



*Ending Torture. Seeking Justice for Survivors*



**Sudan's human rights crisis:  
High time to take article 2 of the Covenant seriously**

**Submission to the UN Human Rights Committee ahead of  
its Examination of Sudan's Fourth Periodic Report under  
the International Covenant on Civil and Political Rights**

**June 2014**

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*This report is dedicated to Osman Hummida, the late Founding Director of the African Centre for Justice and Peace Studies, who fought tirelessly throughout his life to obtain justice for victims of human rights violations in Sudan and hold perpetrators to account.*

## I. Introduction

Sudan is facing a serious, ongoing human rights crisis. Gross violations continue to be committed in armed conflicts, in Darfur, South Kordofan and Blue Nile. Meanwhile, particularly since South Sudan's independence in 2011, civil society and the media have been subjected to repeated crackdowns. Public protests have been met with excessive force, and frequently been followed by arbitrary detentions and ill-treatment. Sudan's legal system fails to protect its citizens, particularly women, and foreign nationals living in the country, from violations and facilitates breaches, such as torture, which are committed with impunity. This applies particularly to the National Intelligence and Security Forces (NISS) which enjoy virtually unlimited powers. Impunity for violations, both in the context of armed conflict and in other situations, remains the norm. Legislative and institutional reforms to address widely acknowledged systemic deficiencies have, with few exceptions, not been advanced. These realities result in the perpetuation of the status quo, which is incompatible with the Covenant.

Interventions before and by the United Nations (UN) Human Rights Council and the African Commission on Human and Peoples' Rights (African Commission) have highlighted the seriousness of the situation, which requires urgent and concerted measures to bring about the changes needed to ensure the protection of rights, as well as accountability and justice for violations. We, REDRESS and the African Centre of Justice and Peace Studies (ACJPS) – relying on a number of sources of first-hand information and secondary sources that testify to the nature and scale of human rights violations – call on the UN Human Rights Committee to do its utmost to ensure that the State party upholds its obligations under the Covenant.

## II. Summary of developments and concerns since August 2007

1. The State Party has not addressed most of the concerns identified in the Committee's 2007 concluding observations on Sudan's third periodic report, and several new issues of concerns have arisen since.
2. The period from August 2007 until July 2011, the date of South Sudan's independence, was characterised by ongoing violations in the armed conflict in Darfur and a crack-down on civil society organisations and the media, particularly in response to the International Criminal Court's issuance of an arrest warrant for international crimes against Sudan's President Omar al-Bashir in 2009.<sup>1</sup> In parallel, the State party largely failed to undertake

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<sup>1</sup> See in this regard in particular "Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Sima Samar", UN Doc. A/HRC/11/14, June 2009, paras.29-45, at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.14\\_AUV.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.14_AUV.pdf).; African Commission, Communication 379/09 – *Monim Elgak, Osman Hummeida and Amir Suliman* (represented by FIDH and OMCT) v Sudan, which is pending before the African Commission.

the legislative and institutional reforms envisaged in the 2005 Comprehensive Peace Agreement (CPA). The 2007 Police Act, the 2008 Army Act and the 2010 National Security Act retained a number of features, such as lack of safeguards, immunities and jurisdiction for special courts, which facilitate human rights violations and are detrimental to accountability.<sup>2</sup> Protests against the failure to reform the National Intelligence and Security Services (NISS) in line with the CPA and the Interim National Constitution (INC) were met with excessive force in 2009 and 2010.<sup>3</sup> Further reforms, particularly in relation to women's rights, were discussed but not carried out, with the exception of the 2010 Child Act.<sup>4</sup>

3. At the time of South Sudan's independence, the unresolved status of the border regions of South Kordofan/Nuba Mountains (July 2011) and Blue Nile (September 2011) erupted into open armed conflict between forces of the State Party and opposition forces.<sup>5</sup> The situation in Abyei remained tense, notwithstanding the 2009 ruling by the Permanent Court of Arbitration,<sup>6</sup> and was characterised by repeated assaults and displacement.<sup>7</sup> The armed conflict in Darfur continued, with a number of reported violations in the midst of increased lawlessness.<sup>8</sup> 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 ongoing armed conflicts in Kordofan and Blue Nile, as well as in Darfur.<sup>9</sup>
4. In 2011, at the time before and after the independence of South Sudan, the State Party took a number of steps seemingly aimed at strengthening what it considers the Arab and

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<sup>2</sup> See further below at para.17.

<sup>3</sup> See Amnesty International, "Sudan must end violent crackdown on protesters", Press Release, 7 December 2009, at <http://www.amnesty.org/en/news-and-updates/news/sudan-must-end-violent-crackdown-protestors-20091207>.

<sup>4</sup> See Committee on the Rights of the Child, *Concluding Observations: Sudan*, UN Doc. CRC/C/SDN/CO/3-4, 22 October 2012, para.9: "The Committee welcomes the promulgation of the Child Act (2010). It is concerned, however, that the State party has yet to establish a regulatory and policy framework to effect its implementation."

<sup>5</sup> See African Commission, Communication 402/2011: *Interights, Human Rights Watch, Sudan Democracy First Group and REDRESS v Sudan*, at <http://www.redress.org/case-docket/redress-sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta>.

<sup>6</sup> See Permanent Court of Arbitration, *The Government of Sudan / The Sudan People's Liberation Movement/Army (Abyei Arbitration)*, at [http://www.pca-cpa.org/showpage.asp?pag\\_id=1306](http://www.pca-cpa.org/showpage.asp?pag_id=1306)

<sup>7</sup> See for example, *Report of the Secretary-General on the situation in Abyei*, UN Doc. S/2011/451, 26 July 2011.

<sup>8</sup> Commission on Human Rights, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled Human Rights Council- *Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101*, at <http://reliefweb.int/report/sudan/sudan-report-high-level-mission-situation-human-rights-darfur-pursuant-human-rights>. ACJPS, Sudan Human Rights Monitor March-April 2013, ACJPS, *Sudan Human Rights Monitor, June- July 2010*, at [http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human\\_Rights\\_Monitor-Issue6-FINAL.pdf](http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human_Rights_Monitor-Issue6-FINAL.pdf).

<sup>9</sup> *Interights, Human Rights Watch, Sudan Democracy First Group, and REDRESS v. Sudan*, Communication 402/2011, see above note 5.

Islamic identity of Sudan. This included statements that the new Constitution should be based on Shari'a (Islamic law),<sup>10</sup> the imposition of Hudud and Quisas (Shari'a based) punishments,<sup>11</sup> violations of the rights of minorities and the withdrawal of citizenship from Southern Sudanese.<sup>12</sup> The period since late 2011 has also been characterised by increased restrictions of the rights to freedom of expression, association and assembly, including: harassment and intimidation of journalists and pre-and post-print censorship; closure of civil society organisations (CSOs);<sup>13</sup> arrest and detention of members of political opposition parties and those perceived to be affiliated to political opposition, particularly by the NISS;<sup>14</sup> and harassment, detention, ill-treatment and torture of individuals participating in public protests or forums or accused of organising such events, particularly student activists.<sup>15</sup>

5. Uprisings in the region, a deteriorating economy due to the loss of oil revenues, and political tensions resulted in repeated anti-government protests, by students and members of the public, in various parts of Sudan. These protests were regularly met with excessive use of force, including extra-judicial killings and mass arbitrary detentions. Testimonies from detainees released pointed to the systematic use of torture and ill-treatment of protestors and suspected protest organisers.<sup>16</sup> ACJPS documented the deaths of 185 persons (verifying the names of 144) during protests in late September and early October 2013 when Sudanese authorities fired live ammunition to disperse protestors in major cities throughout the country.<sup>17</sup>

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<sup>10</sup> "Sudanese President asserts North Sudan's Arabic, Islamic identity", Sudan Tribune, 5 February 2011.

<sup>11</sup> See below at 6.5.

<sup>12</sup> 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, <http://www.afriMAP.org/english/images/report/OSIEA-AfriMAP-Nationality-Sudans-full-EN.pdf>.and *Report of the Independent Expert on the situation of human rights in the Sudan*, Mashood A. Baderin, UN Doc. A/HR/C/21/62, 27 August 2012, para.42.

<sup>13</sup> 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, <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>.

<sup>14</sup> 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, <http://www.acjps.org/?p=1280>.

<sup>15</sup> See REDRESS, ACJPS 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.pclrs.org/downloads/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf>.

<sup>16</sup> See below at 6.3.

<sup>17</sup> See attached Annex. ACJPS documented 185 deaths, and verified the names of 144 victims.. See also,

6. Contrary to the UN Human Rights Committee's 2007 recommendations, the State Party has not taken effective measures to hold perpetrators of serious human rights violations to account and to provide reparation to victims. The 2009 amendments of Sudan's 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 amnesties and immunities.<sup>18</sup> The recommendations of the African Union High Level Panel on Darfur to set up a hybrid court to try those bearing the greatest responsibility for serious crimes have not been acted upon.<sup>19</sup> No steps are known to have been taken to investigate allegations of conflict-related violations in South Kordofan, Blue Nile or elsewhere. The lack of investigations and prosecutions of serious violations such as torture led the African Commission to conclude that Sudan's legal system does not provide effective remedies for victims of human rights violations.<sup>20</sup>
7. The multiple armed conflicts, ongoing violations, and lack of justice and reparation combine to what has been referred to as the "Sudanese crisis".<sup>21</sup> This crisis is rooted in the marginalisation of people that do not form part of the ruling riverine elites, the discrimination of minorities, and the lack of a system and institutions ensuring equal citizenship and respect for rights.<sup>22</sup> The current constitutional review, peace processes, and

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ACJPS, "Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan", 4 October 2013. See also, Human Rights Watch, "We Stood, They Opened Fire" Killings and Arrests by Sudan's Security Forces During the September Protests, 2014. See also Human Rights Watch, *We Stood, They Opened Fire" Killings and Arrests by Sudan's Security Forces During the September Protests, 2014*. Discussed further below, section 6.3.

<sup>18</sup> 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](http://www.pclrs.org/downloads/Miscellaneous/Penal_Code_Amendment_Position%20Paper%20_2_.pdf)

<sup>19</sup> *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), paras.246-254.

<sup>20</sup> African Commission, *Monim Elgak, Osman Hummeida and Amir Suliman (represented by OMCT and FIDH) v. Sudan*, Communication 379/09, Admissibility Decision, August 2012.

<sup>21</sup> AU High-Level Panel Report, above note 19, para.9, referred to the situation as the "Sudanese crisis in Darfur" but this characterisation applies equally to several other parts of the country.

<sup>22</sup> "Perhaps one of the most crucial shortcomings in Sudan's political history, which strikes at the very essence of the meaning of human rights, is the continual marginalisation of citizens of the periphery in all aspects of human rights: political, civil, economic, social and cultural. The so-called pluralistic political parties have manipulated these differences between the centre and the periphery, thus depriving populations of areas outside the Nile valley who, in most cases, happened not to be of the so-called "Arab" descent, or not wholly belonging to the Islamic faith, or both. Only at times of general elections would political leaders seem to pay attention to those "citizens" until the polls are over. Then, the socio-economic exclusion sets in again until the next round of general elections. Under military regimes the lawful claims of marginalised people are considered as rebellious warfare that have been suppressed by armed and security forces. One does not have to look back long to recall the North/South conflict, ending in the recent separation of the South, and one also continues to ponder what fate awaits the beleaguered Sudan - what is left of it - in Darfur, South Kordofan and Southern Blue Nile." Amin M. Medani, 'The Constitutional Bill of Rights in the Sudan: Towards Substantive Guarantees and Effective Realisation of Rights', in REDRESS, University of Khartoum and SHRM, *The Constitutional*

the political dialogue offered by the Government of Sudan in January 2014,<sup>23</sup> are elements of a broader political, legal and institutional process that was partly reflected in the CPA but not implemented at the time. Civil society groups have highlighted that these reforms must be considered an essential prerequisite for the effective implementation of Covenant rights within the jurisdiction of the State Party.

### III. Compliance with the obligations under the Covenant

#### 1. Constitutional and legal framework within which the Covenant is implemented (art. 2)

##### 1.1. Constitutional review process

8. Concerns persist that the current constitutional review process, which was triggered by South Sudan's independence in July 2011, is characterised by a lack of transparency and adequate public consultation.<sup>24</sup> President Omar al-Bashir has publicly asserted that the new national Constitution replacing the Interim National Constitution will be based on Shari'a (Islamic law).<sup>25</sup> There have been no modalities for civil society consultation or engagement in the National Congress Party-led constitutional review process. Attempts by civil society groups to engage on the constitutional process have been hindered by the NISS and other authorities,<sup>26</sup> against a general back-drop of severe restrictions on freedom of expression, association and assembly, including forced closures and restrictions imposed on civil society groups (see section 9 below). Political opposition parties rejected an invitation from the ruling National Congress Party (NCP) to join a constitutional review meeting held at Presidential Palace on 19 September 2012, alleging that the meeting would be neither

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*Protection of Human Rights in Sudan: Challenges and Future Perspectives*, January 2014, 7-13, at 7, at <http://www.redress.org/downloads/publications/140127FINAL%20Sudan%20UoK%20Report.pdf>.

<sup>23</sup> See critical analysis by Sudan Democracy First Group, "A National Dialogue or a National (Congress Party) Monologue?" *SDFG Update* Vol. 2, No.6, 27 May 2014, at: <http://www.sudaneseonline.com/cgi-bin/esdb/2bb.cgi?seq=msg&board=10&msg=1401203327&rn=1>

<sup>24</sup> See REDRESS et al., *Constitutional Protection of Human Rights*, above note 22, 4.

<sup>25</sup> Reuters, "Bashir says Sudan will adopt Islamic constitution", 13 October 2011.

<sup>26</sup> For example, on 27 March 2013 the NISS of Khartoum stopped the Al Ayam Center for Cultural and Development Studies (ACCDS) from holding a workshop on constitutional reform. The workshop was to be attended by thirty participants, with representation from different political affiliations, academia, and civil society. Before the workshop, the NISS called Mahgoub Mohamed Salih, the head of ACCDS, and ordered him not to hold the event, claiming that the discussion on the first day was likely to incite sedition against the state. Mr. Salih ignored the NISS' order and proceeded with the workshop. On the second day, the NISS arrived to the workshop's venue and prevented the event from continuing. See ACJPS, "Sudan Human Rights Monitor", Issue 22, March-April 2013. See also reference in Human Rights Watch, "Sudan: End Crackdown on Civil Society", 13 January 2013.

genuine nor inclusive, and would only incorporate views from pro-NCP opposition parties.<sup>27</sup>

9. From 3-6 June 2013, 83 prominent Sudanese journalists, lawyers, human rights defenders, and political activists attended a four-day conference on “The Role of Civil Society in Sudan’s Constitution Making Process” convened in Nairobi, Kenya, by ACJPS in partnership with the Cairo Institute for Human Rights Studies (CIHRS). The conference was convened in Kenya owing to concerns that it would be obstructed if held in Khartoum. Members of the NISS at Khartoum International Airport prevented two activists Mr Tilal Afifi, artist and film-maker, and Ms Rasha Awad, journalist, from travelling to Kenya for the conference. Delegates expressed concern that the current political context, characterised by severe restrictions on civil and political rights and the ongoing armed conflicts is not conducive to meaningful civil society and opposition participation in a constitutional review process. In a *Declaration of Guiding Principles for Constitution Making in Sudan* adopted on 6 June 2013, delegates stressed that “the creation of a suitable environment, including an end to the armed conflicts in the country and guarantees of public freedoms, are essential prerequisites to achieving a democratic constitution through comprehensive dialogue.”<sup>28</sup> The Declaration set out ten guiding principles for the development of a democratic constitution including: “[t]he founding of a pluralistic democratic system of governance that respects ethnic, religious, cultural and other diversities in Sudan and ensures public freedoms and equality before the law, along with equal protection and benefit of the law, and lays the appropriate foundations for good governance”; [e]nsuring all human rights and freedoms, interpreted in accordance with international and regional human rights standards, treaties and covenants”; “[t]he realization of the principles of transitional justice”; and “[e]nsuring and protecting the right to thought, conscience and religion.”<sup>29</sup>
10. In late January 2014 the Government of Sudan invited political opposition parties to join a political dialogue. In a speech televised live on 27 January 2014, President Omar al-Bashir stated that the NCP was determined to take the lead in preparing Sudan for the “leap” towards national reconciliation and expressed readiness for a political dialogue with all parties, including armed rebel groups if they renounced violence. The speech did not set out any concrete steps for national dialogue or the constitutional review process and was criticised by political opposition parties.<sup>30</sup> On 1 April 2014 President Bashir reiterated his party’s commitment to a national dialogue and ordered the release of all political prisoners in the country.<sup>31</sup> The President also instructed authorities to allow political parties to carry

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<sup>27</sup> ACJPS, “Continued Wrangling over Sudan’s Constitutional Review Process”, in Sudan Human Rights Monitor, August-September 2012.

<sup>28</sup> ACJPS, “Adoption of Declaration of Guiding Principles for Constitution Making in Sudan: Sudanese civil society calls for a constitution that recognizes the country’s diversity and promotes equality”, 18 June 2013.

<sup>29</sup> Ibid.

<sup>30</sup> See ACJPS, “Sudan Human Rights Monitor”, December 2013-January 2014, Issue 25, Feature Article. See also, Sudan Tribune, “Sudan’s Bashir disappoints after speech brings no specific reform agenda”, 27 January 2014.

<sup>31</sup> BBC News, “Sudan’s Bashir orders political prisoner release”, 1 April 2014.

- out their activities inside and outside their headquarters in accordance with national legislation, and for press freedoms to be enhanced to contribute to the national dialogue.<sup>32</sup>
11. However, shortly after, on 15 April 2014, the President issued decree No.158, which forbids political parties from organising meetings in their own venues without prior approval and requires permission for public meetings 48 hours in advance. Media is ordered to “maintain strict neutrality” and their reports may not “affect the country’s unity”.<sup>33</sup> On 1 May 2014, the Political Parties Affairs Council (PPAC) announced that the Sudanese Republican Party’s application to register as a political party had been rejected. The PPAC argued that the Republican Party’s political ideology contradicted the constitutional provision that law in Sudan be based on Shari’a law and the conditions for the establishment of political parties in Sudan.<sup>34</sup> The authorities have continued to detain individuals on the basis of their political opinions.<sup>35</sup> On 17 May the NISS arrested Sadiq al-Mahdi, leader of the opposition National Umma Party. He was transferred to Kober prison in Khartoum, where he reportedly faces capital charges under articles 50 (undermining the constitutional order) and 51 (waging war against the state) of Sudan’s Criminal Act of 1991. Al-Mahdi was arrested after he publicly accused the Government’s paramilitary Rapid Support Forces of committing atrocities in Sudan’s conflict zones. As a result of al-Mahdi’s detention, the National Umma Party, one of the few parties that had indicated a willingness to participate, withdrew its participation from the national dialogue.<sup>36</sup> These continued restrictions on the operation of political parties and individuals considered to hold opinions contrary to the interests of the ruling NCP cast doubt on the potential for inclusive political dialogue and a participatory constitutional review process to take place. These doubts are reinforced by measures restricting the freedom of human rights defenders and civil society organisations to exercise their functions as set out in the UN Declaration on Human Rights Defenders. Further, the ongoing armed conflicts in several parts of the country, particularly in Darfur, South Kordofan and Blue Nile risk that perspectives from these areas, particularly if they are (seen as) opposed to the Government of Sudan, are not adequately represented and reflected in constitutional debates and the constitutional review process.

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<sup>32</sup> Sudan Tribune, “Bashir orders release of political detainees, ease in restrictions on parties and media”, 6 April 2014.

<sup>33</sup> ACJPS, “Sudan Human Rights Monitor”, December 2013-January 2014.

<sup>34</sup> ACJPS, “Sudan’s Political Parties Affairs Council bans Republican Party amidst calls for national dialogue”, 8 May 2014.

<sup>35</sup> ACJPS, “Political opposition party members and activists detained by Sudan’s security despite Presidential pledge to cease detentions and open up dialogue”, 21 May 2014.

<sup>36</sup> Ibid.

## 1.2. Compatibility of the Constitution with the Covenant

12. No measures are known to have been taken to ensure that the text of the new Constitution will be fully compatible with the Covenant. The constitutional review process has lacked a clear commitment and process to uphold the Covenant rights. This includes addressing any existing shortcomings relating to the protection of rights in Sudan's Interim National Constitution (INC) of 2005.<sup>37</sup> In its jurisprudence, Sudan's Constitutional Court has failed to consistently uphold the rights guaranteed in the Covenant.<sup>38</sup>
13. Article 5(1) of Sudan's INC stipulates that: "Nationally enacted legislation having effect only in respect of the Northern states of the Sudan shall have as its sources of legislation Islamic Sharia and the consensus of the people." According to article 27 (3) of the INC, "[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]." Neither the INC nor the Constitutional Court's jurisprudence provides any clarification as to how any conflict between Shari'a law and Sudan's international human rights obligations is to be resolved. This applies equally to the interpretation of the INC's Bill of Rights as some of its provisions, such as the lack of prohibition of cruel, inhuman or degrading punishment (omitted from article 33 of the INC on the prohibition of torture) and the non-recognition of the right to adopt a religion (article 38), are incompatible with Sudan's obligations under articles 7 and 18 of the Covenant respectively.
14. Furthermore, a series of provisions in Sudan's statutory law based on Shari'a, such as in the Criminal Act of 1991,<sup>39</sup> the Evidence Act of 1994,<sup>40</sup> and the Personal Status Act of 1991<sup>41</sup> fail to reflect the rights guaranteed under the Covenant. In addition to the rights mentioned above (articles 7 and 18), this applies particularly to the right to equality and non-discrimination.

## 1.3. The Right to an Effective Remedy and Immunities

15. There are no effective remedies in Sudanese law for victims of serious human rights violations including arbitrary detention, torture and ill-treatment. Of particular concern, (i)

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<sup>37</sup> As set out in the submission on the pre-sessional meeting of the Human Rights Committee by REDRESS, Sudanese Human Rights Monitor, ACJPS and FIDH, August 2013.

<sup>38</sup> REDRESS and Sudanese Human Rights Monitor, "Arrested Development: Sudan's Constitutional Court, Access to Justice and the Effective Protection of Human Rights", August 2012.

