

**African Centre for Justice and Peace Studies (ACJPS)<sup>1</sup>, International Federation for Human Rights (FIDH)<sup>2</sup>, and International Refugee Rights Initiative (IRRI)<sup>3</sup>**

**Submission to the Universal Periodic Review of Sudan  
2016**

**September 2015**

**Part A: Sudan's legal and institutional framework**

*The Constitution*

The Bill of Rights enshrined in Sudan's 2005 Interim National Constitution (INC) guarantees a number of rights and Article 27(3) provides that all human rights treaties ratified by Sudan are an integral part of it. Despite this, a number of Sudan's laws infringe on fundamental rights and freedoms and fail to provide effective remedies. The Constitutional Court has failed to consistently uphold or interpret domestic legislation in line with the Bill of Rights and international treaties binding on Sudan.<sup>4</sup>

The constitutional review process, which has been overdue since the secession of South Sudan in July 2011, is stalled.<sup>5</sup> In January 2015 a number of amendments to the INC were passed without public consultation and in breach of the required procedure.<sup>6</sup> Officials have repeatedly asserted that the new Constitution will be based on Shari'a (Islamic law) without transparent or inclusive consultation.<sup>7</sup>

*Prohibition of torture*

INC Article 33 prohibits torture but fails to prohibit cruel, inhuman or degrading punishment. A

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<sup>1</sup> Established in 2009, the African Centre for Justice and Peace Studies (ACJPS) is a non-profit, non-governmental organization working to monitor and promote respect for human rights and legal reform in Sudan. ACJPS has offices located in NY, London, and Kampala. For more information visit: [www.acjps.org](http://www.acjps.org).

<sup>2</sup> FIDH (International Federation for Human Rights), is an international human rights NGO with 178 member organisations from close to 120 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights set out in the Universal Declaration for Human Rights as well as in other regional and international human rights instruments. For more information visit: <https://www.fidh.org>.

<sup>3</sup> The International Refugee Rights Initiative (IRRI) is dedicated to promoting human rights in situations of conflict and displacement, enhancing the protection of vulnerable populations before, during and after conflict. Over the last ten years, IRRI has focused on addressing these issues in the Great Lakes region and in particular Sudan. For more information visit: <http://www.refugee-rights.org>.

<sup>4</sup> ACJPS and REDRESS, Sudan's human rights crisis, 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, <http://www.acjps.org/sudans-human-rights-crisis-submission-to-the-un-human-rights-committee/>.

<sup>5</sup> Ibid.

<sup>6</sup> The amendments of January 2015 were tabled just a few days before the vote and were adopted during a joint sitting of the two chambers of the National Legislature (the National Assembly and Council of States), without the required quorum of either chamber, in breach of Article 224 of the INC. See, ACJPS, Sudan Human Rights Monitor, December 2014-January 2015, <http://www.acjps.org/wp-content/uploads/2015/04/Sudan-Human-Rights-Monitor-December-2014-January-2015.pdf>.

<sup>7</sup> ACJPS and REDRESS, Sudan's human rights crisis, above, note 4..

number of national laws provide for corporal punishments including flogging, amputation, stoning and death penalty by hanging<sup>8</sup> in violation of the absolute prohibition torture and cruel, inhuman or degrading punishment or treatment to which Sudan has committed.<sup>9</sup>

Sudan has not signed the UN Convention against Torture and has not taken steps to reform its laws to enact a criminal offence of torture that reflects international standards. Existing criminal offences referring to torture are not in conformity with international standards<sup>10</sup> and other applicable offences, such as causing hurt or abuse of office, do not adequately capture the seriousness of torture or impose appropriate sanctions.<sup>11</sup> There is a lack of clarity in the Evidence Act of 1993 concerning the admissibility of evidence obtained through torture and courts have regularly dismissed allegations that confessions had been extracted under torture.<sup>12</sup>

