2012>

⁷² See ACJPS' bi-monthly Sudan Human Rights Monitor, at <http://www.acjps.org/?cat=6>. See also ACJPS, Sudan: No space for free expression, 11 April 2013, at <http://www.acjps.org/wp-content/uploads/2013/04/Sudan-no-space-for-free-expression-11-April-2013.pdf>.

⁷³ See ACJPS, 'Civil society organisations closed in renewed clamp down on freedom of association in Sudan', 9 January 2013, at <http://www.acjps.org/?p=1346>.

⁷⁴ See ACJPS, SHRM, *ibid*. See also See Urgent Appeals from the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT joint program) on Sudan http://www.fidh.org/-Sudan,211-?id_mot=27 ; see also <http://www.fidh.org/Sudan-Incommunicado-detention-of-Hatim-Ali-Abdalla-and-police-harassment-13113> ; <http://www.fidh.org/Sudan-releases-of-defenders-but> ; <http://www.fidh.org/Sudan-Arbitrary-arrest-and> ; <http://www.fidh.org/SUDAN-Arrest-and-release-of-Mr>

⁷⁵ See REDRESS, ACJPS and SDFG, above note 11.

⁷⁶ *Ibid*.

⁷⁷ See ITUC, CSI, IGB, *Annual survey of violations of trade union rights: Sudan, 2012*, at <http://survey.ituc-csi.org/Sudan.html?lang=en#tabs-1>.

⁷⁸ See Bronwen Manby, *The Right to Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws*, The Open Society Initiative for Eastern Africa, June 2012, at <http://www.afri-map.org/english/images/report/OSIEA-AfriMAP-Nationality-Sudans-full-EN.pdf>.

⁷⁹ See for example Arry, 'Urgent Action Violent Attack on Christian Nuba and their Institutions in Khartoum', 25 February 2013, at <http://arry.org/?p=702>.

⁸⁰ ACJPS, 'Sudan Human Rights Monitor', March-April 2013, at <http://www.acjps.org/?cat=6>.