<sup>39</sup> See in particular article 126 criminalising apostasy and article 145 criminalising adultery, as well as punishments (death penalty, including stoning, amputations, cross-amputations, and whipping) for hudud offences.

<sup>40</sup> See in particular article 63 concerning evidence in cases of hudud where male evidence is privileged, *inter alia* stipulating that the testimony of two female witnesses equals that of one male witness.

<sup>41</sup> See article 75 according to which a man can stop providing maintenance if his wife leaves the house without permission and article 93 (disobedient wife), which sets out conditions that married women need to fulfil, and articles 157-203 concerning divorce.

there are no effective modalities for lodging complaints before the authorities in situations of NISS detention and (ii) immunity provisions in law make it practically impossible to pursue a prosecution case against any NISS member (see below at para. 16). First, under the National Security Act 2010 an individual may be detained as a matter of law without charge or judicial review for 45 days or four and a half months respectively. Second, there is no individual right of action available which would permit a complainant to request the Prosecution Attorney to exercise the *proprio motu* powers which he does have under article 51 (8) of the NSA 2010 to inspect places of detention. Even if such a review was initiated, and a detainee was able to lodge a complaint directly with the inspecting Attorney, it is unlikely to be pursued as there is no clear obligation in law on the Prosecution Attorney to commence an investigation into allegations of torture received. Third, neither the Criminal Procedure Act of 1991, the National Security Forces Act of 1999, nor any other legislation stipulate a duty on the part of the authorities to commence an investigation upon receiving notice of an allegation of torture or other serious human rights violations or following a complaint of the same. There is no explicit right or established procedure or precedent of using mandamus or other remedies to compel the Sudanese authorities to commence an investigation. Fourth, even if such an investigation is commenced, proceeding against a suspect faces significant additional hurdles. As a result, no prosecution of NISS officers are known to us despite numerous reports of ill-treatment and torture, especially in relation to protests of June-August 2012 and September-October 2013.<sup>42</sup> Just one prosecution case was opened in respect of one death during protests in September-October 2013, when at least 170 persons were killed.<sup>43</sup>

16. A number of complaints have been submitted to regional and international human rights mechanisms owing to a lack of effective domestic remedies for serious violations of human rights. The African Commission has confirmed the lack of effective remedies in its admissibility decisions, considering in one case that it was both “unreasonable and impractical” to expect the victims to access remedies provided in Sudanese law “because of general fear of persecution”.<sup>44</sup>
17. Immunities provisions in Sudan’s laws provide that an official cannot be subject to criminal or civil sanctions without prior authorisation by the head of his or her respective forces (or someone exercising delegated powers).<sup>45</sup> The granting of immunities for officials is deeply engrained in Sudanese law and practice. Since the last review of the State Party’s compliance with the Covenant in 2007, immunities have, with few exceptions, frequently prevented the effective investigation and prosecution of violations of the Covenant,

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<sup>42</sup> See ACJPS, Amnesty International, Human Rights Watch *et al*, “Briefing Note on the situation of human rights in Sudan since September 2012”, at: <http://www.acjps.org/?p=1508>.

<sup>43</sup> See further below at 6.3.

<sup>44</sup> African Commission, *Monim Elgak, Osman Hummida and Amir Suliman v Sudan*, above note 20, para.55.

<sup>45</sup> See for an overview “Reforming Sudan’s Law on Immunities”, in REDRESS and Sudanese Human Rights Monitor, *Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives, A compilation of Sudan Law Reform Advocacy Briefings*, February 2014, 6-13.

including allegations of serious violations such as torture.<sup>46</sup> Despite concerns raised by a number of regional and international bodies that immunities result in impunity, and should therefore be abolished,<sup>47</sup> including by the UN Human Rights Committee<sup>48</sup> and the AU High Level Panel on Darfur,<sup>49</sup> the State Party has maintained immunities provisions in the Armed Forces Act of 2007, the Police Act of 2008 and the National Security Act of 2010.<sup>50</sup> The African Commission considered the question of immunities in a number of recent cases against Sudan, and found that immunities are incompatible with the right to an effective remedy under the African Charter on Human and Peoples' Rights.<sup>51</sup> In one case, *Farouk Ibrahim v Sudan*, Sudan's Constitutional Court had upheld immunities provisions in Sudan's national security law on the grounds that immunity was conditional and subject to judicial review.<sup>52</sup> Considerations by Sudan's Ministry of Justice, such as in September 2013, to reform the law on immunities by introducing timeframes for decisions to be made and a system of judicial review are not sufficient to prevent delays and guarantee the availability of effective remedies in conformity with the Covenant.<sup>53</sup>

## 2. Refugees, asylum seekers and internally displaced persons (arts. 2, 7 and 12)

18. According to the latest UN figures, there are over two million Internally Displaced Persons (IDPs) in Sudan, particularly as a result of ongoing conflicts in Darfur, South Kordofan and Blue Nile.<sup>54</sup> In addition to concerns over a lack of protection and humanitarian access, the IDPs – who live across Sudan, particularly in and around Khartoum – suffer from a weak protection of their rights and their inability to effectively access justice.<sup>55</sup> In a well-known

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<sup>46</sup> See for example article 52 of Sudan's National Security Act of 2010.

<sup>47</sup> See e.g. *Darfur: The Quest for Peace, Justice and Reconciliation*, above note 19, xix, para.25 (c) and (d); 56-63, paras.215-238; and 91, 92, para.336. See also African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the 4<sup>th</sup> and 5<sup>th</sup> Periodic Report of the Republic of Sudan, 2012, para. 66.

<sup>48</sup> UN Human Rights Committee: *Concluding Observations: Sudan*, UN Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007, para.9.

<sup>49</sup> See above note 19, para. 237.

<sup>50</sup> Article 42(2) of the Armed Forces Act of 2007, article 45(1) of the Police Act of 2008 and article 52 of the National Security Act of 2010.

<sup>51</sup> See in particular African Commission, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication 368/10, paras.47-49; and *Osman Hummaida, Monim ElJak and Amir Suliman v Sudan*, above note 20, paras. 66-70.

<sup>52</sup> African Commission, *REDRESS (on behalf of Dr. Farouk Ibrahim) v Sudan*, Communication 386/10, paras.58-60.

<sup>53</sup> See further "Reforming Sudan's Law on Immunities", above note 45.

<sup>54</sup> Exact numbers of displaced persons are hard to determine as some have been displaced on multiple occasions, some were displaced temporarily while others remained displaced for many years, and some are in camps while others are in host communities or left the area. (Humanitarian Snapshot, 31 August 2013) [http://www.osocc.monitor.czert.info/index.php/reliefweb/maps/14453-sudan-humanitarian-snapshot-\(31-august-2013\)?fontstyle=f-larger](http://www.osocc.monitor.czert.info/index.php/reliefweb/maps/14453-sudan-humanitarian-snapshot-(31-august-2013)?fontstyle=f-larger).

<sup>55</sup> See UNHCR, *Country Operation Profile-Sudan*, 2014, at <http://www.unhcr.org/pages/49e483b76.html>

incident, several hundred residents of Soba Aradi, an IDP camp in the South East of Khartoum, were detained by the police in 2005 for over a year following protests in which IDPs had resisted forced relocation. The African Commission, in its decision of January 2014 in *Abdel Hadi, Ali Radi and Others v Sudan*, found that Sudan is responsible for the violation of a series of rights, including the prohibition of torture, the right to liberty and security, the right to a fair trial and the obligation to give effect to the Charter rights (article 1 of the African Charter which is similar to article 2(1) and (2) of the Covenant).<sup>56</sup> This includes the failure to effectively investigate complaints of torture, ill-treatment and other violations raised by the complainants in 2006 and to provide reparation. Sudan has yet to take measures to implement the decision.

### 3. States of emergency (art. 4)

19. A state of emergency is in force in the five states of Darfur, South Kordofan and Blue Nile, bringing Sudan's emergency laws into operation. The present system is characterised by a number of shortcomings if judged against the State party's obligations, particularly article 4 of the Covenant. Under the INC, the President of the Republic may suspend the Bill of Rights with the exception of core rights, namely the "right to life, sanctity from slavery, sanctity from torture, the right of non-discrimination on the basis of race, sex, religious creed, the right in litigation or the right to fair trial".<sup>57</sup> The statutory legal framework for emergencies as set out in the Emergency and Protection of Public Safety Act of 1997 (Act Number (1) 1998),<sup>58</sup> raises concerns over the broad powers and scope for criminalisation. The 1997 Act, if read in conjunction with section 15 of the Emergency and Public Safety Bylaw of 1998, permits preventive arrest and detention on the basis of vague grounds. These include the belief of the authorities that the person in question has acted or may act in a way that "affects public security, or public safety, or ... participated in any crime related to the declaration". The 1998 Bylaw provides neither time limits for this type of detention, nor judicial oversight, and therefore authorises prolonged if not indefinite detention incompatible with article 9 of the Covenant.
20. The broad powers given to the Executive under the 1997 Act and 1998 Bylaw have repeatedly given rise to concerns over arbitrary arrest and detention, ill-treatment and

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<sup>56</sup> African Commission, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, above note 51.

<sup>57</sup> Article 211 (a) INC.

<sup>58</sup> The law vests the authorities with wide powers, particularly to search and enter buildings, and in relation to surveillance, seizure and confiscation, movement of persons. The authorities may arrest anyone "suspected of participating in crimes related to the declaration [of emergency]".

These crimes are set out in the Presidential declaration (which needs parliamentary approval),

torture, and violations of the right to a fair trial, which are facilitated by the virtually complete absence of safeguards and judicial oversight.<sup>59</sup>

#### **4. Non-discrimination and equal rights of men and women (arts. 3, 23, 25 and 26)**

21. 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.<sup>60</sup> There has been no reform of these laws to date, notwithstanding campaigns to this effect by civil society and women's rights groups as well as recommendations made by UN bodies and third states.<sup>61</sup>
22. The enforcement of public order laws, such as article 152 of the 1991 Criminal Code (indecent or immoral acts) (hereafter article 152), has given rise to a series of concerns. This provision, while being neutrally worded, is primarily aimed at and applied against women.<sup>62</sup> The enforcement of public order laws is by way of summary trials. This raises concerns over their compatibility with the right to a fair trial.<sup>63</sup> Further, the punishments frequently imposed in such cases, particularly whipping, are incompatible with the prohibition of torture and cruel, inhuman or degrading punishment.<sup>64</sup> In practice, the enforcement of public order laws by the public order police has frequently been discriminatory and arbitrary.<sup>65</sup> The broad criminalisation also raises concerns about the right to privacy guaranteed under the Covenant. Public order laws have also been used to stifle the freedom of expression, association and assembly rights of human rights defenders and peaceful activists.
23. In adultery cases, women, in addition to facing or being subject to corporal punishment or the death penalty (depending on whether they are married or not) have been subjected to

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<sup>59</sup> See for example the submission in the case of *Mayor Hussein Ishaq Yahia Sayo and Others v Director of North Darfur State Police & Others* lodged before the Sudanese Constitutional Court in 2007 (on file with REDRESS) and Independent Expert on the situation of human rights in the Sudan. 2010, para. 69.

<sup>60</sup> 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.

<sup>61</sup> See in this regard, REDRESS and Sudanese Human Rights Monitor, Human Rights Concerns, above note 45, 35, 36.

<sup>62</sup> 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 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 12 November 2009.

<sup>63</sup> Ibid.

<sup>64</sup> See further below at 6.5.

<sup>65</sup> 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 Criminal Act 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, at: <http://www.acjps.org/?p=1493>.

intimate medical examinations as part of police investigations to ascertain whether the accused had engaged in sexual intercourse, raising concerns about compatibility with the right to non-discrimination on grounds of sex, the right to privacy and the prohibition of torture.<sup>66</sup>

### ***Prosecutions for offences against public order laws***

24. Ms Amira Osman Hamed, a women's rights activist, was charged on 27 August 2013 under article 152 with 'indecent or immoral dress' for failing to wear a headscarf and faces the possibility of receiving up to 40 lashes if convicted. Her trial was postponed twice and there is no indication as to when it could resume.<sup>67</sup>
25. On 5 June 2013 Judge Esama Jabril of the Khartoum Bahri Public Order Court sentenced a young female singer from Omdurman (name unknown) to 40 lashes under article 152 for wearing a short tight dress. She was also fined 100 Sudanese pounds (\$23 USD).<sup>68</sup>
26. On 22 May 2013 Ms Hassinia Alahamir Almin was sentenced to one hundred lashes by the Kosti Public Order Court under article 146 (adultery) of the Criminal Act of 1991. Ms Almin was arrested after having given birth to a child without being legally married. The Kosti Public Order Court accused Mr Salah Abubakar of fathering the child and also committing adultery, but Mr Abubakar denied the accusations and was released without punishment.<sup>69</sup>
27. On 24 March 2013 the Public Order police of South Darfur arrested 150 women working as tea sellers within the town. They were arrested on the basis that that some of the women were wearing tight clothes and some were not wearing socks. The women were convicted by the Public Order Court under article 152 and ordered to pay a fine of 300 SDG (approximately \$69 USD) each.<sup>70</sup>
28. On 27 February 2013 the Public Order court of Kosti, White Nile state, sentenced two students from *Bakht Al Rida* University, Amina ((female), not her real name)), and Ahmed, ((male), not his real name), to 40 lashes under article 154 (practising prostitution) of the Criminal Act of 1991. The lashing penalty was implemented on the same day after a summary trial during which only the arresting police officers were permitted to testify. Public Order police had arrested the two during a raid on Ahmed's family home in Kosti. They were taken to the police station and then referred to a hospital where a doctor examined Amina for signs of sexual activity. No signs of sexual activity were found.<sup>71</sup>

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<sup>66</sup> See cases cited below ("Prosecutions for offences against public order laws").

<sup>67</sup> See Amnesty International, Urgent Action: "Woman leaves hair uncovered, risks flogging", 17 September 2013. See also "Stop threatening Women with Flogging, UN experts warn Sudan", Press Release, 6 November 2013, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13955&LangID=E>.

<sup>68</sup> ACJPS, Sudan Human Rights Monitor, May-July 2013.

<sup>69</sup> Ibid.

<sup>70</sup> ACJPS, "Sudan Human Rights Monitor", March-April 2013, at: [http://www.acjps.org/?attachment\\_id=1491](http://www.acjps.org/?attachment_id=1491).

<sup>71</sup> ACJPS, "Sudan Human Rights Monitor", January-February 2013.

29. On 30 January 2013 the Public Order Court in Kosti, White Nile state, sentenced AAA, (female), 19 years of age, and AB, (male), age unknown, to 70 lashes under article 145 (adultery) of the Criminal Act of 1991. Both AAA and AB are from Adwim town in White Nile state. The sentence of 70 lashes was implemented on the same day. As part of the police investigation AAA had been examined by a doctor for sexual activity. The examination found no evidence of sexual activity.<sup>72</sup>
30. On 15 October 2012 a Public Order police officer reportedly nicknamed “Alsjana” from the South Khartoum police station arrested Ms Lamis Taj Alsir Alnajeib, 19 years of age. Ms Lamis was arrested while travelling from her home in central Khartoum to Alkalakla district, a suburb of Khartoum. The police interrogated her about her attire. Ms Lamis was allowed to call her mother, Shadia Abdulmoneim. Mrs Abdulmoneim immediately came with her second daughter to the police station. The two women were also arrested. Ms Lamis, her mother, and her sister were released at 8pm on the same day without charge.<sup>73</sup>
31. On 24 July 2012 the Public Order Court of Nyala sentenced Ms Fatima Adam Asil to 40 lashes and a fine of 600 Sudanese pounds for drinking alcohol under article 178 of the Criminal Act of 1991.<sup>74</sup>
32. On 19 May 2012 the El Haj Abdalla town court in Southern El Gezira state sentenced four girls to 25 lashes and a fine of 150 Sudanese pounds for wearing trousers: Rania Mohamed, 28 years old; Rita Simon, 28 years old; Zuhoor Abdalla, 18 years old; and Sittana Monir, 14 years old. They were arrested by police from a public bus returning from Khartoum after attending a wedding and detained for seven hours and charged with wearing indecent and immoral clothing.<sup>75</sup>
33. On 27 October 2011 Kosti public order court sentenced Ms Niemat Abaker Adam, 19 years of age, a resident of Gouz Alsalm in Kosti, White Nile state, to 50 lashes under article 151 (“gross indecency”) of the Criminal Act of 1991. Ms Abaker’s brother filed a case under article 162 (“kidnapping”) with the police after Ms Abaker was allegedly kidnapped by Mr Myang Aitang Deng, with whom she was living. When the court questioned her, Ms Abaker stated that Mr Aitang is her husband and she moved in with him after her family refused to allow her to marry him. The court did not consult Mr Aitang. The kidnapping charges were amended to article 151 (“gross indecency”) and Ms Abaker was sentenced to 50 lashes, in excess of the 40 lashes prescribed under article 151.<sup>76</sup>
34. Ms Lubna Ahmad Hussein, a journalist, and 12 other women were arrested at a restaurant in Khartoum on 3 July 2009, when police forces stormed the restaurant and arrested them for wearing trousers. The women, four of whom were Southern Sudanese, and three of whom were under the age of 18, were charged under article 152. Ten of the women pleaded guilty and received punishments of ten lashes each (two of them under the age of

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<sup>72</sup> Ibid.

<sup>73</sup> ACJPS, “Sudan Human Rights Monitor”, October 2012-February 2013.

<sup>74</sup> ACJPS, “Sudan Human Rights Monitor”, June-July 2012.

<sup>75</sup> ACJPS, “Sudan Human Rights Monitor”, April-May 2012.

<sup>76</sup> ACJPS, “Sudan Human Rights Monitor”, October-November 2011.

- 16) and a fine of around 100 USD each. Lubna Hussein refused to stand trial and publicly protested against her treatment. Her case generated publicity around the world, casting the spotlight on arbitrary law enforcement and administration of justice in the context of Sudanese public order laws. This may have been crucial in influencing the court's determination of punishment, namely convicting her to pay a fine instead of the customary whipping.<sup>77</sup> Lubna Hussein took her case to Sudan's Constitutional Court in 2010 where it has been pending since.
35. In December 2010, a video became publicly available on sources such as YouTube, which showed two Sudanese police officers flogging a young Sudanese woman in a car park, laughing and joking while doing so. The woman was reportedly punished under articles 154 and 155 of the Criminal Act of 1991 and subjected to 53 lashes in total. The responsible Judicial Authority reportedly launched an inquiry as to whether the punishment had been executed properly, the outcome of which is not known.<sup>78</sup>
36. The imposition of punishments of lashing, stoning and the death penalty for adultery and/or apostasy under articles 146 and 126 of Sudan's Criminal Act of 1991 respectively is incompatible with a series of rights (prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to privacy, freedom of religion) and discriminatory.
37. On 11 May 2014, the Al-Haj Yousef Criminal Court in Khartoum convicted Meriam Yahia Ibrahim, a 27 year old woman, who was born to a Muslim father and Christian mother and considered herself Christian, on charges of apostasy and adultery (her marriage to a Christian had been declared void), and on 15 May 2014 sentenced her to the death penalty and one hundred lashes as punishment. In early June 2014, the verdict was under appeal. At the time of writing she had been detained at Omdurman Women's Prison since 24 February 2014, together with her toddler son. She was shackled since 15 May 2014 and forced to give birth to a baby girl on 27 May 2014 while in shackles. Eight UN human rights experts and Special Procedures mandate holders condemned the trial, conviction and sentence and expressed their serious concern.<sup>79</sup> On 1 June 2014, REDRESS, ACJPS and three

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<sup>77</sup> See Human Rights Council, *Report of the independent expert on the situation of human rights in the Sudan, Mohammed Chande Othman*, UN Doc. A/HRC/14/41, 26 May 2010 on the application of Shari'a laws to non Muslims, at para.29: "On 3 July 2009, the Public Order Police arrested 13 Muslim and non-Muslim women from a privately-owned restaurant and charged them with 'indecent dressing'. Some of the women were allegedly slapped and harassed. A judge in a Public Order Court found most of them guilty and sentenced them to lashing and the payment of fines or, in the alternative, imprisonment. On 18 November 2009, a 16 year old non-Muslim Sudanese girl was sentenced by a Public Order Court to 50 lashes for 'indecent dressing' for having worn a skirt and blouse."

<sup>78</sup> "Sudan investigates case of woman seen being flogged on YouTube clip: Footage sparks international condemnation as police laugh and joke as they administer whipping to screaming woman", *Guardian*, 13 December 2010, <http://www.theguardian.com/world/2010/dec/13/sudan-woman-flogged-youtube>

<sup>79</sup> UN High Commissioner for Human Rights, 'Sudan: UN rights experts condemn death sentence against pregnant mother for apostasy and adultery', 19 May 2014, ('UN Experts'), at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14618&LangID=E>;

Sudanese organisations submitted a complaint and request for provisional measures in the case to the African Commission.<sup>80</sup>

38. On 13 May 2012 Ms Intisar Sharif Abdalla was sentenced to death by stoning in Ombada, Khartoum State. She was convicted by Judge Sami Ibrahim Shabo under article 146 (“adultery”) of the Criminal Act of 1991 after giving birth to a child allegedly conceived outside of wedlock. Ms Abdalla’s age is unclear as she has been reported as being between 15 and 20 years of age, and she was convicted following the introduction of a confession reportedly obtained after being beaten by her brother.<sup>81</sup> In June 2012, the appeal court overturned the verdict and Intisar Sharif Abdallah was released from Omdurman prison where she had been held with her 5 months old baby.<sup>82</sup>
39. In July 2012, Ms Laila Ibrahim Issa Jamool was equally sentenced to death by stoning after having been convicted for adultery.<sup>83</sup> The sentence was reportedly overturned on appeal.<sup>84</sup>

## 5. Violence against women (arts. 2, 3, 7, 23 and 26)

40. In addition to the prosecution of women under the public order laws as outlined above (at 4.), a series of reports and cases have highlighted the shortcomings of Sudan’s laws on rape and sexual violence, and its failure to provide adequate protection. These concerns have been persistently raised by multiple sources since the UN Human Rights Committee adopted its concluding observations in 2007, including by the campaign on article 149 (rape laws) in Sudan.<sup>85</sup> While the Government of Sudan had signalled its willingness to discuss reforms during the interim period of the Comprehensive Peace Agreement (2005-2011), it has not taken any effective steps to progress such reforms. This includes measures to criminalise marital rape and domestic violence.<sup>86</sup> The following is a selection of cases

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<sup>80</sup>See at <http://www.redress.org/case-docket/meriam-yahia-ibrahim-daniel-wani-and-their-two-children-martin-wani-and-maya-wani-v-sudan>.