### ***The National Security Act (2010)***

Sudan's laws facilitate human rights violations by the security forces. Of particular concern the 2010 National Security Act (NSA 2010) grants the National Intelligence and Security Services (NISS) wide powers of arrest and allows detention for up to four and a half months without judicial review, well in excess of international standards. The NSA 2010 also permits incommunicado detention without prompt unequivocal access to a lawyer of one's choice or the right to medical care, and grants immunity to officials.<sup>13</sup> This and other laws fail to provide adequate safeguards, and create an enabling environment for the perpetration of torture. Amendments to the constitution in January 2015 further empowered the NISS by designating it as a regular force with a broader mandate of combatting a range of political and social threats and taking precautionary measures against them. The NISS regularly uses these powers to target real or perceived political opponents to the ruling National Congress Party (NCP) for arbitrary detention without charge, incommunicado detention, torture and ill-treatment.

Powers of search and seizure granted under the NSA 2010 are also used by the NISS to undermine freedoms of association, expression and assembly including the obstruction or cancelling of civil society events and public forums, and confiscation of assets belonging to civil society organizations.<sup>14</sup>

### ***Emergency Law***

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<sup>8</sup> See Corporal Punishment section below.

<sup>9</sup> Sudan is a state party to the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR). In 2012 the African Commission on Human and Peoples' Rights urged Sudan to "urgently abolish" all forms of corporal punishment because of their incompatibility with article 5 of the African Charter and in the case of *Doebbler v Sudan (2003)* the African Commission held that flogging penalties are "tantamount to sanctioning State sponsored torture". See, ACHPR Communication 236/00 Curtis Francis Doebbler / Sudan, 4 May 2003, <http://www.achpr.org/communications/decision/236.00/>.

<sup>10</sup> Such as article 115 of the Criminal Act of 1991. 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>11</sup> ACJPS and REDRESS, Sudan's human rights crisis, above, note 4.

<sup>12</sup> See Sudan's Evidence Act, 1993. See also discussion in ACJPS and REDRESS, Sudan's human rights crisis, above, note 4.

<sup>13</sup> ACJPS and REDRESS, Sudan's human rights crisis, above, note 4.

<sup>14</sup> See for example, ACJPS, Sudan's Ministry of Culture orders the closure of the Sudanese Writer's Union, 3 February 2015, <http://www.acjps.org/sudans-ministry-of-culture-orders-the-closure-of-the-sudanese-writers-union/>.

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. Broad powers given to the Executive under the Emergency and Protection of Public Safety Act of 1997 and the Emergency and Public Safety Bylaw of 1998 have repeatedly given rise to concerns over arbitrary arrest and detention, ill-treatment and torture, and violations of the right to a fair trial, which are facilitated by the virtually complete absence of safeguards and judicial oversight.<sup>15</sup> The two laws read together permit preventive arrest and detention on vague grounds. The 1998 Bylaw provides neither time limits nor judicial oversight of detention and therefore authorises prolonged if not indefinite detention.<sup>16</sup>

### ***Justice and accountability / effective remedies***

There is near-total impunity for human rights violations by Sudan's security forces. The law contains a number of barriers to effective investigations and prosecutions for serious human rights violations. Of particular concern are laws granting immunities to officials,<sup>17</sup> statutes of limitation,<sup>18</sup> lack of adequate victim and witness protection<sup>19</sup> and a system of special courts for the police and security forces.<sup>20</sup> Decisions concerning complaints against Sudan before the African Commission on Human and Peoples' Rights illustrate the lack of effective local remedies for serious human rights violations including torture.<sup>21</sup>

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<sup>15</sup> For example, the case of journalist Hassan Ishag, detained without charge under the 1997 Emergency Act for more than three months in 2014 after he reported the detention of the leader of the Sudanese Congress Party on social media. See freedom of expression section, below.

<sup>16</sup> See ACJPS and REDRESS, Sudan's Human Rights Crisis, above, note 4, paras 19-20.