<sup>81</sup> ACJPS, “Sudan Human Rights Monitor”, April-May 2012.

<sup>82</sup> See “Update: Intisar Sharif Abdallah Released Unconditionally without Further Charge”, 21 June 2012, at <http://www.wluml.org/action/update-intisar-sharif-abdallah-released-unconditionally-without-further-charge>.

<sup>83</sup> ACJPS, “23 Year Old Woman Sentenced to Death by Stoning for Adultery”, 11 July 2012, at <http://www.acjps.org/23-year-old-woman-sentenced-to-death-by-stoning-for-adultery/>. See also “Second Woman sentenced to death by stoning”, *Sudan Tribune*, 24 July 2012, at <http://www.sudantribune.com/spip.php?article43353>.

<sup>84</sup> See “Sudan: Gang rape victim found guilty of ‘indecent acts’”, *Sudan Tribune*, 20 February 2014, at <http://www.sudantribune.com/spip.php?article50031>.

<sup>85</sup> Living Under Muslim Laws, at <http://muslima.imow.org/content/living-under-muslim-laws>. See also “Sudan Law Reform Update, Women’s Rights”, at [http://www.pclrs.org/downloads/Sudan\\_Law\\_Reform\\_Update\\_October\\_November\\_2010.pdf](http://www.pclrs.org/downloads/Sudan_Law_Reform_Update_October_November_2010.pdf).

<sup>86</sup> See for an analysis in particular REDRESS and KCHRED, *Time for Change: Reforming Sudan’s Legislation on Rape and Sexual Violence*, November 2008, at <http://www.redress.org/downloads/publications/Position%20Paper%20Rape.pdf>.

that raise concerns about rape and sexual violence against women, and the lack of protection in Sudanese law and practice.

41. Ms Safia Ishaq, a university graduate and member of Girifna, a Sudanese non-violent resistance movement, was arrested by two men dressed in plain-clothes on 13 February 2011 and taken to a building near the Shandi bus station (Khartoum north) known to belong to the NISS. Inside, three men subjected her to rape, beatings and verbal abuse. She filed a complaint against the authorities involved on 16 February 2010, but after an initial inquiry her case was closed. Following threats by the authorities, she decided to leave the country. When five journalists reported about her case and called for an investigation into the allegations, criminal charges were brought against the journalists by the NISS.<sup>87</sup> Safia Ishaq subsequently brought a complaint before the African Commission, which was declared admissible in May 2014.<sup>88</sup>
42. In July 2013, an 18 year old Ethiopian migrant woman was attacked by seven men and gang raped.<sup>89</sup> A police officer found her following the incident but no formal complaint was filed because it was a public holiday. A video of the incident filmed by the perpetrators led to their arrest in January 2014. Three men were convicted of adultery, two were convicted of indecent acts and one of distributing indecent materials. They were sentenced to 100 lashes (first three) and 40 lashes (other three) and a fine. The Ethiopian woman was arrested in January 2014 and detained even though she was 9 months pregnant. In February 2014, she was tried for, and convicted of having committed indecent acts, resulting in a 1 month suspended prison sentence and a fine (5,000 Sudanese pounds). Since January 2014, the Attorney General has refused to receive a complaint of rape, ostensibly because she was being investigated for a criminal offence. Her lawyers challenged this inaction before the courts, with the case pending in June 2014. The case illustrates the lack of effective official responses to rape and the risk faced by rape victims who may be subject to criminal prosecutions on charges of adultery or indecent acts. The fact that the perpetrators of the crimes were convicted of adultery and indecent acts belittles the crime of rape.
43. There is no national law explicitly criminalising the practice of female genital mutilation in Sudan. Section 13 of the Draft Child Act included a prohibition of female genital mutilation. This section was removed prior to the adoption of the Child Act 2010, reportedly on the basis of an opinion as to its compatibility with Islamic Law. Sudanese civil society

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<sup>87</sup> See "UN criticizes Sudan for jailing journalists who wrote rape story", *Aid News*, 4 August 2011, available at <http://humanitariannews.org/20110804/un-criticizes-sudan-jailing-journalists-who-wrote-rape-story>.

<sup>88</sup> African Commission, *Safia Ishaq Mohammed Issa (represented by REDRESS and the African Centre for Justice and Peace Studies) v Sudan*, see further, at <http://www.redress.org/case-docket/safia-ishaq-mohammed-issa-v-sudan->.

<sup>89</sup> See SIHA, "Ethiopian woman gang raped by seven men convicted of "indecent acts", 20 February 2014, at <http://sihanet.org/news/sudan-ethiopian-woman-gang-raped-seven-sudanese-men-convicted-%E2%80%9Cindecent-acts%E2%80%9D>.

organisations protested against this decision and published a memorandum on section 13.<sup>90</sup> The Committee on the Rights of the Child noted:

with concern that female genital mutilation remains widespread in Northern Sudan, despite the adoption of the National Plan for Child Welfare (2007-2011). It is concerned that, although the Child Act (2008) of Southern Sudan and the Southern Kordofan Female Genital Mutilation Act (2008) prohibit and criminalize female genital mutilation, the Child Act (2010) does not prohibit the practice.<sup>91</sup>

## **6. Right to life and prohibition of torture and cruel, inhuman or degrading treatment (arts. 6 and 7)**

### **6.1. Violations committed in the context of armed conflict**

44. The UN, civil society organisations and others 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 ongoing armed conflicts in South Kordofan and Blue Nile, as well as in Darfur.<sup>92</sup> 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.<sup>93</sup> The UN High Commissioner for Refugees estimated in December 2013 that “some 2.3 million people continue to remain displaced” in Sudan.<sup>94</sup> On 25 May 2014 the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that 322,000 persons had been

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<sup>90</sup> See “Sudan: Call to ban FGM” (in Arabic), 30 July 2010, <http://web61388.aiso.net/resources/infoDetail.asp?ID=22955&flag=news>. See also “Memorandum on the Repeal of Article (13) in the Child Act, 2009” (in English), published in Sudan Tribune, 25 February 2009, at: [http://www.sudantribune.com/spip.php?page=imprimable&id\\_article=30281](http://www.sudantribune.com/spip.php?page=imprimable&id_article=30281).

<sup>91</sup> Committee on the Rights of the Child, “Concluding Observations: Sudan”, UN Doc. CRC/C/SDN/Co/3-4, 22 October 2010, para.56.

<sup>92</sup> *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 in relation to South Kordofan and Blue Nile) and decision by the African Commission in Communication 279/03-269/05: Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan (2009) (in relation to Darfur) See also, *Report of the Independent Expert on the situation of human rights in the Sudan, Mashood A. Baderin*, UN Doc. A/HRC/24/31, 18 September 2013, paras.36-51.

<sup>93</sup> 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.

<sup>94</sup> United Nations High Commissioner for Refugees, “Sudan: 2013 UNHCR country operations profile”, December 2013.

newly displaced throughout Darfur since January 2014.<sup>95</sup> OCHA has also reported that the scale of new displacement in 2014 and the type of violence inflicted on the civilian population was reminiscent of the early years of the Darfur conflict from 2003 – 2005.<sup>96</sup> In April and May 2014 over 116,000 were newly displaced in South Kordofan and Blue Nile, according to aid agencies and the rebel Sudanese Peoples' Liberation Movement – North (SPLM-N).<sup>97</sup> A major cause of the deteriorating humanitarian and human rights situation in Sudan's conflict areas in 2014 has been an intensified counter-insurgency campaign dubbed the "Decisive Summer" by the authorities to end armed rebellions in the country.<sup>98</sup> The campaign has seen the mobilisation and deployment of a new paramilitary force – the Rapid Support Forces – a force comprised predominantly of former "janjawid" militias that have conducted attacks, including joint attacks with the Sudanese Armed Forces (SAF) and other militias, in civilian areas of the Darfur and Kordofan regions.

### *South Kordofan and Blue Nile*

45. The UN, national and international human rights organisations, and media reported that the SAF and other security forces have been responsible for torture, disappearances and ill treatment throughout Southern Kordofan state since the outbreak of conflict in June 2011. ACJPS documented the extrajudicial killings of 42 persons in South Kordofan in the days following the outbreak of the conflict on the basis of ethnic identity and presumed affiliation with the Sudanese Peoples' Liberation Movement – North (SPLM-N). Lists were circulated by local NCP members of presumed SPLM-N members. According to the UN, four UN peacekeepers were arbitrarily detained and abused by SAF personnel in Kadugli.<sup>99</sup> A report of the Sudan Democracy First Group in 2011 documented the arrest, torture and disappearance of 90 civilians taken from Hay Mwazafin in Kadugli, and the arrest of another 26 civilians, whose whereabouts were unknown.<sup>100</sup> In another reported incident,

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<sup>95</sup> UN Office for the Coordination of Humanitarian Affairs, "Darfur: New Humanitarian Needs and Aid Delivery Fact Sheet", 25 May 2014.

<sup>96</sup> UN Office for the Coordination of Humanitarian Affairs, "Darfur: New displacement – first quarter 2014", March 2014.

<sup>97</sup> UN Office for the Coordination of Humanitarian Affairs, "South Kordofan and Blue Nile: Population Movement Facts Sheet", 19 May 2014.

<sup>98</sup> In April 2014 the GoS announced the launch of a renewed counter-insurgency campaign known as "Decisive Summer" to end the conflicts in South Kordofan, Blue Nile, and Darfur. See: Sudan Vision, "Defence Minister Declares Start of Decisive Summer Operation to End Rebellion", 14 April 2014.

<sup>99</sup> "Sudan: UN condemns harassment of its peacekeepers in Southern Kordofan", *UN News Centre*, 17 June 2011, at

<http://www.un.org/apps/news/story.asp?NewsID=38758&Cr=sudan&Cr1=>; UNMIS statement, 'Bombs dropped near UNMIS in Kadugli', 17 June 2011, at

<http://unmis.unmissions.org/Default.aspx?tabid=511&ctl=Details&mid=697&ItemID=14119>

<sup>100</sup> See the SDFG report, "Ethnic Cleansing Once Again: Southern Kordofan/ Nuba Mountains", 13 June 2011, 3-4, for a detailed list of people allegedly arbitrarily detained, disappeared and tortured. See also report of the independent expert on the situation of human rights in Sudan, UN Doc. A/HRC/18/40, 22 August 2011,

an Al Jazeera TV team was detained by security forces when trying to access Dalang city on 8 June 2011. The team, consisting of one reporter, one photographer, one engineer and a driver, was beaten with rifle butts and threatened with death. The team was temporarily detained at the Security Authority Headquarters and a police station before being released.<sup>101</sup> On 25 October 2011 six boys of Nuba ethnicity between the ages of twelve and eighteen were stopped by the paramilitary Popular Defense Forces (PDF) on the road between Habila locality in Dalang to Mehatan. The PDF accused the boys of being SPLM-N members. The PDF separated the group and took each member in a different location. Five of them were killed.<sup>102</sup>

46. Human rights defenders and activists of Nuba ethnicity were also targeted throughout Sudan (see below at 6.3. (i and ii)). Widespread violations, including torture and ill treatment of those believed to be affiliated to opposition movements, have continued since 2011. In November 2012 the NISS detained 32 ethnic Nuba women from Southern Kordofan because of their suspected affiliation with the SPLM-N. They were held at El Obeid Prison for between five to eight months without access to lawyers or medical care before their release without charge.<sup>103</sup> Fighting between the Sudan Revolutionary Forces (SRF), a coalition of armed opposition groups including the SPLM-N, and Government forces in April 2013 near Abu Kershola and Um Berimbita and the spread of conflict to North Kordofan, displaced thousands. After the fighting, authorities in Khartoum arrested and detained dozens of ethnic Nuba and Darfuri activists suspected of ties to the coalition of armed opposition groups such as the Sudan Revolutionary Front and SPLM-N.<sup>104</sup> Between 1-14 May 2013, ACJPS also documented the detention without charge by the NISS of 21 members of the SPLM-N, including a number of prominent members of the party, in locations throughout the country including Khartoum, Omdurman, Nyala, Wad Medani, Halfa, El Obeid and Kosti.<sup>105</sup>
47. Armed clashes broke out in Blue Nile on 1 September 2011 following a joint SAF and PDF attack on an SPLM-N convoy in Damazein. On the following day, President Al-Bashir declared a state of emergency in Blue Nile, dismissed the then governor Malik Agar and replaced him with a military commander Major General Yahya Mohamed Khair. Hundreds of perceived SPLM-N members were subjected to arbitrary arrest and detention concurrent to the outbreak of conflict in Blue Nile. On 3 September, the ruling NCP

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paras.37, 39.

<sup>101</sup> Arabic Network for Human Rights Information, "ANHRI condemns attack on Al Jazeera team in South Kordofan", 15 June 2011, at <http://reliefweb.int/node/420875>.

<sup>102</sup> ACJPS, "Sudan Human Rights Monitor, October – November 2011", December 2011.

<sup>103</sup> ACJPS *et al*, "Sudan: Letter to Human Rights Council on the Human Rights Situation in Sudan", 23 August 2013.

<sup>104</sup> Human Rights Watch, "Sudan: Wave of Arrests After Rebel Offensive", 10 July 2013.

<sup>105</sup> ACJPS, "Government of Sudan continues to subject political opposition members to arbitrary detention", 14 May 2013, at: <http://www.acjps.org/government-of-sudan-continues-to-subject-political-opposition-members-to-arbitrary-detention/>.

declared the SPLM-N to be an illegal political party and froze their assets. Their offices were closed around the country.<sup>106</sup>

48. Human rights violations reportedly committed in Blue Nile include extrajudicial killings, arbitrary arrest, torture and other forms of ill-treatment.<sup>107</sup> The majority of victims have been opposition activists, in particular members or perceived supporters of the SPLM-N.
49. In June 2014, ACJPS was following seven cases before the terrorism court in Sinja town, Sinnar State, involving 119 men who were detained by the NISS at the outbreak of conflict in Blue Nile in September 2011. The men were held in NISS custody in prisons in Sennar and Blue Nile state on account of their affiliation, or presumed affiliation to the SPLM-N for around 17 months without charges or judicial review. They were denied access to lawyers or their families for over 10 months until the first lawyer visits were permitted in June-August 2012 following an application to the Minister of Justice. 91 reported to lawyers they had been tortured in NISS custody in Sinnar, Al Rosaris, and Sinja prisons.<sup>108</sup> 28 of the detainees were released by the Office of the Prosecutor prior to any court hearings without charge in February 2013 owing to a lack of *prima facie* evidence. The remaining detainees were charged in February 2013 under articles 51, 58 and 130 of the Sudanese Criminal Act 1991, article 26 of Weapons and Ammunition Law, and articles 5 and 6 of the Anti-Terrorism Act. Articles 130 of the 1991 Criminal Act, article 26 of the Weapons and Ammunition Law and articles 5 and 6 of the Anti-Terrorism Act are punishable by death or life imprisonment. Court hearings were held at the terrorism tribunal in Sinja in May, August and September 2013. During these sessions, 38 were released and 53 were convicted to prison sentences, of which 46 were sentenced to life imprisonment. Their lawyers have submitted appeals.
50. REDRESS and several other human rights organisations submitted a complaint and a request for provisional measures in respect of the situation in Southern Kordofan (later extended to include Blue Nile) to the African Commission in July 2011. On 7 November 2011, the Commission transmitted the complaint and request for provisional measures to the Government of Sudan (GoS), calling on the GoS to prevent harm to civilians.<sup>109</sup> Due to a lack of response from the GoS, the African Commission re-iterated its request for provisional measures in August 2012. The GoS has yet to respond to the Commission, which found the case admissible in August 2013.<sup>110</sup>

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<sup>106</sup> ACJPS, "Perceived SPLM-Northern Sector Supporters Arrested throughout Northern Sudan", 6 September 2014. For details of the incidents, see ACJPS, "Continuing Violations of Human Rights in South Kordofan and Blue Nile States", 24 August - 8 September 2011, and "Update on Human Rights Violations in Blue Nile and South Kordofan", January 2012.

<sup>107</sup> See Human Rights Watch, "Under Siege: Indiscriminate Bombing and Abuses in Sudan's Southern Kordofan and Blue Nile States", December 2012, pp. 34-45.

<sup>108</sup> Documentation on file with ACJPS, June 2014.

<sup>109</sup> Documents pertaining to the complaint are available at <http://www.redress.org/case-docket/redress-sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta>.

<sup>110</sup> Documents pertaining to the complaint are available at <http://www.redress.org/case>

51. UN experts and NGO researchers, as well as human rights monitors on the ground in both South Kordofan and Blue Nile state, have collected consistent evidence of the indiscriminate nature of the SAF's bombing campaign through interviews with victims and witnesses, on the ground investigations of bomb sites, examination of bomb fragments, as well as photographs and satellite images of damaged property and craters.<sup>111</sup> The evidence shows, *inter alia*, that the SAF uses unguided munitions such as 'barrel bombs' rolled out of Antonov cargo planes flying at high altitude, which do not allow for accurate delivery.<sup>112</sup> According to medical staff who spoke to Human Rights Watch in 2012, out of 122 individuals treated at a hospital near Kauda, Blue Nile, in the preceding 18 months, 110 were civilians.<sup>113</sup>
52. The Sudanese authorities also continue to obstruct humanitarian access to areas controlled by the SPLM-N. All parties to the conflict have an obligation to facilitate humanitarian access and the Sudanese Government should not interfere with civilians' right to access to basic goods and services.<sup>114</sup> The authorities have also restricted the operation of humanitarian organisations elsewhere in the country including in conflict areas. The authorities suspended the operations of the International Committee of the Red Cross on 1 February 2014. The ICRC issued a statement on 19 May 2014 expressing concern that the suspension of its activities for more than three months was "having severe consequences for the Sudanese population in areas affected by the armed conflict, which has intensified over the past months and caused massive displacement in Darfur, Blue Nile and South Kordofan."<sup>115</sup> The agency reported that in 2013, more than 426,000 Sudanese living in areas affected by conflict received food aid from the ICRC, and over 325,000 received farming tools and seed.<sup>116</sup>
53. According to the International Rescue Committee, an increasing number of women and girls were raped while fleeing Nuba Mountains in South Kordofan.<sup>117</sup> Sudanese women and

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<sup>111</sup> For instance, UN High Commissioner for Human Right, '*Preliminary report on violations of international human rights and humanitarian law in South Kordofan from 5 to 30 June*', 15 August 2011, paras.26-29; Human Rights Watch, *Under Siege*, above note 107, pp.20-24; 35-39; ACJPS, '*On the Brink Again*', pp.6-13.

<sup>112</sup> Human Rights Watch explains that barrel bombs are "improvised crude devices filled with nails and other jagged pieces of metal that become deadly projectiles upon impact", Human Rights Watch, "*Under Siege*", pp.3,35; see also Eric Reeves, "*They Bombed Everything That Moved: Aerial military attacks on civilians and humanitarians in Sudan, 1999-2012*"; Human Rights Watch, "*Sudan: Civilians describe attacks, abuses*", 23 April 2012; Amnesty International, "*Sudan: Possible war crimes in Southern Kordofan*", 30 August 2011, at <http://www.amnesty.org/en/news-and-updates/report/sudan-possible-war-crimes-southern-kordofan-2011-08-26>.

<sup>113</sup> *Ibid.*

<sup>114</sup> ACJPS et al, "Sudan: Letter to Human Rights Council on the Human Rights Situation in Sudan", 23 August 2013.

<sup>115</sup> ICRC News Release, "Sudan: Continued suspension of activities has severe humanitarian impact", 19 May 2014.

<sup>116</sup> *Ibid.*

<sup>117</sup> Katie Nguyen, "Women raped while fleeing South Kordofan", 1 March 2012, at: <http://www.trust.org/trustlaw/news/women-raped-while-fleeing-south-kordofan-conflict>

girls in the conflict regions have spoken out about how they have been the target of systematic rape and other forms of sexual violence.<sup>118</sup> Refugees fleeing the Nuba Mountains into South Sudan identified rape as a common feature of the conflict, with women and girls reporting being raped in front of family members, raped by multiple perpetrators, and “taken” for long periods of time.<sup>119</sup> Survivors of sexual violence face tremendous challenges in reporting due to stigma, shame, and fear of reprisal. There are few services available for survivors of sexual violence.

54. On 7 November 2011, the African Commission on Human and Peoples’ Rights issued the following request for provisional measures in respect of South Kordofan and Blue Nile:

The Complainants allege that serious human rights violations are being perpetrated by the State of Sudan in South Kordofan and Blue Nile States as part of its operations against the Sudan Peoples’ Liberation Army...

Your Excellency, the Complainants have requested the African Commission to invoke Rule 98 of its Rules of procedure, and issue Provisional Measures against these alleged violations of human rights. In that regard, and without drawing any conclusions from these allegations, I respectfully request Your Excellency to intervene in the matter with a view to preventing irreparable harm being caused to the victims. I would like to indicate that the grant of Provisional Measures pending consideration of the aforementioned Communication by the African Commission does not in any way affect the final position of the African Commission on the Communication.<sup>120</sup>

The State Party has not responded to this request for provisional measures, more than 30 months after it has been issued. Sudan has not provided any information on any measures taken to investigate the numerous allegations of torture, ill-treatment and other violations raised.

### *Darfur*

55. The long-standing armed conflict in Darfur continues to devastate the lives of civilians and cause mass forced displacement. 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

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<sup>118</sup> Nobel Women’s Initiative and the International Campaign to Stop Rape and Gender Violence in Conflict, “Survivors Speak Out: Sexual Violence in Sudan”, November 2013.

<sup>119</sup> International Rescue Committee, “Still Not Safe: Violence against Woman and Girls of the Nuba Mountains”, March 2012.

<sup>120</sup> Request for the Provisional Measures under Rule 98 of the Rules and Procedure of the African Commission on Human and People’s Rights, 7 November 2011, at <http://www.redress.org/downloads/provisional-measures-for-transmittalpm-by-achpr-7november-2011.pdf>

President Bashir. Violence in Darfur from 2009 – 2012 was characterised by widespread banditry and looting punctuated by short outbreaks of direct confrontation between the SAF and its affiliated paramilitaries, and Darfur’s rebel groups. The collapse of the Darfur Peace Agreement in December 2010 between the GoS and the only rebel signatory, the Sudan Liberation Army-Mini Minawi, led to the displacement of over 32,000 civilians in the Khor Abeche region.<sup>121</sup> The nature of the conflict in the region continues to oscillate and grow more complex, with civilians presently facing attacks by government forces and pro-government militias, as well as armed opposition groups.<sup>122</sup>

56. 2013 witnessed a surge in inter-ethnic fighting between predominantly Arab groups. While the GoS has stated that it does not have the capacity to quell inter-ethnic fighting, there have been reports of the involvement of government forces using government weapons and equipment.<sup>123</sup> In some cases, such as in Um Dukhun in central Darfur, where conflict broke out between the Misseriya and Salamat tribes, government forces took no measures to protect civilians, and impeded the access of UNAMID to conduct verification missions.<sup>124</sup> According to Human Rights Watch, witnesses placed Ali Kosheib, a former militia leader now in a high-ranking post with the auxiliary Central Reserve Police at the scene of an attack on the town of Abu Jeradil, 30 kilometers south of Um Dukhun, on April 8, riding in a government vehicle. Kosheib is the subject of an International Criminal Court issued in 2007 for crimes against humanity and war crimes in West Darfur in 2003 and 2004.<sup>125</sup> In another incident on 10 August 2013 in a Ma’alia settlement, Kilkil Abu Salama, in East Darfur, ACJPS documented the use of government vehicles and ammunition in fighting between Ma’alia and Rizeigat tribes. The Rizeigat militia members were identified by witnesses as being affiliated with the infamous pro-Government Rizeigat militia leader, Mohamed Hamdan Dogolo, nicknamed ‘Hemeti’. Approximately 400 Ma’alia families were displaced due to the fighting.<sup>126</sup> Forces such as the Border Guards and Central Reserve Forces (CRF) have reportedly participated directly in the inter-ethnic fighting using government issued arms and vehicles, killing hundreds and prompting the forced displacement of thousands.<sup>127</sup>
57. In late February and early March 2014, violence and attacks on civilians surged in South Darfur when the paramilitary Rapid Support Forces were deployed to the region in a renewed counter-insurgency effort. The Rapid Support Forces are a new paramilitary force reportedly formed by the Government in August 2013 to defeat armed rebellions in the

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<sup>121</sup> ACJPS, “Rendered Invisible: Darfur Deteriorates as International Pressure Shifts to the Referendum Process”, February 2014.

<sup>122</sup> ACJPS, “Sudan Human Rights Monitor”, March – April 2013, July 2013.

<sup>123</sup> Human Rights Watch, “Sudan: ICC Suspect at Scene of Fresh Crimes”, 3 June 2013, at: <http://www.hrw.org/news/2013/06/03/sudan-icc-suspect-scene-fresh-crimes>.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> ACJPS, “Sudan Human Rights Monitor”, March – April 2013, July 2013.

<sup>127</sup> Sudan Democracy First Group, “Monthly Newsletter Issue (1) May 2013”, 18 May 2013.

country, under the field command of the former Janjawid militia leader Mohamed Hamdan (also known as “Hemeti”), taking orders from the NISS.<sup>128</sup> Despite the stated aims of the government offensive – to quash rebel presence in the region – civilians bore the brunt of the action and were directly targeted. Dozens of villages throughout South Darfur were attacked in a military campaign that was characterised by air attacks by the SAF and ground offences by joint forces of the RSF, SAF, and PDF causing mass displacement.<sup>129</sup> According to the United Nations, at least 45,000 civilians were displaced in the Um Gunya area of South Darfur in late February and early March 2014.<sup>130</sup>

58. Arbitrary detention, torture including instances of rape and sexual violence, and extra-judicial killing cases continued to be reported from Darfur throughout the reporting period.<sup>131</sup> In Khartoum, in 2008, dozens of Darfurians were tried and sentenced to death (and executed in some cases) following proceedings that relied on confessions allegedly extracted under torture during incommunicado detention.<sup>132</sup> In May 2014, ACJPS was aware of at least 92 individuals detained incommunicado in North Darfur, in custodies of the Military Intelligence, the NISS, and at Shala prison in El Fashir.<sup>133</sup>
59. On 6 April 2014, Military intelligence officers admitted the dead bodies of two men, and a third man in a critical condition who later died in hospital, into Nyala hospital in South Darfur. The three men – two from the Zaghawa ethnic group and one from the Tama ethnic group – had been arrested in early March by the Rapid Support Forces when the paramilitary force attacked Um Gongga town in South Darfur. Medical sources confirmed to ACJPS that the bodies showed signs of beatings and burns to their stomachs and genitals. Military Intelligence officers later returned to the hospital and took the bodies of the deceased. The whereabouts of the corpses have not been made known.<sup>134</sup>
60. Indiscriminate bombing continues to be a feature of the conflicts in Darfur. ACJPS documented the aerial bombardment of Derib al Reih village in South Darfur on 21

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<sup>128</sup> ACJPS, “Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict affected areas”, 19 May 2014, at: <http://www.acjps.org/civilian-deaths-following-aerial-bombardment-extrajudicial-killings-and-custodial-violence-in-sudans-conflict-affected-areas/>.

<sup>129</sup> ACJPS, “Targeted attacks on civilians in South Darfur continue”, 26 May 2014, at: <http://www.acjps.org/category/pressreleases/>.

<sup>130</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), “Humanitarian Bulletin Sudan: Issue 10”, 3 – 9 March 2014.

<sup>131</sup> See on torture and ill-treatment, reports of the independent expert on the situation of human rights in Sudan, in addition to note 93 above, UN Doc. A/HRC/18/40, 22 August 2011, para.54, and UN Doc. A/HRC/14/41, 26 May 2010, paras.67-70, and, on rape and sexual violence, A/HRC/18/40, para.55, and A/HRC/14/41, paras.67-70.

<sup>132</sup> See in particular *Kamal Mohammed Saboon v Sudan Government*; and *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.

<sup>133</sup> ACJPS, “Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict-affected areas”, 19 May 2014.

<sup>134</sup> ACJPS, “Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict affected areas”, 19 May 2014.

February 2013, in which four civilians were killed and 37 injured. Two of the civilians killed were children. Also in February 2013, there were media reports of aerial bombardment in Central Darfur and South Jebel Marra, as well as in Blue Nile's IDP camps. In response, the UN Security Council passed Resolution 2091 on 14 February calling for a cessation of military action in the region, including aerial bombardment.<sup>135</sup> ACJPS documented the aerial bombardment of Golo town (West Darfur), and Fanga village (South Darfur) in eastern Jebel Marra on 15 May 2014, resulting in the deaths of seven civilians from the Fur ethnic group, including three children under the age of ten, and injuries to four others, including one child. A reliable source confirmed to ACJPS that there was no rebel presence in either area.<sup>136</sup>

61. In Darfur and the rest of the country, advocates seeking to highlight the situation facing people from Darfur have been specifically targeted in a violent crack-down on freedom of expression and association. Meetings and demonstrations organised by Darfur IDPs and by Darfur students associations around the country have been met with excessive force. 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.
62. On 31 July 2012, ACJPS documented the deaths of twelve individuals, ten of whom reportedly under the age of 18, who sustained gun shot 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.<sup>137</sup>
63. 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.<sup>138</sup>
64. On 17 February 2014, four IDPs died of gun-shot wounds after Sudanese authorities fired live ammunition to disperse a peaceful demonstration of IDPs in Zelengei, Central Darfur state. The incident took place when a delegation of IDPs marched in a peaceful procession from Hamadiya IDP camp Zelengei University campus, Zelengei town, to submit a memorandum to the Darfur Regional Authority (DRA). The DRA was concluding a workshop on Darfur peace processes at the university. As the IDPs approached the venue, an eyewitness reported that a police officer received an order from the NISS to shoot live ammunition into the crowd. Two IDPs were instantly killed. Two others died of injuries

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<sup>135</sup> ACJPS, "Aerial bombardment in South Darfur kills Four Civilians, Government of Sudan Declares it Accidental", 22 February 2014.

<sup>136</sup> Ibid.

<sup>137</sup> ACJPS, "Twelve dead, including ten children, and over eighty injured following police and NISS excessive use of force in Nyala", 2 August 2012.

<sup>138</sup> ACJPS, "Call for immediate independent investigation into student deaths and excessive use of force by Sudanese authorities", 10 December 2012; Human Rights Watch, 'Sudan: Justice Needed for Student Deaths', 10 December 2012.

sustained from gunshot wounds the following day, on 18 February. Sixteen others, including eight children, sustained injuries including gunshot wounds and cuts from barbed wire while fleeing the scene.<sup>139</sup>

65. Demonstrations staged by the Darfur Students' Association on 11 March 2014 at the University of Khartoum were forcibly suppressed by the police, NISS, and student militias, killing one person, Ali Abakar Musa, (m), and critically injuring seven others.<sup>140</sup> In Early June 2014, Dr. Sidig Noreen Ali Abdalla, a university professor who is thought to have been detained on account of his advocacy on the situation in Darfur, remained in NISS custody in El Obeid town, North Kordofan state. He had been held incommunicado for more than four months since his arrest on 16 January 2014. Another man, journalist and blogger Taj Aldeen Arjaa, was released without charge on 11 May 2014, after spending more than four months in NISS detention following his arrest on 26 December 2013 on account of his opinions on Darfur. Mr. Arjaa had openly criticised President Omar al Bashir of Sudan and Idriss Deby of Chad at a press conference attended by the two leaders for their roles in the atrocities and human rights violations committed in Darfur.<sup>141</sup>
66. Sudan has not taken any effective steps to investigate and prosecute any of the serious human rights violations committed in the three armed conflicts (that have been characterised as international crimes by the ICC in the Darfur context), which are therefore taking place in a climate of virtual impunity. The findings of a Commission of Inquiry established by the GoS to investigate the deaths of 56 individuals, including 41 men who were buried in a mass grave in Tabra, North Darfur, on 2 September 2010 have never been announced.<sup>142</sup>
67. 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.<sup>143</sup> 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

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<sup>139</sup> ACJPS, "Four IDPs killed and sixteen injured by Sudanese authorities in Zalengei, Central Darfur", 3 March 2014, at: <http://www.acjps.org/?p=1780>.

<sup>140</sup> ACJPS, "One person dead and 7 critically injured after Sudanese forces open fire on University of Khartoum students", 12 March 2014.

<sup>141</sup> ACJPS, "Sudan Human Rights Monitor", December 2013 – January 2014 and "Concern for safety of two Sudanese activists detained incommunicado", 10 February 2014.

<sup>142</sup> ACJPS, "Sudan Human Rights Monitor", August – September 2010, October 2012.

<sup>143</sup> ACJPS et al, "Sudan: Letter to Human Rights Council on the Human Rights Situation in Sudan", 23 August 2013.

2007 and the ICC Rome Statute), and do not remove barriers to accountability, particularly the principle of non-retroactivity, amnesties and immunities.<sup>144</sup> 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.<sup>145</sup> 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.<sup>146</sup>

## 6.2. Death penalty

68. The death penalty remains in force for numerous offences,<sup>147</sup> including on a mandatory basis and for those that cannot be considered to be the most serious<sup>148</sup> - some of which also violate other rights such as the crime of apostasy (article 126 of the 1991 Criminal Act, which is incompatible with freedom of religion clauses in article 18 of the Covenant, and article 38 of Sudan's 2005 Interim National Constitution). Article 126 (2) of the 1991 Criminal Act criminalizes the crime of apostasy, prohibiting Muslims from changing their religion.<sup>149</sup> A number of criminal charges that have been used by Sudanese authorities to silence political dissent and restrict freedom of expression, such as articles 50 (undermining the constitutional order) and 51 (waging war against the state) of the 1991 Criminal Act, carry the death penalty. Human rights organisations have documented these charges being levied against journalists<sup>150</sup> and political opposition party members. At the time of writing in June 2014, Sadiq al-Mahdi, leader of the opposition National Umma Party, was detained in Kober prison in Khartoum, reportedly facing capital charges under articles 50 and 51 of the 1991 Criminal Act. Al-Mahdi was arrested by the NISS on 17 May 2014 after he publicly accused the Government's paramilitary Rapid Support Forces of committing atrocities in Sudan's conflict zones.<sup>151</sup>

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<sup>144</sup> See REDRESS and KCHRED, "Comments on the Proposed Amendment of the Sudanese Criminal Act, Position Paper", September 2008.

<sup>145</sup> AU High-Level Panel Report, above note 19, paras.246-254.

<sup>146</sup> *Monim Elgak, Osman Hummeida and Amir Suliman (represented by OMCT and FIDH) v. Sudan*, Communication 379/09, Admissibility Decision, August 2012.

<sup>147</sup> Under the 1991 Criminal Act there are fifteen crimes in Sudan that are punishable by death. See ACJPS, "Widening the Scope: The Expanding Use of Capital Punishment in Law and Practice in Sudan", December 2010.

<sup>148</sup> Human Rights Committee, "General Comment No. 6: The right to life (art. 6)", 30 April 1982, paras.6,7.

<sup>149</sup> ACJPS, "Widening the Scope", above note 147.

<sup>150</sup> Amnesty International, "The Chains Remain: Restrictions on Freedom of Expression in Sudan", September 2010.

<sup>151</sup> ACJPS, "Political opposition party members and activists detained by Sudan's security despite Presidential pledge to cease detentions and open up dialogue", 21 May 2014.

69. In 2014, ACJPS documented the sentencing of the death penalty against five people. Four were sentenced to death in Kosti for the crime of murder in January 2014<sup>152</sup> and one woman, Meriam Ibrahim, was sentenced to death for apostasy in May 2014 after she confirmed her Christian faith.<sup>153</sup> From 2008 – 2013, Amnesty International documented the sentencing of at least 371 individuals to death. In at least 69 of these cases the death sentence was reportedly carried out.<sup>154</sup>
70. Minors have also been sentenced to death in Sudan. In May 2009, Abdulrahman Zakaria Mohammed was executed in El Fasher, North Darfur. He had been found guilty of murder and robbery, but was only 17 at the time of his trial in 2007. The sentence was appealed before the Supreme Court in Khartoum. The conviction and sentencing was upheld despite the defendant's minor status.<sup>155</sup> In October 2011, ACJPS documented two cases in which juveniles were sentenced to death. In one case in which 10 males were sentenced to death, the defense counsel alleged four of the defendants were children. The court ordered a medical examination to determine the age of just two of the defendants. In one case, Idriss Adam Abbaker was confirmed as a child and the death sentence was commuted. In the second case of Abdallah Abdallah Daoud, one medical examination confirmed that he was a child, but a second examination found that he was over 18 and the sentence was upheld.<sup>156</sup>
71. 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 under the national security law and alleged that they had been tortured into making confessions.<sup>157</sup> These cases, as well as convictions pursuant to trials under the

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<sup>152</sup> ACJPS, "Sudan Human Rights Monitor", December 2013- January 2014, p. 13, available at; <http://www.acjps.org/wp-content/uploads/2014/05/SHRM-December-2013-January-2014.pdf>

<sup>153</sup> ACJPS, "Update: Death penalty confirmed in Khartoum apostasy case after woman confirms her Christian faith; new apostasy case comes to light in Al Gadarif", Press Release, 15 May 2014, available at, <http://www.acjps.org/?p=1918>.

<sup>154</sup> Amnesty International, Figures on the use of death penalty, available at; <http://www.amnesty.org/en/death-penalty/numbers>.

<sup>155</sup> Human Rights Watch, "Iran, Saudi Arabia, Sudan: End Juvenile Death Penalty", 8 October 2010.

<sup>156</sup> ACJPS, Sudan Human Rights Monitor, October-November 2011, available at; [http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human\\_Rights\\_Monitor-Issue14-FINAL.pdf](http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Human_Rights_Monitor-Issue14-FINAL.pdf).

<sup>157</sup> 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 (The Sudan) Communication addressed to the Government on 22 August 2008 Concerning Messrs. Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed, A/HRC/13/30/Add.1, paras. 47, 48.

anti-terrorism law,<sup>158</sup> raise serious concerns over their compatibility with the right to life.<sup>159</sup> There are also concerns that the death penalty has disproportionately targeted members of ethnic minorities<sup>160</sup> though no disaggregated data is available in this regard.

72. The United Nations Working Group on Arbitrary Detention (“UN Working Group”) found in 2008 that Sudan was responsible for having arbitrarily detained a number of individuals suspected of having killed the journalist Mohamed Taha who were later convicted and executed on the basis of confessions extracted under torture (and revoked during the trial). The UN Working Group found that ‘[g]enerating evidence under torture not only violates article 7 of the International Covenant on Civil and Political Rights, but it also constitutes one of the most serious human rights violations. ... No judicial system, and in particular, the judicial system of a country that ratified the International Covenant on Civil and Political Rights on 18 March 1986 [which would apply equally to the African Charter], can consider as valid a confession obtained under torture and revoked before a court, and a sentence based on such confession.’<sup>161</sup> Sudan subsequently failed to comply with the request of the UN Working Group to remedy the situation and to stay the execution of the sentence<sup>162</sup> in violation of the right to life.
73. Following the raid by forces of the Justice and Equality Movement on Khartoum in 2008, over one hundred individuals were tried before six special courts established pursuant to the Combating of Terrorism Act of 2001, resulting in the imposition of over 100 capital punishments by 2010. The accused had reportedly been held incommunicado and had no access to their defence lawyers; allegations raised by the accused that their confessions had been extracted under torture were dismissed by the trial courts. A petition challenging the constitutionality of proceedings, particularly their compatibility with the right to a fair trial guaranteed under Sudan’s Interim National Constitution, was equally dismissed.<sup>163</sup>

### **6.3. Torture and inhuman, degrading or cruel treatment (ill-treatment)**

74. A number of well-documented cases<sup>164</sup> show that torture and ill treatment is systemic and has been used predominantly to suppress opposition, to obtain confessions or to discriminate against marginal groups, including Darfurians and Southerners who are often also IDPs. Political opponents, students, journalists and human rights defenders have been

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<sup>158</sup> 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.

<sup>159</sup> See Human Rights Committee, General Comment 6 (the right to life), para.7.

<sup>160</sup> See ACJPS, “Widening the Scope”, above note 147.

<sup>161</sup> Opinion No. 38/2008, above note 157, paras. 47, 48.

<sup>162</sup> See *ibid.*, para.50.

<sup>163</sup> *Kamal Mohammed Saboon v Sudan Government* Submission to 109th Session of the UN Human Rights Committee. [http://www.acjps.org/?cat=5#\\_ftn66.nment](http://www.acjps.org/?cat=5#_ftn66.nment), *CS (Constitutional Court) (60) of 2009*.

<sup>164</sup> See REDRESS, ACJPS and SDFG, Comments, above note 15. See also ACJPS, “Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan”, July 2012, <http://www.acjps.org/?p=1060>.

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. Public protests against austerity measures and calling for regime change in 2011,<sup>165</sup> 2012<sup>166</sup> and 2013<sup>167</sup> have been met with excessive force leading to serious injuries and deaths. Student meetings and demonstrations held in or on the issue of Darfur have also been met with excessive force. Sudanese authorities fired live ammunition to disperse anti-government protestors in cities throughout Sudan in late September and early October 2013.<sup>168</sup> The cases show that the authorities have used excessive force during demonstrations that amounted to ill-treatment. Further, there have been concerns about the lack of protection if not complicity of authorities in the abuse of trafficking victims in Eastern Sudan.<sup>169</sup>

### ***(i) Human Rights Defenders***

75. A number of human rights defenders reported having been targeted and subjected to torture and other forms of ill-treatment, in violation of the African Charter and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, 8 March 1999).
76. On 14 March 2012, Jalila Khamis Koko (f) was arbitrarily arrested by the NISS on 14 March 2012 in Khartoum, Sudan. She was arrested and detained on account of her activities as a human rights defender and specifically for the support she provided to IDPs from South Kordofan State/ Nuba Mountains. She was kept in conditions of detention contrary to the UN Standard Minimum Rules for the Treatment of Prisoners and was subjected to death threats amounting to torture and other cruel, degrading and inhuman treatment ('ill-treatment') by NISS officers. Mrs. Jalila Khamis Koko was released after a court hearing on 20 January 2013.<sup>170</sup>

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<sup>165</sup> See ACJPS, "Youth Mass Protests Spark 113 Arrests and One Death", 1 February 2011, at: <http://www.acjps.org/youth-mass-protests-spark-arrests-one-death/>.

<sup>166</sup> See ACJPS special report, "Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan", 27 July 2012, at: <http://www.africancentreforjustice.org/wp-content/uploads/2012/12/07-27-12-Excessive-force-mass-arbitrary-detentions-ill-treatment-and-torture-used-to-crack-down-on-popular-protests-in-Sudan.pdf>.

<sup>167</sup> ACJPS, "Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan", 4 October 2014.

<sup>168</sup> ACJPS documented the deaths of 185 persons (verifying the names of 144) during protests in September and October 2013, See Annex.

<sup>169</sup> See Human Rights Watch, "I wanted to lie down and die, Trafficking and torture of Eritreans in Sudan and Egypt", 11 February 2014, at <http://www.hrw.org/node/122899>.

<sup>170</sup> See Submission to the UN Special Rapporteur on Human Rights Defenders in the case of Jamila Khamis Koko, at [http://www.redress.org/downloads/FinalUrgentAction\\_JalilaKhamiKoko\\_18December2012.pdf](http://www.redress.org/downloads/FinalUrgentAction_JalilaKhamiKoko_18December2012.pdf).