<sup>17</sup> 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). Sudan has maintained immunities provisions in the Armed Forces Act of 2007, the Police Act of 2008 and the National Security Act of 2010. The Rapid Support Forces, formed in 2013, fall under the supervision of the NISS and benefit from immunities granted to NISS officials. The granting of immunities for officials is deeply engrained in Sudanese law and practice. Since the last review immunities have, with few exceptions, prevented the effective investigation and prosecution of human rights violations including allegations of serious violations such as torture. There is not one known prosecution of a NISS officer despite the documentation of evidence that torture is routinely practiced by the NISS.

<sup>18</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>19</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>20</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>21</sup> See ACHPR decision in Communication 379/09, *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*. The African Commission held Sudan violated, *inter alia*, article 5 of the African Charter (prohibition of torture, cruel, inhuman or degrading punishment and treatment) and urged Sudan to effectively investigate and prosecute the security and intelligence officers alleged to be responsible for the arbitrary arrest, torture and ill-treatment of three prominent human rights defenders. See also ACHPR decision in Communication 368/09, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, <http://www.achpr.org/communications/decision/368.09/>.

There have been no known prosecutions of NISS officers for torture or other ill-treatment. The government of Sudan has repeatedly failed to ensure prompt, thorough, impartial and effective investigations into excessive and lethal force used by security forces and has failed to ensure effective remedies or provide reparation to the victims. While it has set up Committees with a mandate to investigate the incidents, their composition, the parameters of their investigations and their findings have never been made public.<sup>22</sup> When, exceptionally, authorities have prosecuted officials the courts have acquitted them. Just one criminal complaint concerning the killing of 185 people by government forces in 2013 proceeded to court. The murder conviction of the accused, a Sudanese Armed Forces (SAF) officer, was overturned on appeal.<sup>23</sup>

There are similarly no effective justice and accountability mechanisms for serious violations of human rights and humanitarian law in conflict zones and government authorities commit abuses with impunity.<sup>24</sup>

### ***National Human Rights Commission***

The Sudan National Human Rights Commission, established in 2012, has been largely ineffectual owing to a lack of political independence (Commissioners are appointed by the President), the obstruction of its work by Government security services, and a lack of funding. For example, on 30 December 2012, the NISS prevented civil society activists from delivering a memorandum on the forced closures of civil society organizations, arrested three of the activists and beat a journalist who was present.<sup>25</sup>

## **Part B: HUMAN RIGHTS DEVELOPMENTS ON THE GROUND SINCE 2011**

### ***Human rights violations in the context of armed conflict***

#### **Southern Kordofan and Blue Nile**

In Southern Kordofan and Blue Nile states, more than 1 million people have been forced to flee from their homes in the four years since conflict started between government forces and the

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<sup>22</sup> Sudan 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. It has similarly failed to make public the findings of inquiries announced into the killing of at least 185 protestors during country-wide demonstrations in September and October 2013.

<sup>23</sup> Of at least 85 criminal complaints lodged in respect of the September-October 2013 protest killings, just one complaint proceeded to court. The murder conviction of the accused, a Sudanese Armed Forces (SAF) officer, for the killing of Dr. Sara Abdelbagi, was overturned on appeal. See, ACJPS, Sudan responds to calls for justice and accountability with mass detentions of activists on anniversary of protest killings, 26 September 2014; FIDH and ACJPS, Sudan: One year after the September 2013 bloody repression victims still await truth and justice, 22 September 2014, <http://www.acjps.org/fidh-and-acjps-sudan-one-year-after-the-september-2013-bloody-repression-victims-still-await-truth-and-justice/>.

<sup>24</sup> In its August 2015 report on Darfur the OHCHR found that Sudan's criminal justice system failed to have a meaningful impact in combatting impunity and strengthening accountability. See, OHCHR, Report of the United Nations High Commissioner for Human Rights on Impunity and Accountability in Darfur for 2014, August 2015, <http://www.ohchr.org/Documents/Countries/SD/ImpunityAccountabilityInDarfur2014.pdf>.