77. Bushra Gamar (m), the chairperson of the Human Rights and Development Organisation (HUDO), a human rights NGO working in South Kordofan, was arrested by the National Intelligence and Security Services from his home in Omdurman. Mr. Gamar was held incommunicado for the first three weeks of his detention in Khartoum Bahri. He was subjected to severe torture, including threats of rape, and denied access to medical attention. In August 2011 he was subjected to re-arrest by the NISS after the Khartoum Criminal Court ordered his release. He was held for over a year without charge and access to a lawyer before being released on 27 June 2012.<sup>171</sup> A communication on Mr. Gamar's case has been filed before the African Commission on Human and Peoples' Rights by AJCPS.
78. On 16 January 2011, human rights defender Abdel Amajeed Salih was released after spending 6 months and 15 days within the political security section of Kober prison. In his first week of detention, he was subjected to torture and ill-treatment. He was never tried nor charged with any crime during his six month detention. Upon his release, the NISS ordered him to report weekly to their offices and he reported receiving threatening phone calls.<sup>172</sup>
79. On 30 October 2010, around 7 officials from the NISS arrested Abderahman Mohammed Gasim, a 49 years old lawyer from Darfur, near Khartoum 3 (Algourashi park). For the first three days of his arrest, he was beaten with water hoses on his back and face, placed in solitary confinement, deprived of sleep and interrogated for long periods about his alleged collaboration with the ICC, Radio Dabanga and the Hand Network. Officials put a gun to his head and threatened to kill him and to rape his colleague. They also tied his eyes and poured ice cold water over his head. After three months in detention, he was charged with crimes against the state under article 50 of the Criminal Act of 1991. The trial court ordered his release after five months of prosecution due to insufficient evidence. Mr Gasim has lodged a complaint to the African Commission which is currently considering his case.<sup>173</sup>
80. On 4 November 2010, Jafar Alsubki Ibrahim, a journalist for Alsaḥafa daily newspaper who has worked with the Darfur Bar Association and Radio Dabanga, as well as being a member of Journalists for Human Rights, was arrested by four NISS officers. He was held incommunicado for two months. During this time, he was subjected to various forms of torture, including being hung upside down, flogging with a water hose, electric shocks, mock execution and sleep deprivation. He was also subjected to racist insults for being

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<sup>171</sup> Amnesty International, "Sudanese activist released without charge: Bushra Gamar Hussein Rahma", 16 July 2012.

<sup>172</sup> ACJPS, "Sudan Human Rights Monitor", Issue 5, December 2009 –May 2010.

<sup>173</sup> African Commission, 15th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, 7-14 March 2014, Draft Agenda, at [http://www.achpr.org/files/sessions/15th-eo/info/achpreo15\\_agenda\\_2014\\_eng.pdf/achpreo15\\_agenda\\_2014\\_eng.pdf](http://www.achpr.org/files/sessions/15th-eo/info/achpreo15_agenda_2014_eng.pdf/achpreo15_agenda_2014_eng.pdf).

Darfurian. Jafar Alsubki Ibrahim was released on 28 November 2011 on the grounds of insufficient evidence.<sup>174</sup>

81. In November 2008, Monim Elgak, Osman Hummaida and Amir Suliman, human rights defenders who were working as an independent researcher, human rights consultant and advocate, and director of the Khartoum Centre for Human Rights and Environmental Development (KCHRED) respectively, were arrested and detained by the NISS. Over the next four days, they were interrogated about their alleged cooperation with the ICC, and subjected to beatings, kickings, threats, witnessing the torture of others, sleep deprivation and denial of medical treatment, as well as beating with pipes and canes, including on bare feet (falaqa), stamping on face and threatening with rape and torture. Following their release, the three men left the country and brought a case before the African Commission on Human and Peoples' Rights, which, in 2012, declared the case admissible.<sup>175</sup>

***(ii) Student activists, political activists and journalists, particularly excessive use of force resulting in deaths and serious injuries***

82. Over the last three years, the growth of a Sudanese student movement and political opposition has met with increasing repression, taking the form of the excessive use of force during demonstrations and a series of arbitrary arrests, detentions, torture and ill-treatment of those (seen to be) belonging to these groups.<sup>176</sup> Student and political activists from or speaking on behalf of individuals from Darfur and other marginalised and conflict affected areas such as Blue Nile and South Kordofan have overwhelmingly been the target of government repression.<sup>177</sup>
83. The excessive use of force by Sudanese authorities, including the increasing use of live ammunition, to disperse public protests and student gatherings led to serious injuries and deaths in 2012-14. There have been no prosecutions for the injuries sustained by protestors during these incidents and the findings of any official inquiries announced have not been made public.
84. On 11 March 2014, Ali Abakar Musa, (m), a student from the economics faculty at the University of Khartoum died from gunshot wounds he sustained when Sudanese security services opened live fire during a demonstration at the University. The demonstration took

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<sup>174</sup> See "Sudan: Two journalists released, one still faces death penalty", *English Pen*, 13 September 2011, which also refers to allegations of torture of Rai Al-Shaab deputy editor Abu Zar Al-Amin.

<sup>175</sup> *Monim Elgak, Osman Hummaida and Amir Suliman v Sudan*, see above note 20.

<sup>176</sup> See *Report of the independent expert on the situation of human rights in the Sudan*, Mohamed Chande Othman, UN Doc. A/HRC/18/40, 22 August 2011, paras.7 and 19, and *Police Clamp Down on Youth Protesters in Sudan amid Reports of Student Death*, Sudan Tribune, 31 January 2011, available at <http://www.sudantribune.com/Police-clamp-down-on-youth,37827>.

<sup>177</sup> See overview in ACJPS, "One person dead and 7 critically injured after Sudanese forces open fire on University of Khartoum students", 12 March 2014, at: <http://www.acjps.org/?p=1803>.

place immediately after the conclusion of a public forum organised by the Darfur Students' Association at the University that day concerning escalating violence in South Darfur. Students marched to the main University gate where they were met by joint forces of the police, NISS and student militias. The joint forces fired tear gas, rubber bullets, and live ammunition on the students. A medical report obtained by ACJPS stated that he had been shot by live ammunition in the chest. The police subsequently issued a statement denying responsibility for the death. Seven other students were seriously injured after being beaten with batons and shot at with rubber bullets.<sup>178</sup>

85. In February and March 2014, excessive use of force was used against Darfurian IDPs and students (see above at paras. 64, 65).
86. On 26 December 2013 Taj Aldeen Arjaa, (m), 23 years of age, a journalist and blogger, was arrested by the NISS in Khartoum on 26 December 2013. He was released without charge on 11 May 2014. Mr. Arjaa had openly criticised President Omar al Bashir of Sudan and Idriss Deby of Chad at a press conference attended by the two leaders for their alleged roles in the atrocities and human rights violations committed in Darfur. He was reportedly subjected to torture at NISS offices in Khartoum before being transferred after a few days to Kober prison, also in Khartoum. He was allowed one family visit after spending a month in detention. A subsequent request by his family to visit him was refused.<sup>179</sup>
87. During anti-austerity and anti-government demonstrations that took place throughout Sudan in late September and early October 2013, scores of persons died and over 800 were detained.<sup>180</sup> ACJPS documented 185 deaths, and verified the names of 144 deceased persons (see Annex). The majority of people who died had sustained gun-shot wounds to the chest and head, suggesting that security forces had shoot to kill orders. Many of the detainees were held incommunicado and without access to their families and lawyers before being released without charge. Just one prosecution case was opened in respect of the killing of Dr. Sarah Abdelbagi who was shot outside her uncle's home in the Aldoroshab neighbourhood of Khartoum Bahri on 25 September 2013. Dr. Abdelbagi had joined other friends and family members at the home after hearing that her 15 year old cousin had been shot during a demonstration earlier the same day. A prosecution case was opened against an officer of the Sudanese Armed Forces who was identified by eye-witnesses to have been present and armed during the incident. He was acquitted on 28 May 2014 by Khartoum North Criminal Court owing to contradictory eye-witness accounts. An appeal

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<sup>178</sup> ACJPS, "One person dead and 7 critically injured after Sudanese forces open fire on University of Khartoum students", 12 March 2014, at: <http://www.acjps.org/?p=1803>.

<sup>179</sup> ACJPS, "Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan's conflict affected areas", 19 May 2014.

<sup>180</sup> See ACJPS and Human Rights Watch, "African Commission: Investigate Sudan Killings", 1 November 2013; ACJPS, "Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan", 4 October 2014.

was submitted by lawyers representing Dr. Abdelbagi's family and was pending in early June 2014.<sup>181</sup>

88. On 19 September 2013, just before anti-austerity protests broke out around the country, two children and one adult were shot and killed by the police at a protest outside the South Darfur government's offices in Nyala. Wali Eldein Abdulhadi Morsal, (m), 11 years of age, student, Manal Abdulrahman Hamid Omer, (f), 12 years of age, student, and Mohamed Zakaria, (m), 25 years of age died during the protest. Eighteen others were injured. Protestors had gathered after attending a funeral for two men from the Zaghawa ethnic group who had been killed by an unidentified militia group the previous day. The protest concerned the lack of protection for civilians in the region. Protestors demanded compensation for the families of the victims and the resignation of the state Governor. The Governor and his cabinet refused to meet with the protestors. A group of protestors set fire to the Governor's car and the fire spread to six other cars in the compound. Police were deployed and fired tear gas into the compound. When protestors attempted to flee, police fired live ammunition into the crowd, killing the three protestors.<sup>182</sup>
89. On 22 May 2013 nine students sustained gun-shot wounds at El Fashir University, North Darfur when members of the NISS, the police and a student militia group aligned with the ruling National Congress Party fired live ammunition into a crowd of unarmed students on the university campus. The students had attended a public forum to discuss the recent disconnection of water and electricity supplies to the university and student residences.<sup>183</sup>
90. On 6 and 7 December 2012, four students were found dead in an irrigation channel on the campus of Al Jazeera University, following a joint action by the Central Reserve Police and the NISS, joined by an NCP-affiliated student militia, to break up a student meeting concerning tuition fees for Darfuri students on 5 December. The exact circumstances of the deaths are unclear and authorities have not yet made public the findings of an inquiry announced into the incident.<sup>184</sup> Four local members of political opposition parties were detained by the NISS in Wad Medani town immediately after this incident, in an apparent attempt to pre-empt the organisation of any public response, and on the same day nine individuals were arrested in Khartoum when they attended a protest about the student deaths.<sup>185</sup>
91. Police and the NISS used excessive force to disperse and arrest protestors taking to the streets throughout Sudan in June-July 2012, including the reported use of rubber bullets,

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<sup>181</sup> Facts on file with ACJPS June 2014. See also Al-Monitor, "Sudan protest victims still seeking justice", 6 June 2014, at: <http://www.al-monitor.com/pulse/originals/2014/06/sudan-sara-bagi-protests-september-activists.html#>.

<sup>182</sup> ACJPS, "Three protestors, including two children, killed by police at protest outside Government offices in Nyala", 24 September 2013, at: <http://www.acjps.org/?p=1631>.

<sup>183</sup> ACJPS, "Sudanese police, security forces and student militia group fire live ammunition at Darfur students; nine students sustain gun-shot wounds", 22 May 2013, <http://www.acjps.org/?p=1418>.

<sup>184</sup> AJPS, "Call for immediate independent investigation into student deaths and excessive use of force by Sudanese authorities", 10 December 2012: <http://www.acjps.org/?p=1127>.

<sup>185</sup> Ibid.

tear gas and beatings with sticks and rubber batons. ACJPS documented the systematic use of arbitrary arrest and detention, ill-treatment and torture of individuals involved or suspected of being involved in the protests. In an apparent attempt to obstruct the coordination of any further protests, NISS targeted those suspected of leading or coordinating the protests within the youth movements and opposition political parties. Human rights defenders and journalists monitoring and reporting on the protests and subsequent action by the police and NISS were also targeted. Reports of ill-treatment and torture received by ACJPS included the use of beatings with water pipes, sticks and fists, prolonged enforced standing, exposure to bright sunlight and heat, sleep deprivation, psychological torture including blindfolding, death threats against detainees and their families, threats of sexual violence and exposure to the torture and beatings of fellow detainees, as well as verbal insults. Detainees testified to being held in inadequate facilities with no electricity, bedding or sufficient ventilation. Some detainees were forced to provide their email, Facebook and Skype passwords.<sup>186</sup>

92. On 29 October 2012 at 10pm, Somia Ismail Ibrahim Hendusa, (f) a 34 year old Sudanese freelance journalist, was arrested from a street in Khartoum Bahri nearby her family home. She was apprehended by seven NISS officers and taken to the NISS office in Khartoum Bahri. Ms. Hendusa was subjected to physical and psychological torture and reported that nine NISS officers were involved. She was forced to remove her abaya (Islamic dress), beaten with water pipes and burned on her back, shoulders and stomach with an iron. Ms. Hendusa was also subjected to racial abuse. The NISS officers shaved her head and told her that they did so because she appeared have “Arab” hair rather than “Darfuri” hair. She was told she was a prostitute and that the Rizeigat are slaves. During her detention, she was accused of advocating against the Government of Sudan and interrogated about articles she had written which were critical of Sudanese president Omar Al Bashir. Four days later, on the morning of 2 November, Ms. Hendusa was released and abandoned in extremely poor health on a street in the Khour Al Sumra neighbourhood of Al Drushab district, Khartoum Bahri. Ms. Hendusa is a freelance journalist known for publishing political analysis for two online newspapers, Sudan Today and Al Rakouba. She had been living in Cairo, Egypt but was visiting family in Sudan for Eid Al-Adha at the time of her arrest. She reported that on 25 October, a few days prior to her arrest, she had received a phone call from the NISS welcoming her to Sudan. She received a second call on 27 October asking her to report to NISS offices in Khartoum Bahri, which she did not do. Ms. Hendusa also reported that a car had been following her in the days leading to her arrest. On 2 November, the day of her release, Ms. Hendusa sought medical treatment at Omdurman Hospital. However, the hospital refused to issue her the medical report form necessary to obtain treatment. She subsequently obtained a medical report from Khartoum Bahri

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<sup>186</sup> See cases and testimonies documented in ACJPS: “Sudan Human Rights Monitor”, Issue 19 (August-September 2012); Special Report: “Excessive force”, above note 166; and “Sudan Uses Excessive Force to Disperse Protests”, 24 June 2012.

Hospital which confirmed that she had burns on her body and that her head had been shaved.<sup>187</sup>

93. On 31 July 2012, the Sudanese police and NISS fired live ammunition and tear gas into mass anti-government protests in Nyala, South Darfur. At least twelve people, including ten children, died from gunshot wounds and wounds caused by sharp weapons and were admitted to Nyala hospital mortuary. More than eighty other individuals were reportedly admitted to Nyala hospital having sustained injuries during the protests.<sup>188</sup> The findings of a Government committee announced to investigate the deaths of the twelve demonstrators have never been made public.
94. On 5 April 2012 the Public Order Court in Omdurman Umbada sentenced Mubarak Mohamed Abdallah to five months in jail under articles 67 for “rioting” and 69 for “disturbing the public peace” of the 1991 Criminal Act. Mr. Abdallah was arrested at the funeral procession of Abdalhaken Abdulhakem, a member of the Darfur Student’s Association who was killed in a suspicious car accident on 4 April. Eight students were also arrested at the funeral and tried under articles 67, 69, and 77 for “public nuisance”. Charges were dropped against two of the students, Abdulaziz Adam and Mohamed Zakaria. The remaining six were sentenced to forty lashes: Abualgasim Abkar, Salih Mohamed Youef, Abdlkaream Ibrahim, Khalid Musa, Fathi Mohamed Abdalla, and Mohamed Abdalla. Fifteen other individuals were arrested at the funeral and beaten with water pipes, prior to their release without charge: Majda Mohamed Ahmed; Zakia Asil, Ababa Abdalla, Aiz Aldein Adam Saeed, Mutasim Mohamed, Salem Mohamed Yousef, Abdlkarem Ibrahim, Shadi Mohamed Adam, Abualgsim Abakar, Safa Mohamed Ibrahim, Egbal Abdurhaman; Manal Abdurhamn, Fatih Alrhaman Adam, Heba Abdalla Adam and Nagla Sid Ahmed.
95. On 30 January 2012, Taj Al Deen Mohamed Ibrahiem, a 24 year old art student at Khartoum University, was arrested by NISS officers, together with some other students. He was taken to an office near Khartoum North police station, where he was hit with a black plastic water pipe. He was threatened with rape and death if he did not confess that he was a member of SLM/ Abdel Wahid. He was forced to sign a paper pledging that he would not participate in future meetings, and released after he had signed the pledge.
96. On 27 January 2012, Khalaf Saeed was arrested by security agents following the magreb prayers. He was threatened with execution twice. An NISS official held a weapon to his head and threatened to kill him, and on another occasion a scarf was wrapped around his neck violently, which he described as “it felt like being executed by hanging”. Four days after his arrest, he was forced to sign a “promissory note” to exercise political activity in a “legal way” in the future. He was then released and immediately left Sudan.

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<sup>187</sup> ACJPS, Sudanese journalist tortured and subjected to racist abuse by NISS, 8 November 2012, at: <http://www.acjps.org/?p=896>.

<sup>188</sup> ACJPS, “Twelve dead, including ten children, and over eighty injured following police and NISS excessive use of force in Nyala”, 2 August 2012.

97. On 4 January 2012, Ibrahim Ali Majzoub, a 25 years old graduate student from Omdurman Islamic University, at Atbara River Nile state, was arrested by police after he had spoken on the 'Manasir issue' with a number of students in a discussion group. During the interrogation about his political affiliation, he was beaten by NISS. He was taken to Shendi, where he was kept for 12 days in a tiny cell without ventilation and light.
98. On 1 January 2012, Idris Mohamed Jiddo, a 29 year old political activist and member of the University of Khartoum Student's protest committee, was arrested by the NISS while traveling on a bus. He was accused of being a member of the protest movement and of inciting students. During his interrogation, he was beaten, struck on the head and back. He was threatened to be killed and thrown into the river. After about two months, he was forced to sign a document stating that he will not practice any political activities or incite students. He was released after spending 67 days in prison.
99. Mohamed Hassan Alim recently graduated from the University of Alnelain, Faculty of Engineering. He is well known to the authorities for his political activities as a member of the Baath party and his participation in public demonstrations, and has on several occasions been arrested, detained and ill-treated by the NISS. In late December 2011, he was beaten during his arrest by the NISS, which was in connection with remarks made during an open student debate during which he criticised the NCP's policy and claimed that the government to which Nafi Ali Nafi belongs, is responsible for the deterioration of Sudan's education system and for human rights violations. He was subsequently held incommunicado for three weeks before being released on 16 January 2012.<sup>189</sup>
100. On 30 December 2011, Taj Alsir Jaafer, a 25 year old student at Khartoum University, was arrested by around six NISS officers while traveling to Souq Arabi by bus. He was taken to a building unknown to him, where he was beaten with wires all over his body. The interrogating officers threatened him with rape, and beat him on his back and feet for about one hour. He was placed in solitary confinement, and his first family visit took place 32 days after his arrest. He was later released without having been charged.
101. On 25 December 2011, Juang Peter Mackol, a 27 years old art student at the University of Khartoum, was arrested on campus by riot police. The arrest followed a demonstration of the Al-Manasir community against the Merowe Dam.<sup>190</sup> He did not resist arrest, yet was kicked and beaten with sticks on different parts of his body, in particular on his legs, shoulders and face. He lost consciousness as a result but was not provided with any medical assistance. An initial investigation was opened before the prosecutor in Khartoum in January 2012 and the case was still pending without progress made at the time of writing.
102. On 3 July 2011, 11 members of the Alababda tribe from Blue Nile state, including Alakhir Alawad, 36, Mohamed Bashir, 37, and Sharaf Alalyabi, 30 and Mamon Elshakih, were

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<sup>189</sup> See Amnesty International, "Sudanese Activist Released Without Charge", 17 January 2012.

<sup>190</sup> Al-Manasir is one of three tribes protesting against severe losses of properties suffered due to the construction of the Merowe Dam in their homelands on the Fourth cataract of the River Nile, about 350km north of Khartoum.

arrested by police. All were accused of robbery, and different methods of torture and ill treatment were used to extract their confessions, including threats of rape, putting hot chili in sensitive body parts, blackmailing them to obtain money and breaking of fingers. Legal action was commenced on behalf of Alkhir and three others against police members. The administrative inquiry to lift the immunity of the police members took eight months, with the immunity of the concerned officials being lifted in regards to the cases of four victims.

103. On 14 February 2011, Ali Mohammed Osman, a student and member of the Sudan People's Liberation Movement, was arrested by security forces. He was threatened, interrogated and beaten on his back and shoulders with sticks and a plastic pipe and forced to remain standing all night. The beatings caused severe injuries, requiring him to seek medical care upon his release.<sup>191</sup>
104. On 3 February 2011, Ahmed Mahmoud, a 23 year old student at the Engineering School of Sudan University was arrested near Agrab Square in Khartoum North, and was detained at NISS detention centre until 14 February 2011. During his interrogation, he was beaten with a black plastic water pipe, kicked in his sexual organs and tortured with electrical shocks through a taser. His long hair was cut with a sharp razor. He was subjected to torture over a period of 10 days. After he was forced to sign a pledge not to participate in future protests, and was released on 14 February.
105. The case of Safia Ishaq, a university graduate and member of Girifna, who alleges that she was raped and tortured by the NISS in January 2011 is covered above (at para.41).
106. In January-March 2011, demonstrations organised by the "Youth of 30 January for Change Alliance", a coalition of members of student movements including Girifna, Nahoa Alshari, and Aid ala Aid took place in Khartoum, El Obeid, Wad Medani, and Kosti, were met with excessive force by the Sudanese authorities.<sup>192</sup> Human rights organisations documented the deployment of riot police and the NISS to disperse demonstrations, the beating of protestors, mass detentions and ill-treatment and torture of detainees.<sup>193</sup> ACJPS documented the use of black water pipes, sticks, tear gas and live ammunition to disperse protestors.<sup>194</sup> One protestor, Mohamed Abdelrahman, a student at Omdurman Islamic University, was shot when joint armed forces of the police and NISS were deployed to disperse demonstrations on his university campus. He died later that evening at Omdurman hospital.<sup>195</sup> ACJPS documented 113 arrests by the NISS and the police that took

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<sup>191</sup> Picture from <http://namaa09.blogspot.com/2011/02/sudan-torture-victims-released-tens.html>

<sup>192</sup> ACJPS, "Youth Mass Protests Spark 113 Arrests and One Death", 1 February 2011, at:

<http://www.acjps.org/youth-mass-protests-spark-arrests-one-death/>.

<sup>193</sup> See Human Rights Watch, Sudan: Violent Response to Peaceful Protests, 3 February 2011, at:

<http://www.hrw.org/news/2011/02/03/sudan-violent-response-peaceful-protests>; Amnesty International, Sudan crackdown on peaceful protest continues, 9 March 2011, at: <http://www.amnesty.org/en/news-and-updates/sudan-crackdown-peaceful-protest-continues-2011-03-09>.

<sup>194</sup> ACJPS, Youth Mass Protests, above note 192.

<sup>195</sup> Ibid.

place on 30-31 January. Testimonies from released detainees signalled the systematic use of torture in NISS custody. Torture methods used against protestors and those suspected of organising the protests documented included the use of electric shock treatment, the pouring of hot water the body including genital organs, forced physical exertion and exercise, beating and kicking, forced exposure to sunlight, enforced stress positions (being forced to sit or stand against a wall for long periods), threats of rape, threats of torture against the family and friends, sleep deprivation, being told that friends had been killed, being forced to witness the physical torture of other detainees, sexual insults and degrading language, denial of prescribed medication, racial abuse, enforced nakedness, tearing of clothing, and shaving of heads.<sup>196</sup>

#### **6.4. The lack of effective prohibition of torture in Sudan's legal system**

107. The Bill of Rights prohibits torture. However, existing criminal offences referring to torture, such as article 115 of the Criminal Act of 1991, are not in conformity with international standards.<sup>197</sup> Other offences, such as causing hurt or abuse of office, may be applicable in lieu of a specific offence of torture. However, they do not adequately capture the serious nature of torture. Moreover, relevant offences, including article 115 of the Criminal Act 1991 mentioned above, carry punishments of short-term imprisonment only that are clearly inadequate given the seriousness of torture. The State party has yet to become a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and has not taken steps to reform its laws so as to enact a criminal offence of torture that reflects its obligations under article 7 of the Covenant.
108. Sudanese laws equally fail to provide adequate safeguards, and thereby facilitate recourse to torture. The National Security Act of 2010 is of particular concern because it grants the NISS wide powers of arrest and detention for up to four and a half months without judicial review, permits incommunicado detention without prompt unequivocal access to a lawyer of one's choice and the right to the provision of medical care, and grants immunity for officials.<sup>198</sup>

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<sup>196</sup> See testimonies in: ACJPS, "Silencing the New Front: the Emergence of Widespread Torture against the Youth Movement", April 2011, at: [http://www.africancentreforjustice.org/wp-content/uploads/2012/04/SilencingtheNewFront\\_theEmergenceofWidespreadTortureagainsttheYouthMovement1.pdf](http://www.africancentreforjustice.org/wp-content/uploads/2012/04/SilencingtheNewFront_theEmergenceofWidespreadTortureagainsttheYouthMovement1.pdf)

<sup>197</sup> 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."

<sup>198</sup> REDRESS, ACJPS and Sudan Democracy First Group, *Comments*, above note 15, pp.8-9.

109. Courts have regularly dismissed allegations raised by defendants that confessions had been extracted under torture.<sup>199</sup> There is no explicit prohibition in Sudanese law relating to the use of confessions or statements extracted under torture, or evidence obtained as a result of torture (fruit of the poisonous tree). According to article 20 (2) of the Evidence Act of 1993, confessions in criminal matters will be invalid if they are the result of coercion. However, under article 10 of the same Act, a court may admit evidence – even where it was obtained in breach of recognised procedures – if it is confident that the evidence is independent and acceptable. The lack of clarity in the Evidence Act does not provide for adequate prevention, and risks resulting in a breach of article 7 of the Covenant.<sup>200</sup>
110. Sudanese laws contain a number of barriers to effective investigations and prosecutions, particularly immunities,<sup>201</sup> statutes of limitation,<sup>202</sup> lack of adequate victims and witness protection<sup>203</sup> and a system of special courts for the police and security forces.<sup>204</sup> Sudanese authorities have failed to investigate a number of allegations of torture and ill-treatment. The following is a selection of cases brought before the African Commission that illustrate the lack of effective investigations or local remedies in respect of allegations of serious human rights violations.
- Dr. Farouk Ibrahim, in his case against Sudan, alleged that he had been tortured in 1989 and 1990. From 1990 to 2000 he lodged several complaints that went unheeded. Subsequently, he challenged the short statutes of limitation and immunities that hindered any investigations. The African Commission found that “all local remedies could not be exhausted in the present Communication because they were not available, adequate and effective.”<sup>205</sup>
  - In the case of *Abdel Hadi, Ali Radi & Others v Republic of Sudan* (see above at para.18), lawyers brought a complaint on behalf of the victims of torture, ill-treatment and arbitrary detention to the General Police Manager in September 2006. Since that date, there has been no response, or indication of any investigation undertaken. The African Commission found that:

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<sup>199</sup> See above at 6.2.

<sup>200</sup> 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.

<sup>201</sup> See above at para.17.

<sup>202</sup> 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.

<sup>203</sup> Article 4(e) Criminal Procedure Act 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.

<sup>204</sup> Articles 46 (1) (2) and 48 of the Police Act of 2008 and Articles 75-81 of the National Security Act of 2010.

<sup>205</sup> *REDRESS (on behalf of Dr. Farouk Ibrahim) v Sudan*, above note 52, Communication 386/10, para.67.

Where abuse does occur, State Parties [to the African Charter] are also under an obligation to initiate a prompt, impartial and effective investigation in order to bring the perpetrators to justice as well as to afford redress to the victims.

From all indications, the Respondent State failed to uphold these standards and the Commission finds as a consequence that there was a violation of article 5 of the Charter.<sup>206</sup>

- Monim Elgak, Osman Hummeida and Amir Suliman alleged that they had been subjected to torture and ill-treatment by the NISS in Khartoum in November 2008 and left the country shortly thereafter due to fear of further harassment and ill-treatment. The African Commission found that:

The question here is not whether there are laws in Sudan that provide remedies to victims of torture. Rather the question is can the victims or their representatives utilize those avenues under the circumstances? The short answer is NO. In a situation where the victims or their representatives cannot resort to domestic remedies because of general fear of persecution, the Respondent States assertion that the victims could have used the remedies as provided in the CPA or NISS Act or the Interim National Constitution is unreasonable and impractical...<sup>207</sup>

In the case at hand as the Victims were subject to intimidation, harassment and persecution it would be irrational to ask the victims to go back to their country to pursue legal remedies. It would be equally repugnant to expect anyone within Sudan who sympathizes with the cause of the victims to file a complaint on their behalf before the relevant state organs. Therefore, for the aforementioned reasons and in line with its rulings in the **Jawara case**, **John D. Ouko v Kenya** and **Rights International v Nigeria**<sup>16</sup>, the Commission finds that domestic remedies were not available for the victims and their representatives because of fear of persecution.<sup>208</sup> (emphasis in original)

- *Safia Ishaq Mohammed Issa* (see above at para.42) alleges that Sudan is responsible for her arbitrary arrest, detention, torture and ill-treatment at the hands of state agents, who beat and, subsequent to her arrest, gang-raped her.<sup>209</sup>
- Ms Hawa Abdallah is a member of the Fur tribe from Darfur. At the time of her arrest on 6 May 2011, she was 27 years of age and working as a translator for the United Nations-African Mission in Darfur (UNAMID). She was a well-known and outspoken community

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<sup>206</sup> *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, above note 51, paras.76, 77.

<sup>207</sup> *Monim Elgak, Osman Hummeida and Amir Suliman v Sudan*, above note 20, para.55.

<sup>208</sup> *Ibid.*, para.56 (footnotes omitted).

<sup>209</sup> *Safia Ishaq Mohammed Issa (represented by REDRESS and the African Centre for Justice and Peace Studies) v Sudan*, above note 88.

activist resident in Abu Shouk IDP camp, North Darfur. She was arrested from her uncle's home in El Fashir on 6 May 2011 by a group of heavily armed officers from the NISS who fired gunshots into the air. She was detained by the NISS in El-Fashir for three nights from 6-8 May 2011 prior to her transfer to Khartoum where she was detained by the NISS until her release without charge on 12 July 2011. During her detention by the NISS in El-Fashir and Khartoum, she was subjected to beatings, lashing, rape, death threats and other threats to her personal safety and that of her family, electric shocks and exposure to bright lights. In its decision on admissibility the African Commission concurred with the complainant that significant hurdles exist in Sudanese law and practice that "are a significant bar to access to local remedies for victims of serious crimes such as torture and other forms of ill-treatment" and in fact that "it would be unreasonable to expect the Complainant [Ms Abdallah] to overcome all these hurdles in pursuit of exhausting local remedies."<sup>210</sup> The Commission found that the Sudanese authorities had failed to investigate the allegations of arbitrary detention and torture of Ms Abdallah despite being "sufficiently notified of the violations perpetrated against the Victim"<sup>211</sup> and further held:

the Commission considers the granting of blanket immunities to NISS officials as an impediment to the exhaustion of local remedies since there is no evidence that there is a legal obligation on the part of the NISS hierarchy to lift the immunity of an official who is suspected of committing an offence. Because of the immunity granted to NISS officers, no criminal action could be brought against them unless such immunities were lifted, which immunities could only be lifted by the NISS hierarchy, which in any case has no obligation to do so.<sup>212</sup>

- Magdy Moustafa El-Baghdady, (m) a British national, was arrested on 11 February 2011 before being taken to the NISS headquarters and detained in various places of detention until May 2011. Mr. El Baghdady alleges that he was held in overcrowded prison cells without adequate access to food, water or toilet facilities. While held at Kober prison, he - and others with him - were subject to a mock execution. He says that he witnessed children and adults being beaten and was himself subjected to beatings. Despite his complaint, and interventions made by the UK Foreign and Commonwealth Office, no investigations into his allegations of torture and ill-treatment are known to have been carried out. On 25 October 2013, REDRESS filed a complaint against Sudan, on his behalf at the African Commission on Human and Peoples' Rights.<sup>213</sup>

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<sup>210</sup> Communication 401/11, *Hawa Abdallah (Represented by the African Centre for Justice and Peace Studies) v. Sudan*, decision on admissibility, para. 57.

<sup>211</sup> *Ibid*, note 93, para. 53.

<sup>212</sup> Above, note 93, para. 56.

<sup>213</sup> <http://www.redress.org/international-jurisdictions/magdy-moustafa-el-baghdady-v-sudan>

- In 2013, the Egyptian Initiative for Personal Rights, the Cairo Institute for Human Rights Studies and the Center for the Study of Law, Justice and Society (Dejusticia) filed a complaint in relation to the construction of the Merowe Dam which began in 2003 and was completed in 2009, as well as the Kajbar Dam, both in Northern Sudan, which started in 2005 and is currently on hold.<sup>214</sup> The construction of the Merowe Dam reportedly resulted in the displacement and forced eviction of over 50,000 people.<sup>215</sup> Government forces reportedly used excessive force to quell protests against the construction of the dam. On 22 April 2006, armed militia, in the presence of police guards, killed at least three anti-dam protesters during a peaceful gathering at a school courtyard and injured around 40 others. To date, perpetrators of these attacks have not been prosecuted and no formal investigations have been concluded. On 13 June 2007, heavily armed Sudanese security forces fired on a peaceful anti-dam demonstration, killing four demonstrators and wounding more than 15 others; 26 individuals were arrested and held for several weeks, including journalists who tried to cover the protest.<sup>216</sup> The perpetrators of the attacks were not prosecuted, despite numerous complaints and requests filed by aggrieved individuals. While construction was halted for several years, Sudan has recently expressed its intent to resume the construction of the dam.

## 6.5. Corporal punishment

111. Sudanese law recognises several forms of corporal punishment - stoning, amputation, cross-amputation and whipping.<sup>217</sup> Sudanese courts imposed the sentence of stoning in two recent judgments, which were subsequently not carried out (see above at paras. 38, 39). However, the penalty of cross-amputation (amputation of the right hand and left foot) for armed robbery was carried out against 30-year old Adam al-Muthna by Government doctors in Khartoum on 14 February 2013.<sup>218</sup> Although amputation sentences had been handed down, this was the first case of implementation known to ACJPS and REDRESS

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<sup>214</sup> Egyptian Initiative for Personal Rights, "The Other Side of the Sudan Dams Complaint before the African Commission seeks justice for victims of Sudanese dams", 7 October 2013, at <http://eipr.org/en/blog/post/2013/10/07/1839>.

<sup>215</sup> The UN Special Rapporteur on Adequate Housing, Miloon Kothari, estimated the numbers affected by the construction of the Merowe Dam at 60,000, see UN High Commissioner on Human Rights, "U.N. Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects," 27 August 2007, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7513&LangID=E>.

<sup>216</sup> Human Rights Watch, "World Report 2008", p.169, at <http://www.hrw.org/reports/2008/01/30/world-report-2008>.

<sup>217</sup> *Curtis Francis Doebbler v Sudan*, African Commission on Human and Peoples' Rights, Communication No.236/2000 (2003); *UN Human Rights Committee: Sudan*, above note 20, 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>

<sup>218</sup> Redress, ACJPS, Physicians for Human Rights and Human Rights Watch, "Sudan: Doctors Perform Amputations for Courts", 27 February 2013, <http://www.acjps.org/?p=1317>.

since 2001. In response to public concern related to the case, Sudan's Deputy Chief Justice Abdul Rahman Sharfi reportedly confirmed at a press conference on 11 March 2013 that 16 cases of amputation had been carried out by the authorities since 2001.<sup>219</sup> Responding to criticism from human rights campaign groups that doctors had implemented the penalty in contravention of medical ethics which prohibit them from engaging in acts of torture or other cruel, inhuman or degrading treatment or punishment, Sharfi reportedly stated that the Sudanese authorities "cherish the book of Allah [Quran] and not the Hippocratic Oath". He further added that if doctors refused to implement Sharia (Islamic law) punishments, they would face prosecution and that the government could train and qualify judges to perform court-ordered amputations instead.<sup>220</sup>

112. Whipping is provided for as hudud punishment for adultery, wrongful accusation of adultery and drinking of alcohol, and for 18 other offences in the 1991 Criminal Act. Public order laws, which are enacted by the localities, also provide for whipping as one of the punishments. For example, the Khartoum Public Order Law allows for the imposition of whipping in respect of 17 prohibitions set out in the Law, including for a failure of men and women to queue separately. In addition to the nature of the punishments, the criminalisation of a wide range of acts, including consensual sex, is incompatible with the right to privacy guaranteed under article 17 of the Covenant.
113. Available evidence (see for cases above at 4) points to the following typical practice:<sup>221</sup> many of those subjected to whipping appear to belong to marginalised groups, such as impoverished women, tea-sellers, and those from certain backgrounds, including Southern Sudanese and Darfurians, particularly for alcohol related offences or for alleged adultery. However, the sentencing of a well-known football player to forty lashes for drinking alcohol, the whipping of students and the targeting of a journalist and those in her company for wearing 'indecent dress' (see Lubna Hussein case above at para. 34) shows that societal status is not the only factor. Gender and certain types of conduct, often in combination, appear crucial factors. Arrests for public order offences are frequently carried out by the public order police who come to know about what they consider 'morally deviant' behaviour. Crucially, the large number of vaguely worded offences gives police officers considerable leeway and power in determining whether anyone is suspected of having breached the law. Upon arrest, which is often carried out in the form of collective raids known as khasa, the suspects are frequently detained overnight and brought before the judge for a summary trial the next day. The proceedings tend to be short, commonly not more than half an hour, with the police or security officer setting out the case for the prosecution. Defendants frequently have limited awareness of the law and no legal

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<sup>219</sup> ACJPS, "Three men sentenced to amputation following unfair trial in Darfur", 5 April 2013, at <http://www.acjps.org/?p=1333>. See also, Amnesty International, "Sudan: Judges to be trained to carry out amputations", 12 March 2013, at <https://www.amnesty.org/en/for-media/press-releases/sudan-judges-be-trained-carry-out-amputations-2013-03-12>

<sup>220</sup> ACJPS, *ibid.*

<sup>221</sup> The following account is taken from REDRESS and SHRM, above note 217, pp.13-14.

assistance, and may also be anxious to minimise the societal fallout of drawn-out legal proceedings over charges of 'indecent' behaviour. As a result, their willingness and ability to defend themselves is seriously undermined and many defendants, following conviction, waive their right to appeal to put the experience behind them as quickly as possible. The punishment of whipping is then carried out on the spot.

114. In an illustrative case, on 4 May 2011, public order police raided an apartment in Omdurman, Algamair area, at 10pm, arresting a group of friends playing cards. Seven young men and one girl were arrested and taken to Kabajab Police Station, where they spent the night before being taken to Omdurman Market Criminal Court the following day. The entire group was charged with prostitution under article 154 of the Criminal Act of 1991. The first two defendants were sentenced to a fee of 2,000 Sudanese pounds and 70 lashes each. The rest of the group was sentenced to 500 Sudanese pounds and 40 lashes each. The group had no access to a lawyer and their families, and had their mobile phones confiscated.<sup>222</sup>
115. In another case, which raised additional concerns over interference with the right to family life under articles 17 and 24 of the Covenant, on 7 April 2013 the Public Order court of Kosti town in White Nile State, headed by Judge Ismail Hassan Jalal El-Dein, sentenced two individuals to 40 lashes and one year imprisonment under article 154 (practising prostitution) of Criminal Act of 1991. The accused were not informed of their rights to appeal the court decision, and lashing penalty was implemented the same day. Z. J. E., (f), nineteen years of age, housekeeper, Ethiopian national and O M.M., (m), twenty-five years of age, caretaker, Sudanese national, were arrested by the Public Order police after they raided M.M.'s home in Hai Alrbaa, Kosti Town. The two were accused of co-habiting as an unmarried couple. Z.J.E was examined by a medical doctor to confirm whether unlawful sexual activity had taken place. The doctor's report showed no signs of sexual activity. The two were convicted on the basis of the testimony given by the Public Order police officer who arrested them. The officer reported that the two were arrested from the same room of the house. Ms. Z.J.E. has since appealed the decision on the grounds that the two are married and have a pending application for a marriage permit before the Family Court. The application was filed under the Sudanese Personal Status Act of 1991. The sentence contradicted the penalty prescribed under article 154 of the Sudanese Criminal Act of 1991 which provides for imprisonment for to up to three years or whipping up to 100 lashes, but not both.<sup>223</sup>
116. On 6 August 2012 Judge Ibrahim Adam Yusuf of the Public Order Court in Kosti, White Nile state, sentenced S.A.M., (f), 20 years of age, and A.A., (m), 30 years of age, to 100 lashes each under article 146 (adultery) of the Criminal Act of 1991. The lashing penalty was implemented the same day. The couple had married under customary law and obtained a customary marriage certificate. S.A.M's father rejected the marriage and filed a case of

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<sup>222</sup> ACJPS, "Sudan Human Rights Monitor", October-November 2011.

<sup>223</sup> ACJPS, "Sudan Human Rights Monitor", March-April 2013.

- adultery against the couple. The Public Order Court refused to accept the customary marriage certificate and found the couple guilty of adultery.<sup>224</sup>
117. On 24 July 2012 the Public Order Court of Nyala sentenced Adam Mohamed Suliman, (m), 39 years old and Mohamed Salih Bashir, (m), 30 years old, to 40 lashes and a fine of 600 Sudanese pounds. The two men were found guilty of drinking alcohol under article 178 of the Criminal Act of 1991.<sup>225</sup>
  118. Between 27 March and 17 April 2012, Judge Muzamil Suliman of the Public Order Court in Tandaly, White Nile State handed down a penalty of 80 lashes and fees of between 200 and 300 Sudanese pounds for consumption of alcohol under article 78 of the Criminal Act of 1991 in 15 cases. The penalties issued were inconsistent with those prescribed under article 78 which provides that drinking is punishable with up to 40 lashes. The Judge reportedly sentenced 15 persons to 80 lashes and fees, threatening imprisonment if fees were not paid.<sup>226</sup>
  119. On 22 April 2012 the Public Order Court in Nyala, South Darfur sentenced Arafa Salih Adam (f) and Salih Adam (m) to 40 lashes and a fine of 500 Sudanese pounds under article 151 (“gross indecency”) of the Criminal Act of 1991. The two were arrested inside a house in Hai Texas, Nyala. While they were being whipped, Ms. Adam’s husband entered the court and asked what crime they had committed. The judge told her husband that she was found in a compromising situation in which it appeared she had committed adultery.<sup>227</sup>
  120. Interviews conducted with officials, lawyers and those subjected to corporal punishment indicate that officials carrying out the whipping regularly do not adhere to the rules. The number of lashes is exceeded, parts of the body are hit that should be exempt, and those lashed are sworn at. In short, the limited safeguards of monitoring by a magistrate or someone else acting on his/her behalf, are frequently disregarded. The whipping video that surfaced in December 2010 (see above at para.36) therefore appears to reflect reality rather than constitute an aberration. In practice, a punishment forming part of broader notions of a state imposed morality and security becomes a licence to lash out and insult marginalised members of society, thereby reinforcing hierarchies of power, ethnicity and gender.<sup>228</sup>

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<sup>224</sup> ACJPS, “Sudan Human Rights Monitor”, August-September 2012.

<sup>225</sup> ACJPS, “Sudan Human Rights Monitor”, June-July 2012.

<sup>226</sup> ACJPS, “Sudan Human Rights Monitor”, April-May 2012.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

## 7. Right to liberty and security of person, treatment of persons deprived of their liberty and fair trial (arts. 9, 10 and 14)

### 7.1. Detention conditions

121. Conditions in detention facilities in Sudan are 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. The treatment of prisoners often runs counter to international standards, including prisoners being routinely shackled or subjected to solitary confinement in small cells.
122. The prison law of 2010 provides the Minister of Interior and the prison general director broad powers to impose and issue special orders and regulations.<sup>229</sup> The law does not envisage a system of independent oversight. Application of cruel and degrading or inhumane punishments against prisoners who are accused of committing offences in breach of the law is common, as are reports of torture and ill-treatment in prison.<sup>230</sup> There have been reports of women being sexually assaulted and raped during their "detentions and interrogation" by prison guards and security agents.<sup>231</sup>
123. Sudan's prisons are frequently overcrowded. Omdurman Prison for Women was originally built to hold 100 women and later expanded to hold 200. In 2007, it reportedly held 1200 inmates,<sup>232</sup> and in 2009 and 2010 ACJPS researchers documented that the prison held 1500 inmates.<sup>233</sup> Soba West prison was built to accommodate a capacity of 500 inmates; however, the prison has been reported to house 1500 inmates.<sup>234</sup> Nyala General Prison was originally built for a capacity of 500 inmates; however in 2009 and 2010 ACJPS researchers documented that the prison held 1273 inmates.<sup>235</sup> Ardamata prison in West

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<sup>229</sup> Article 48 and 49 of the National Prison and Treatment of Inmates Act of 2010.

<sup>230</sup> Draft report on Sudan's prison system (on file with ACJPS).

<sup>231</sup> "Restrictions on Freedom of Opinion and Expression Persist in Sudan", Amnesty International, April 2012. See also, Peace Women, "Sudan Vision: Details: The Concept of Citizenship Interface with Gender Issues; Parts 1, 2, 3 (Academic / Other)", 17 November 2011, available at:

[http://www.peacewomen.org/portal\\_resources\\_resource.php?id=1606](http://www.peacewomen.org/portal_resources_resource.php?id=1606) (accessed: 12/04/2012).

<sup>232</sup> "Squalid, overcrowded and infested with mosquitoes: The jail where teddy bear teacher will serve her sentence", 30 November 2007, Read more: <http://www.dailymail.co.uk/news/article-497508/Squalid-overcrowded-infested-mosquitoes-The-jail-teddy-bear-teacher-serve-sentence.html#ixzz1p5rUI0Ug>.

<sup>233</sup> A Report on the Conditions of Prisons and Custodies in the Sudan 2009 -2010, The African Centre for Justice and Peace Studies (ACJPS) Field Visit.

<sup>234</sup> "Government negotiating futures of prisoners in Darfur", El Fasher, 16 January 2012, available at:

<http://www.radiodabanga.org/node/24003>

<sup>235</sup> ACJPS, above, note 232.

Darfur is also severely overcrowded. In February 2014 it held 270 inmates in five rooms, each measuring 4x8 meters.<sup>236</sup>

124. The 2010 National Prison Organisation and Treatment of Inmates Act provides for the organisation of prisons in Sudan. Article 5 (1h) and 21 both stipulate the provision of comprehensive healthcare for inmates, with article 5 (1h) also providing for education, social services, and religious services to be provided to prisoners with the aim of contributing to their rehabilitation. Article 12 stipulates that children over two years of age should not remain in prison with their mothers, although the Director of the Prison has discretionary powers to decide whether it is in the child's best interest to remain with the mother.<sup>237</sup> In practice, children are often detained with their mothers over two years of age without special provision. Article 16 provides for psychological counselling and other treatment for mentally ill prisoners. However, in practice, psychological counselling or other support services are not available for inmates, particularly those with mental health issues and disabilities.<sup>238</sup> ACJPS monitoring of prison conditions has revealed that prisons often suffer from a lack of medical staff and services, in addition to shortages in medication and medical equipment. The failure to medically examine newly admitted inmates as well as the use of a single blade to shave several inmates has increased the transmission of diseases and long-term infections in prisons.<sup>239</sup> Prisons also suffer from severe shortages in food supplies. These problems in Sudan's prisons, including food shortages, overcrowding and the lack of appropriate medical and other care facilities, are exacerbated by an increasing prison population and low prison budgets.
125. On 19 February 2014 five inmates sustained gunshot wounds and one of the injured died later the same day from gunshot wounds when live ammunition was fired at inmates of Ardamata Prison in West Darfur during a disturbance in the prison. Prisoners had gathered into a crowd after hearing a warning shot fired by a sentry guard who had reportedly seen a prisoner attempting to escape. After hearing the warning shot, inmates reportedly gathered together and headed towards the exercise yard, shouting out grievances concerning prison conditions and throwing stones at the prison officers. The State Director of Prisons and his bodyguard were also pelted with stones by the inmates when they attended the site. Police and military officers were called to the prison to quell the disturbance and live rounds of ammunition were fired at the prisoners. One prisoner was killed and four others were injured. A prison officer was also taken to the hospital after having been beaten by inmates. Inmates at Ardamata Prison reportedly made a number of unanswered complaints to the State Director of Prisons in early 2014 concerning conditions at the detention facility. Inmates had complained of overcrowding, delays in meal times, ill-treatment and beatings by prison officers. Prisoners have also raised serious complaints

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<sup>236</sup> ACJPS, "Investigation needed into shooting at Ardamata prison, West Darfur; overcrowding and poor health conditions", 21 February 2014.

<sup>237</sup> ACJPS, "A Report on the Conditions of Prisons and Custodies in the Sudan 2009 -2010".

<sup>238</sup> Chapter five of the 2010 National Prison Organisation and Treatment of Inmates' Act,

<sup>239</sup> Draft report on Sudan's prison system (on file with ACJPS).

about health conditions in the facility and a general lack of appropriate medical care and facilities. Specific complaints were made about the lack of response by the prison authorities to an outbreak of scabies in early February. Immediately following the disturbance on 19 February, a medical officer was sent to the prison and diagnosed 35 inmates with an infectious skin condition. 23 prisoners were diagnosed with scabies and 12 others with chicken pox.<sup>240</sup> There has been no investigation announced into the incident.

## 7.2. Right to liberty and security

126. The Criminal Procedure Act, 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.<sup>241</sup>
127. The National Security Act, 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 months without any judicial supervision).<sup>242</sup> The 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 NSA is considered unlawful, which renders a right to compensation for a breach of article 9 illusory.
128. In practice, detention under the National Security Act 2010 is systematically used against members of political opposition parties and others perceived to be affiliated to the political opposition. Individuals perceived have publicly expressed views contrary to those of the ruling National Congress Party, such as student activists, journalists, human rights defenders and members of civil society organisations and community groups have also been targeted. Detainees are often held without charge and without access to a judge in excess of the four and a half months permitted under the NSA. The harassment and detention of these groups, mainly at the hands of the NISS, is incompatible with the right to security as interpreted in the Committee's jurisprudence.<sup>243</sup> In addition to prolonged incommunicado detention without charge or judicial review, the torture and ill-treatment

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<sup>240</sup> ACJPS, "Investigation needed into shooting at Ardamata prison, West Darfur; overcrowding and poor health conditions", 21 February 2014.

<sup>241</sup> See Nabil Adib, "At the State's Mercy: Arrest, Detention and Trial under Sudanese Law", in Lutz Oette (ed.), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan*, pp. 121-138, at pp. 122-133.

<sup>242</sup> See articles 50, 51 National Security Act, 2010.

<sup>243</sup> *Rajapakse v. Sri Lanka*, UN Doc. CCPR/C/87/D/1250/2004, 26 July 2006, para.9.7.

of detainees in NISS custody is routinely documented (see above at 6.3.). A selection of recent cases illustrative of this trend is provided below.<sup>244</sup>

129. In January 2013 authorities arrested and detained without charge six prominent leaders of Sudanese political opposition parties after they returned to Sudan from political negotiations in Kampala, Uganda.<sup>245</sup> On 1 April, Presidential Omar al-Bashir released a presidential decree to release all political detainees under an alleged “amnesty” in an effort to encourage dialogue with the political opposition. The six high-profile opposition members and a youth activist were released without charge in early April 2013 after more than three months in NISS detention, although human rights groups estimated that at that time, at least 100 other persons remained detained in connection with their real or presumed political affiliation.<sup>246</sup>
130. At the time of writing in early June 2014, Dr. Sidig Noreen Ali Abdalla, (m), 42 years of age, had been detained incommunicado for almost six months since his arrest by the NISS on 16 January 2014. Dr. Sidig is a father of four, a lecturer at West Kordofan University, and a supervisor of the Greater Darfur Students’ Association. Dr. Sidig was arrested by the NISS from Elnhood Public Insurance Hospital, where he had taken one of his children for treatment. He is being detained in El Obeid Prison. Although he has not had access to his family or lawyers, he is thought to have been detained in connection with his presumed political opinions owing to his role with the Darfur Students’ Association.<sup>247</sup>
131. In early June 2014, nine youth activists remained detained incommunicado by the NISS in connection with protests that were organised by the Darfur Students’ Association at the University of Khartoum on 11 March 2014.<sup>248</sup> The nine activists who in early June had not had access to their families or lawyers since their arrests, and were detained without charge or judicial review are: Gazi Al-Rayah Al-Sanhouri, (m), youth activist and human rights defender, arrested on the evening of 11 March during an armed raid on his family home in the Al-Taeif neighbourhood of Khartoum; Abdulaziz Altoum, (m), human rights defender, arrested on 11 March; Abdulmonim Adam, (m), human rights defender, arrested on 13 March; Ibrahim Salih Ibrahim Adam, (m), student at Omdurman University and member of the Darfur Students Association, arrested on 18 March; Al Radi Ali Ibrahim, (m), advocate and human rights defender, arrested on 18 March; Mohamed Idris Jedo, (m), the

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<sup>244</sup> Further documented cases of arbitrary detention by Sudan’s police and the NISS can be viewed on the ACJPS website at: [www.acjps.org](http://www.acjps.org).

<sup>245</sup> ACJPS, “Sudanese political opposition leaders detained incommunicado and at risk of torture”, 15 January 2013, at: <http://www.acjps.org/sudanese-political-opposition-leaders-detained-incommunicado-and-at-risk-of-torture/>.

<sup>246</sup> ACJPS, Human Rights Watch and Human Rights and Development Organization (HUDO), “Sudan: Despite Pledge, Many Political Prisoners Remain”, 22 April 2013, at: <http://www.acjps.org/sudan-despite-pledge-many-political-prisoners-remain/>.

<sup>247</sup> ACJPS, “Concern for safety of two Sudanese activists detained incommunicado”, 10 February 2014, at: <http://www.acjps.org/concern-for-safety-of-two-sudanese-activists-detained-incommunicado/>.

<sup>248</sup> See ACJPS, “One person dead and 7 critically injured after Sudanese forces open fire on University of Khartoum students”, 12 March 2014, at: <http://www.acjps.org/one-person-dead-and-7-critically-injured-after-sudanese-forces-open-fire-on-university-of-khartoum-students/>.

former Chairperson of the Darfur Students Association, arrested on 19 March (Mr. Jedo was previously arrested by the NISS in Khartoum in 2012 and questioned on his involvement with the Darfur Students Association); Mohamed Salah Abdulrahman, (m), activist, arrested by the NISS on 12 May 2014 along with two other youth activists, Taj Alsir Jafar, (m) and Moamar Musa, (m), near Khartoum University.<sup>249</sup> Another activist, Ahmed Ali Ahmed, (m), a student at El Nilein University and member of the Darfur Students' Association, was detained on 18 March in connection with the University of Khartoum demonstration on 11 March, but released without charge the following day.<sup>250</sup>

132. During anti-austerity and anti-government protests that took place around Sudan in June-July 2012, the NISS arrested and detained without charge at least 14 prominent human rights defenders on account of their work monitoring and reporting on the Sudanese Government's response to the protests.<sup>251</sup> All have since been released. On 17-18 July, the NISS arrested three human rights defenders from their legal practice offices in Nyala, South Darfur. Abdul Rahman Abu Al Hassan (m), Ahmed Mohamed Abdallah, (m), and Adil Abdallah Nasr El Dein, were arrested after submitting an open letter to the Governor of South Darfur on 16 July, signed by "Nyala lawyers", called for the release of persons detained for engaging in peaceful protests and raised concerns about security and economic issues in South Darfur.<sup>252</sup> At least 11 other human rights defenders were arrested by the NISS from their homes or offices during the protests including: Mohamed Al-Usbat, (m), journalist and activist, arrested at 10.20pm on 12 July from his home in Khartoum; Nahid Gabralla, (f), women's rights activist, member of Sima Organisation for Child Rights, arrested on 3 July from the Sima Organisation for Child Rights office, in Khartoum North; Amira Osman, (f), women's rights activist, member of "No to Women's Oppression", arrested on 22 June, along with five others during a protest in the Al Riyadh district of Khartoum. All were released after five hours, but Amira Osman was re-arrested from her home five days later, on 27 June; Faisal Shabou, (m), women's rights activist, member of Sima Organisation for Child Rights, arrested on 24 June from the Sima Organisation for Child Rights office in Khartoum North; Rashida Shams, (f), member of

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<sup>249</sup> Mohamed Salah had previously been arrested by the NISS on 20 March from the immigration section of Khartoum Airport as he attempted to fly out of Sudan. He was detained incommunicado until his release without charge on 7 April and then re-arrested with two others (Taj Alsir Jafar and Moamar Musa) on 12 May. Mr. Salah is a graduate of Khartoum University and had previously been arrested for two months in 2012.

<sup>250</sup> See ACJPS, "Update: Activists and human rights defenders arrested in wake of University of Khartoum demonstrations", 24 March 2014, at: <http://www.acjps.org/update-activists-and-human-rights-defenders-arrested-in-wake-of-university-of-khartoum-demonstrations/>; and ACJPS, "Political opposition party members and activists detained by Sudan's security despite Presidential pledge to cease detentions and open up dialogue", 21 May 2014, at: <http://www.acjps.org/political-opposition-party-members-and-activists-detained-by-sudan-security-despite-presidential-pledge-to-cessate-detentions-and-open-up-dialogue/>.

<sup>251</sup> ACJPS, "UPDATE: Human Rights Defenders Arbitrarily Detained in the Wake of Mass Popular Protests in Sudan", 20 July 2012, at: <http://www.acjps.org/update-human-rights-defenders-arbitrarily-detained-in-the-wake-of-mass-popular-protests-in-sudan/>.

<sup>252</sup> *Ibid.*

Girifna and “No to Women’s Oppression,” arrested on 18 June with 33 other youth activists from the Haaq political party’s offices in Khartoum, during a meeting of eight youth groups. All detainees were subsequently released but two of the activists were re-arrested, including Rashida Shams, who was re-arrested on 23 June; Tarig El Sheikh, (m), lawyer, member of Darfur Bar Association, arrested on 3 July from his office in Khartoum. He is currently detained by NISS in Kober prison in Khartoum Bahri; Marwa el Tigany, (f), human rights defender, arrested on 3 July together with two other women from an internet café in Al Haj Youssef, Khartoum Bahri; Al Said Mustafa, (m), Chairperson of Al Shiroog Cultural Forum, arrested on 26 June from his home in Al Gadarif, Eastern Sudan; Abdulgadir Mahmoud, (m) activist and member of Popular Congress Party, arrested on 26 June from his home in Al Gadarif, Eastern Sudan; Rudwan Daoud, (m), member of Girifna, arrested on 3 July from Al Haj Youssef, Khartoum Bahri, on 3 July with 14 other individuals, including his brother and father; Ramzi Yahia, (m), lawyer and affiliate of Al Shiroog Cultural Forum, arrested on 26 June from his home in Al Gadarif, Eastern Sudan.<sup>253</sup>

### 7.3. The right to a fair trial

133. On 2 July 2013, Sudan’s parliament adopted an amendment to Sudan’s Armed Forces Act, 2007. The amendment stipulates that every person who commits or is suspected of committing any act undermining the security of the state is subject to the jurisdiction of Sudan’s military courts. This applies to persons irrespective of their military status or connection with Sudan’s armed forces. The crimes for which persons may now be brought before military courts include sixteen offences under Part V (“Offences against the State”), Part VI (“Offences relating to Disciplined Forces”) and Part VII (“Sedition”) of the Criminal Act of 1991, including offences such as “undermining the constitutional system” (article 50) and “publication of false news” (article 66).<sup>254</sup> The amendment also creates a number of new offences subject to the jurisdiction of the military courts, namely:

- “(A) Formation of an armed organization under any name to wage military war against the state through either gathering individuals or training them or collecting arms or military hardware, or incitement to do so.
- (B) Any attacks by arms or any warfare means against units or camps of the armed forces or other regular forces, or incitement to do so.
- (C) Taking up arms or any other warfare means to commit an act that threatens stability and security of the country, or endangering its independence and unity.”<sup>255</sup>

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<sup>253</sup> Ibid.

<sup>254</sup> An English version of Sudan’s 1991 Criminal Act is available at <http://www.pclrs.org/downloads/bills/Criminal%20Law/Criminal%20Act%201991%20English.pdf>.

<sup>255</sup> Unofficial translation.

In addition, the amendment envisages changes to a series of provisions of the armed forces law.<sup>256</sup>

134. The justification put forward for these amendments is that the current law is inadequate to deal with the threat faced as a result of armed conflict in Sudan, and that subjecting civilians to military courts is a suitable response and deterrent. This amendment, together with the mass conscription envisaged under the armed reserves law adopted by Sudan's parliament on 3 July 2013, will further militarise civilian life. It strengthens the military and the executive at the expense of, and with the result of further undermining ordinary courts.
135. The amendment is incompatible with, or risks violating a series of rights, including freedom of expression, association and assembly, the rights of defendants, including the right to liberty and security, the right to be free from torture and ill-treatment and the right to a fair trial, and the right to life, particularly where the accused faces the death penalty.
136. In the only case documented by ACJPS since the amendment, on 10 October 2013 the Military Court in Kosti, White Nile state, sentenced Belal Daw Al-bait Adam, (m) to 1.5 years in military prison for undermining the constitutional system. Mr. Daw Al-bait is the Imam of the Abi Bakar Al-sidig mosque in Rabak, White Nile state. He holds a civilian post as a Quran teacher within the Sudanese Armed Forces (SAF). Mr. Daw Al-bait was arrested by the NISS in Rabak town on 27 September 2013 following Friday prayers at the mosque, where he publicly criticised President Bashir for the removal of fuel subsidies. He was taken to the NISS detention facilities in Rabak before being transferred to the Military Prison of White Nile state. He was detained at the Military Prison until his trial.<sup>257</sup>
137. 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 case of *Kamal Mohammed Saboon v Sudan Government*,<sup>258</sup> which 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 hundreds of these persons were forced 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 were 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

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<sup>256</sup> Articles 132, 139, 150, 183, 193 of the Armed Forces Law of 2007.

<sup>257</sup> ACJPS, "Sudan Human Rights Monitor", Issue 25, December 2013-January 2014.

<sup>258</sup> *Kamal Mohammed Saboon v Sudan Government*, Constitutional Court No.60 of 2009.

right to a fair hearing, including the inadmissibility of confessions obtained as a result of torture or ill-treatment.<sup>259</sup>

## 8. Freedom of conscience and religious belief (art. 18)

138. Since South Sudan's independence, public rhetoric by Sudanese leaders and religious figures has become increasingly intolerant, juxtaposed against public proclamations that the Sudanese state is Islamic in nature and that the future permanent constitution will reflect this, including through the retention of Shari'a provisions. In 2013, ACJPS documented a marked increase in harassment of ethnic Christian groups and individuals. Authorities shut down Christian educational institutes and harassed and arrested employees and church members.<sup>260</sup> On 15 January 2013, authorities closed down the Life Institute for Learning, an Egyptian Christian educational institute in Khartoum teaching Arabic to non-Arabic speakers. The non-Sudanese owner and students were ordered to leave Sudan, and the institute's assets were confiscated. On the same day, three other Christian educational organisations, including the Karido Institute for English Languages and Computer Studies, the Nile Valley Academy for Primary Education and the Aslan Academy for English Language and Computer Studies were closed down and had their assets seized.<sup>261</sup> On 3 February 2013 an Undersecretary in the Ministry of Endowment and Religious Affairs sent a letter to the Evangelical Presbyterian Church in Sudan threatening to arrest the church members if they began any missionary activity. On 2 March 2013, a group of armed security forces raided the New Life Church in Omdurman Town, arrested two church members and interrogated them about sources of funding and whether the church had any foreign members. Church members were afraid to use the church after the raid. A large number of other non-Sudanese church members were also deported in 2013.<sup>262</sup>
139. On 15 May 2014, Al-Haj Yousef Criminal Court in Khartoum Bahri confirmed the sentence of 100 lashings and the death penalty by hanging against 27-year old Meriam Yahia Ibrahim, a Christian woman convicted for adultery and apostasy on 11 May.<sup>263</sup>
140. On 8 May 2014, Al Gadarif Criminal Court dropped charges against another woman<sup>264</sup> accused of apostasy after she recanted her Christian faith and converted to Islam to avoid the death penalty. A criminal complaint had been lodged against her by a police officer at

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<sup>259</sup> See further Amin M. Medani, 'A Legacy of Institutionalised Repression: Criminal Law and Justice in Sudan', in Oette, above note 241, pp. 67-88, at 79-82.

<sup>260</sup> ACJPS, "Sudan Human Rights Monitor", March-April 2013.

<sup>261</sup> ACJPS, "Sudan Human Rights Monitor", Update, January-February 2013.

<sup>262</sup> Ibid. See also confidential records on file with ACJPS.

<sup>263</sup> On 2 June 2014, REDRESS, ACJPS, the Sudanese Organisation for Development and Rehabilitation (SODR), The Sudanese Human Rights Initiative (SHRI) and the Justice Centre submitted a complaint and request for provisional measures to the African Commission on Human and Peoples' Rights.

<sup>264</sup> Name redacted, on file with ACJPS.

the National Identity office in Al Gadarif town after she applied for a national identity card. On application, she was asked to declare her own faith and that of her father. The criminal complaint was filed when she declared that she was a Christian, married with eight children to a Christian man, and that her father was a Muslim.<sup>265</sup>

141. According to Sudan Democracy First Group:

Prosecutions of apostasy, such as Ms. Ishag's [Mariam Yahia Ibrahim], have a long and disturbing history in Sudan. In 1984, Mahmud Muhammad Taha, the founder of the Republican Brothers movement was arrested for calling for an end to Shari'a law in Sudan. He was eventually executed for apostasy on 18 January 1985. More recently, on September 17, 2011, police arrested a group named "the Messiah group", who follow a man who proclaimed himself as the Mahdi, messianic redeemer of the Islamic faith. The courts charged the group with apostasy under Article 126 of the penal code, later ordering them to renounce their beliefs in order to avoid the death sentence. Though the group repented in order to secure their freedom, they continue to insist to this day that they have not changed their beliefs. Similarly, on July 29, 2011, police arrested 150 people in Khartoum who belong to the Quranist sect (Quranist is a term used to describe those who follow only the Qur'an and its teachings, "Nothing more and nothing less"). They too were charged with apostasy, and eventually released from prison on September 19, 2011, after they declared that they had repented. However, the group also stated that they had publicly repented only in order to save their lives, but they did not change their beliefs.<sup>266</sup>

## **9. Freedom of expression, freedom of assembly and of association (arts. 19, 21 and 22)**

142. The press has been subjected to repeated censorship under the Press and Publications Act of 2009 and by the NISS using its powers under the National Security Act 2010 since the last periodic report of the Government of Sudan.<sup>267</sup> The NISS have ordered pre- and post-print censorship of newspapers, including confiscating printed copies of newspapers prior to distribution, blocked websites, and threatened journalists with prosecution for work

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<sup>265</sup> ACJPS, "Update: Death penalty confirmed in Khartoum apostasy case after woman confirms her Christian faith; new apostasy case comes to light in Al Gadarif", 15 May 2014.

<sup>266</sup> SDFG, "The dilemma of freedom of religion in Sudan", 31 May 2014, *Sudan Tribune*, at <http://www.sudantribune.com/spip.php?article51185>.

<sup>267</sup> See ACJPS' bi-monthly "Sudan Human Rights Monitor", <http://www.acjps.org/?cat=6>. See also ACJPS, "Sudan: No space for free expression", above note 13; ACJPS, "Sudan Steps Backward: National Security Intensifies Violations of Freedom of Expression in 2011", January 2012, at: <http://www.africancentreforjustice.org/wp-content/uploads/2012/04/Sudan-Steps-Backward-National-Security-Intensifies-Violations-of-Freedom-of-Expression-in-2011.pdf>; and, ACJPS, "An Opening for Expression or Shifting Tactics? Freedom of the Press and Freedom of Expression in Sudan", October 2009, at: <http://www.acjps.org/an-opening-for-expression-or-shifting-tactics-freedom-of-the-press-and-freedom-of-expression-in-sudan/>

considered to fall outside of the “red lines” drawn by the ruling NCP (issues that the Government of Sudan deems sensitive and seeks to control in public debate).<sup>268</sup> This has included the use of broad and vaguely worded offences, such as the ‘publication of false news’ to prosecute journalists. For example in February 2011, ten journalists were prosecuted and tried for reporting on the case of Safia Mohamed Ishag who alleges that she was raped by NISS members.<sup>269</sup> Although there is no official list of “red lines”, journalists are frequently contacted by NISS officials and informed of the topics they should avoid.

143. Journalists have been targeted for arbitrary arrest, detention, ill-treatment and torture for reporting on issues that the government deems sensitive or beyond its “red lines”. Cases include that of Somia Ismail Ibrahim Hendusa detained and tortured after her arrest on 29 October 2012,<sup>270</sup> and 17 journalists and employees of *Al Midan* newspaper who were arrested by the NISS on 2 February 2011 in connection with the paper’s coverage of protests on 30 January 2011. The 17 detainees, including two visiting journalists from *Ajras al Hurya* Newspaper, were taken to NISS headquarters in Khartoum North. Some detainees were forced to open their e-mail and facebook accounts. Eight of the detainees were subjected to various forms of ill-treatment or torture, including beatings and denial of prescribed medication, hard exercises and threats of sexual violence and other forms of torture. All were released without charge after spending up to 11 days in detention without access to their families or lawyers.<sup>271</sup>
144. During anti-government protests in September and October 2013, the authorities increased significantly the restrictions on freedom of expression in what effectively resulted in a media blackout that also affected traditionally pro-government newspapers. The Chief Editors of a number of Khartoum’s newspapers were summoned by the security services on 25 September and instructed to only publish on the demonstrations if the information came from the police or security.<sup>272</sup> They were also instructed not to use the word demonstration or protest but rather refer to vandalism. Three newspapers, *Al Ayaam*, *Al Garar*, and *Al Gerida*, stopped publishing for three days from 25 – 27 September in protest of the censorship. The NISS confiscated printed copies of *Al Sudani* on 26 September and *Al Mijhur and Al Watan* on 27 September. Three *Al Sahafa* journalists resigned after the NISS ordered the newspaper not to publish anything on the demonstrations. On 28 September the NISS suspended the pro-government *Al Intibaha*

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<sup>268</sup> Human Rights Watch, “Stepped-Up Assault on Media Freedom,” May 3, 2013, <http://www.hrw.org/news/2013/05/03/sudan-stepped-assault-media-freedom>.

<sup>269</sup> Amnesty International, ‘Annual Report 2012-The state of the world’s human rights’, Sudan, <http://www.amnesty.org/en/region/sudan/report-2012>.

<sup>270</sup> ACJPS, “Sudanese journalist tortured and subjected to racist abuse by NISS”, 8 November 2012, at: <http://www.acjps.org/?p=896>.

<sup>271</sup> ACJPS, Silencing, above note 196.

<sup>272</sup> Amnesty International and ACJPS, “Sudan: Security forces fatally shoot dozens of protesters as demonstrations grow”, 26 September 2013.

newspaper indefinitely without providing a reason. A number of journalists were amongst the hundreds of persons detained during the protests. Amal Habani, (f), a freelance journalist and 39 years of age, was arrested by the NISS from street 60 in Khartoum whilst participating in a demonstration on 28 September. She was detained without access to her family or lawyers and released without charge on 6 October 2013. The NISS also summoned non-Sudanese journalists for questioning. On 24 September the NISS in Khartoum summoned Tarig Altigani, (m), an international correspondent for Arabic Sky News and on 27 September the NISS summoned Saad Eldein Hassan, an international correspondent of Al Arabiya TV in Khartoum.<sup>273</sup>

145. Press censorship continued through 2013 and 2014 and featured an increase in the use of post-print censorship. For example, in just three months between January – March 2014 over fifteen newspapers were subjected to post-print censorship by the NISS, some more than once.<sup>274</sup> Post-print censorship, involving the confiscation of printed issues or prevention of distribution without prior notice, causes significant financial losses to media outlets, and has been increasingly used as a tool by the NISS to intimidate editors from publishing on “red line” issues. Reasons for censorship are often not provided. For example, *Al-Ayam*, *Alwan* and *Al-Sahafa* newspapers were prevented from distributing printed copies of their daily issues on 4 February 2014 by an NISS administrative order that gave no reason for the suspension.<sup>275</sup> The three dailies resumed publishing and distribution the following day, 5 February 2014. Between January and March 2014 the NISS provided a reason for censorship in just one case, that of *Al Gareeda* daily. On 26 January 2014 the Chief Editor of *Al Gareeda* was summoned to NISS offices and ordered to suspend distribution indefinitely owing to alleged ‘violations of publishing’ related to published articles concerning increases in food, fuel and gas prices and alleged corruption in government-owned cotton factories in Sudan. *Al Gareeda* resumed distribution on 14 February 2014 after permission was issued verbally by the NISS.<sup>276</sup> In an emerging trend in 2013-14, traditionally pro-government newspapers have also been censored.<sup>277</sup> Between 3-5 March 2014, five traditionally pro-government newspapers (*Al Ahram Alyoum*, *Al*

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<sup>273</sup> ACJPS, “Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan”, 4 October 2013, at: <http://www.acjps.org/wp-content/uploads/2013/10/4-10-13-Over-170-dead-including-15-children-and-800-detained-as-demonstrations-spread-throughout-Sudan.pdf>.

<sup>274</sup> ACJPS, “The Government of Sudan cracks down on freedom of expression amidst calls for a national dialogue”, Sudan Human Rights Monitor, Issue 25, December 2013-January 2014.

<sup>275</sup> ACJPS, “Update: Censorship surge in Sudan by security services – papers prevented from distributing printed copies”, 24 February 2014.

<sup>276</sup> *Ibid.* The NISS prevented distribution of daily issues of *Al Gareeda* on the 11, 24 and 26 January 2014. Distribution was suspended from 26 January – 13 February until a verbal notice from the NISS resumed distribution on 14 February.

<sup>277</sup> ACJPS, “Update: Censorship surge in Sudan by security services continues and extends to pro-government newspapers”, 5 March 2014. See also, ACJPS, Sudan Human Rights Monitor, Issue 25, December 2013-January 2014.

- Houra*, *Al Sudani*, *Aakhir Lahza*, and *Eilaf*) were subjected to post-print censorship. Daily issues of *Al Sudani* and *Al Houra* newspapers were censored twice in three days.<sup>278</sup>
146. There have been recurring concerns over respect for the rights of peaceful protesters throughout the last two decades as set out in detail above (at 6.3.).
147. Civil society organisations and human rights defenders have been subject to a range of measures incompatible with their freedom of expression, association and assembly.<sup>279</sup> Several organisations have been shut down and some have had their assets confiscated. In 2009 three domestic NGOs were forcibly closed and ten international NGOs expelled from Sudan, in response to the issuance of the ICC’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.<sup>280</sup> A number of peaceful activities of human rights defenders, such as meetings, have been cancelled or stopped by the NISS.<sup>281</sup> In addition, several human rights defenders have been subjected to arbitrary arrest and detention, as well as torture and ill-treatment.<sup>282</sup>
148. Significant formal and informal restrictions on the registration of NGOs exist which obstruct the effective functioning of civil society in Sudan. Although not set out in law, in practice NGOs are required to obtain a permit to work in each state in which they operate, regardless of their registration status at the national level, and must obtain permission for any meeting or training from the Humanitarian Aid Commission (HAC), which governs the operation of NGOs in Sudan. Serious delays in registration procedures further obstruct the work of NGOs.<sup>283</sup> A number of peaceful activities of human rights defenders, such as meetings, have been cancelled or stopped by the NISS.<sup>284</sup> For example, in December 2012, the NISS prevented the Sudanese Confederation of Civil Society from holding a press conference to mark its launch.<sup>285</sup> In January 2013 the Sudanese Writers Union was prevented from holding a public forum to host a Sudanese writer living in France at their offices in Khartoum<sup>286</sup> and in March the NISS in Khartoum shut down a workshop convened by the Al Ayaam Center for Cultural and Development Studies (ACCDs) on constitutional reform.<sup>287</sup> In addition, several human rights defenders have been subjected to arbitrary arrest and detention, as well as torture and ill-treatment.<sup>288</sup>

<sup>278</sup> ACJPS, “Sudan Human Rights Monitor”, Issue 25, December 2013-January 2014.

<sup>279</sup> *Report of the Independent Expert on the situation of Human Rights in the Sudan*, Mashood A. Baderin, above note 93, p.5.

<sup>280</sup> See ACJPS, Civil society organisations closed, above note 13.

<sup>281</sup> See ACJPS, SHRM, *ibid.*

<sup>282</sup> See REDRESS, ACJPS and SDFG, Comments, above note 15.

<sup>283</sup> See ACJPS, No space for free expression, above note 13.

<sup>284</sup> See ACJPS, *ibid.*

<sup>285</sup> ACJPS, “Sudan Human Rights Monitor”, Update, January-February 2013.

<sup>286</sup> *Ibid.*

<sup>287</sup> ACJPS, “No space for free expression”, above note 13.

<sup>288</sup> See REDRESS, ACJPS and SDFG, Comments, above note 15.

149. These steps taken by the Sudanese authorities were apparently aimed at restricting independent organisations from operating effectively and in particular restricting independent monitoring and reporting of challenges faced by Sudanese civil society, including human rights violations. On 25 December 2012 President Omar al-Bashir issued a presidential decree establishing a committee to examine the regulations of foreign NGOs in Sudan. The committee is to be headed by a representative of the Defence Ministry and include delegates from the Foreign Ministry, Ministry of Interior, the Darfur Regional Authority, Humanitarian Aid Commission (the government regulatory body charged with monitoring the work of international and national non-governmental organisations in the country) and the NISS.<sup>289</sup>
150. On 29 January the Humanitarian Aid Commission notified the ICRC via an official letter that their activities would be suspended from 1 February 2014, stating that the rationale for the suspension was that the ICRC had implemented activities outside of their country agreement.<sup>290</sup> The ICRC issued a statement on 19 May 2014 expressing concern that the suspension of its activities for more than three months was “having severe consequences for the Sudanese population in areas affected by the armed conflict, which has intensified over the past months and caused massive displacement in Darfur, Blue Nile and South Kordofan.”<sup>291</sup>
151. On 31 May 2012 the Humanitarian Aid Commission ordered the closure of the offices of seven international organizations in eastern states of Sudan. Save the Children (Red Sea state), Goal Ireland (Kassala state), the Agency for Cooperation in Research and Development (ACORD, Kassala and Red Sea state), the Mines Advisory Group (Kassala state), Plan Sudan (Red Sea state), Triangle (Gedarif state) and Rosantes (Gedarif state) were informed by the HAC that they were not carrying out their mandates and given until 30 June to settle their accounts with their employees.<sup>292</sup>
152. The freedom of association of other groups, such as trade unions, which are subject to the Trade Union Act of 2010, is restricted.<sup>293</sup>

## 10. Minority rights (art. 27)

153. Members from marginalised communities, particularly from Darfur, South Kordofan and Blue Nile have been particularly targeted and subjected to various forms of ill-treatment (see above at 6). Southern Sudanese have been stripped of their Sudanese citizenship

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<sup>289</sup> ACJPS, “Civil society organisations closed”, above note 13.

<sup>290</sup> ACJPS, “Sudan’s Humanitarian Aid Commission suspends the International Committee of the Red Cross’ operations”, 7 February 2014, at: <http://www.acjps.org/?p=1736>.

<sup>291</sup> ICRC News Release, “Sudan: Continued suspension of activities has severe humanitarian impact”, 19 May 2014.

<sup>292</sup> ACJPS, “The Government of Sudan Closes the Offices of Seven International Organizations”, 7 June 2012.

<sup>293</sup> See ITUC, CSI, IGB, *Annual survey of violations of trade union rights: Sudan, 2012*, at <http://www.refworld.org/docid/4fd88925a.html>.

following the independence of South Sudan in July 2011<sup>294</sup> and are vulnerable to harassment and other forms of ill-treatment on account of their origin.<sup>295</sup> For example, on 9 July 2011, a group of 42 Southern Sudanese were celebrating Southern independence in Al Ghaba area, Khartoum. They were arrested by Public Order police, taken to court in the morning, and received 40 lashes each.<sup>296</sup> Concern has arisen in 2013 of heightened restrictions and forced closures of civil society organisations and other entities lead by Christian minorities in Sudan.<sup>297</sup>

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<sup>294</sup> 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, <http://www.afrimap.org/english/images/report/OSIEA-AfriMAP-Nationality-Sudans-full-EN.pdf>.

<sup>295</sup> See for example Arry, Urgent Action Violent Attack on Christian Nuba and their Institutions in Khartoum, 25 February 2013, <http://arry.org/?p=702>

<sup>296</sup> ACJPS, Sudan Human Rights Monitor, June-July 2011.

<sup>297</sup> ACJPS, "Sudan Human Rights Monitor", March-April 2013.

**Annex: List of demonstrators killed during the September – October 2013 demonstrations  
(names verified by ACJPS)**

1. Abdalla Mahmoud Abdalla, (m).
2. Abdul Gadir Mohamed Abdalla, (m).
3. Abdul Gadir Rabea Kuku, (m).
4. Abdul Lateef Al Ameen, (m), 17 years of age.
5. Abdul Rahman Saeed Wida't Alla, (m).
6. Abeer Al Haj Osman Bayin, (f).
7. Abu Bakr Mohamed Al Hassan, (m), `16 years of age.
8. Abu Bakr Mohamed Saeed Suliman Jum'aa, (m), 17 years of age.
9. Adil Al Nur Mohamed, (m), 17 years of age.
10. Ahmed Ayyoub, (m), 14 years of age.
11. Ahmed Hamad Al Neel Mansour Al Jizouli, (m).
12. Ahmed Mohamed Al Tayib, (m).
13. Ahmed Mohamed Ali Ahmed, (m).
14. Ahmed Mohamed Ali Al Arabi, (m).
15. Ahmed Yousif Mohamed Omer, (m).
16. Aiman Ahmed Kidir, (m).
17. Aiman Bija Habeela, (m).
18. Aiman Mohamed Yassen Ibrahim, (m).
19. Aiman Omer Tiyya, (m), 14 years of age.
20. Aiman Salih Ibrahim, (m), 14 years of age.
21. Akram Al Zubair Ahmed Al Zubair, (m).
22. Al Sadiq Abu Zaid Izz Al Deen, (m), 17 years of age.
23. Al Sadiq Mohamed, (m), 17 years of age.
24. Al Saiq Ibrahim, (m).
25. Al Tayib Abdul Wadud, (m).
26. Al Toam Daldoum, (m), 16 years of age.
27. Alaa Al Deen Babikir, (m).
28. Alam Al Deen Haroun Eisa Abdul Rahman, (m).
29. Ali Abu Ahmed, (m).
30. Ali Ahmed, (m).
31. Ali Mohamed Ali, (m).
32. Amal Munzir, (f).
33. Ameer Adam Ibrahim, (m), 16 years of age.
34. Asim Husham,(m).
35. Awad Alla Al Hadi, (m), 15 years of age.
36. Ayman Baiga Habeela , (m).
37. Ayman Salah, (m).
38. Babiker Abbashar Musa Hammad, (m), 17 years of age.

39. Babikir Al Nur Hamad, (m).
40. Babikir Yousif, (m).
41. Badawi Salah, (m).
42. Bakri Hamid, (m), 16 years of age.
43. Basheer Musa Basheer, (m).
44. Bashir Abdalla Ahmed Al Manna, (m), 16 years of age.
45. Bashir Abdul Nabi, (m).
46. Farah Mohamed, (f).
47. Faris Hashim, (m), 17 years of age.
48. Farouq Babikir Idris, (m), 15 years of age.
49. Fateh Al Rahmen Saeed, (m).
50. Fatima Yahya Adam, (f).
51. Haitham Ali Ghareeb, (m).
52. Hamad Osman, (m).
53. Hasab Al Rasoul Al Khaleefa Mohamed Haj Al Sideeg, (m).
54. Hassan Suliman, (m).
55. Hatim Mohamed, (m).
56. Hawa Ahmed, (f).
57. Hazim Mohamed Zain, (m), 16 years of age.
58. Hazza Izz Al Deen Jafar, (m).
59. Hijir Abdul Al Aleem , (m).
60. Hussein Hasan Tutu, (m).
61. Ibraheem Mohamed Ali , (m).
62. Imad Al Sideeq Ismail, (m).
63. Iman, (f), 2 years of age.
64. Isam Al Deen Mohamed Ahmed Hasan, (m).
65. Isam Al Dirdeeri, (m), 16 years of age.
66. Isam Al Tijani Omer Kajo, (m), 14 years of age.
67. Isam Mohamed Bakheet, (m).
68. Jafar Osman Ya'Aqoub, (m).
69. Khadeega Mohamed Salih, (f).
70. Khalid Muhi Al Deen, (m).
71. Khalid Yahya, (m).
72. Ma'az Abdul Daiem, (m).
73. Majdi Mohamed Ali, (m).
74. Majid Mohamed Ahmed Musa, (m).
75. Mazin Sid Ahmed , (m).
76. Midrar Abu Al Gasim Jum'a Nasir, (m), 16 years of age.
77. Mohamed Abdul Aziz, (m).
78. Mohamed Abdul Rahman Abu Zaid, (m).
79. Mohamed Adam, (m), 13 years of age.

80. Mohamed Ahmed Hasan Ali Al Kabeer, (m).
81. Mohamed Ahmed Mohamed Al Tayib, (m).
82. Mohamed Al Khatim, (m).
83. Mohamed Al Sadiq Hussein, (m).
84. Mohamed Bashir Suliman, (m).
85. Mohamed Faris Abdul Farraj, (m).
86. Mohamed Hamid Mohamed Ali, (m).
87. Mohamed Hamid Sultan, (m), 17 years of age.
88. Mohamed Husain Mohamed Saleh, (m.).
89. Mohamed Idriss Abdul Hameed, (m).
90. Mohamed Kheir Alla, (m), 16 years of age.
91. Mohamed Mansour, (m).
92. Mohamed Musa Mohamed Ali, (m).
93. Mohamed Osman Sharoam, (m).
94. Mohamed Sadiq Hussein, (m).
95. Mohamed Sideeg Mohamed Osman, (m), 16 years of age.
96. Mohamed Younis, (m).
97. Mohamed Zain Al Abdeen Al Ansari, (m), 12 years of age.
98. Monim Osman Satti, (m).
99. Mujtaba Hasan, (m).
100. Mumin Osman Satti, (m).
101. Muna Abdul Rahman Suliman , (f).
102. Muneer Ahmed, (m).
103. Muntasir Al Tayyib Abdul Bagi, (m).
104. Mus'aab Nuri Alaisir, (m), 17 years of age.
105. Musab Mustafa Muhi Eldean Abdul Wahab, (m).
106. Mustafa Al Nazeer, (m), 17 years of age.
107. Mutasim Mohamed Ahmed Hano, (m).
108. Nabeel Mustafa, (m), 2 years of age.
109. Nahla Jamal Kuwaa (f), 15 years of age.
110. Nur Al Deen Al Tayib Nur Al Deen, (m).
111. Omer Abdul Aziz, (m), 14 years of age.
112. Omer Khalil Ibrahim Khalil, (m).
113. Omer Mohamed Ahmed Al Khidir, (m).
114. Omer Mohamed Al Hasan, (m).
115. Omer Shaib, (m), 17 years of age.
116. Omran Al Sayid, (m).
117. Osama Muhamedein Al Ameen, (m).
118. Osama Osman Wida'a, (m).
119. Raja Mahmoud Mohamed, (f).
120. Sadiq Abu Zaid, (m).

121. Salah Al Deen Muddathir Al Sanهوري, (m).
122. Salah Mohamed Ali, (m).
123. Salah Mudathir Al Rayyah Al Sanهوري, (m).
124. Salih Ayoub Salih, (m).
125. Salih Siddig Osman, (m), 15 years of age.
126. Sallam Ahmd Al Tayib
127. Sami Hasan Hussein, (m).
128. Sami Hassan Hammad, (m).
129. Sarah Abdulbagi, (f).
130. Sarah Haydar Musa Jubara, (f), 14 years of age.
131. Sharf Al Deen Mohamed Mahmoud Basheet, (m).
132. Shawgi Al Rayyah Yousif, (m), 13 years of age.
133. Sidig Adam Mohamed Abdul Wahid, (m).
134. Sohaib Mohamed Musa Jubara, (m), 15 years of age.
135. Suliman Mahmoud Yahya, (m).
136. Tariq Siddiq, (m).
137. Wafaa Mohamed Abdul Raheem Abdul Bagi, (f), 15 years of age.
138. Waleed Wad Al Ageed, (m).
139. Wali Al Deen Al Sadiq, (m), 17 years of age.
140. Walla Al Deen Babikir Hussein Al Jack, (f).
141. Yasir Adil, (m), 16 years of age.
142. Yousif Abdalla Suliman Yahya, (m).
143. Yousif Nour, (m).
144. Zafir Abdalla Ahmed Balla Doaka, (m).

### **Unidentified Bodies**

1. 2 unidentified bodies in Wad Medani
2. 27 in Omdurman
3. 12 in Khartoum North