<sup>25</sup> ACJPS, Civil society organisations closed in renewed clamp down on freedom of association in Sudan, 9 January 2013, <http://www.acjps.org/civil-society-organisations-closed-in-renewed-clamp-down-on-freedom-of-association-in-sudan/>. Amnesty International also reported that on 29 May, 13 June and 17 August 2013, the authorities refused to allow political and civil society activists to submit memorandums highlighting human rights violations by the government to the NHRC office in Khartoum. See, Amnesty International Report 2014-15: Sudan, <https://www.amnesty.org/en/countries/africa/sudan/report-sudan/>.

Sudan People's Liberation Army-North (SPLA-North) in June and September 2011.<sup>26</sup> The fighting has been marked by serious violations of international human rights and humanitarian law. Government forces have attacked civilian areas and infrastructure through indiscriminate and targeted aerial bombardment and ground offensives, killing and maiming hundreds of civilians. Since the start of 2015, 258 incidents of attacks on civilian populations have been recorded, killing 43 individuals.<sup>27</sup> Monitoring has consistently shown that bombings increase in connection with times of planting and harvesting, indicating a deliberate attempt to disrupt agricultural production and inflict food insecurity.<sup>28</sup> Aerial bombardment in May and June 2015 disrupted cultivation activities before the rainy season.<sup>29</sup>

Over four years, government forces have destroyed civilian property including villages, health facilities, schools, mosques and churches, and the authorities continue to obstruct humanitarian assistance. Government forces and allied militia have also been implicated in alarming levels of sexual violence. Human rights groups have also documented mass arbitrary detentions and in some cases presumed enforced disappearances of civilians pursuant to attacks by government forces on civilian areas.<sup>30</sup> Aerial bombardment and flights over civilian areas has had a profound psychological impact over the course of the conflict.<sup>31</sup> There is also evidence that Government aircraft has deliberately bombed hospitals and other humanitarian facilities<sup>32</sup> and used cluster bombs despite international condemnation of the indiscriminate nature of these weapons.<sup>33</sup>

In Blue Nile, Government forces arbitrarily detained residents, raped women and girls, and restricted residents' movements, farming, and access to food.<sup>34</sup> Entire communities have been displaced by Government forces in what appears to be collective punishment for their perceived support to the rebel movements based on ethnic identity.<sup>35</sup> The SPLA-N has also launched

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<sup>26</sup> See OCHA, Sudan: Humanitarian snapshot as of 31 July 2015, [http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan\\_Humanitarian\\_Snapshot\\_31\\_Jul\\_2015\\_A4.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_Humanitarian_Snapshot_31_Jul_2015_A4.pdf). This included 538,000 IDPs in government-controlled areas of South Kordofan and Blue Nile, an estimated 250,000 in areas controlled by the SPLM-N, 243,000 living as refugees in South Sudan and 36,606 in Ethiopia.

<sup>27</sup> Sudan Consortium and the National Human Rights Monitors Organisation, "Fact Sheet for the Human Rights Council," September 2015.

<sup>28</sup> Ibid.

<sup>29</sup> The Sudan Consortium, "Eight cluster bombs fall on Umdorein County", June 2015, [http://www.sudanconsortium.org/darfur\\_consortium\\_actions/reports/2015/SKBNJune2015FINAL.pdf](http://www.sudanconsortium.org/darfur_consortium_actions/reports/2015/SKBNJune2015FINAL.pdf).

<sup>30</sup> Human Rights Watch, "Under Siege: Indiscriminate bombing and abuses in Sudan's Southern Kordofan and Blue Nile States," December 2012, <https://www.hrw.org/report/2012/12/11/under-siege/indiscriminate-bombing-and-abuses-sudans-southern-kordofan-and-blue>.

<sup>31</sup> See Sudan Consortium report, at [http://www.sudanconsortium.org/darfur\\_crisis/SKBNUupdates.html](http://www.sudanconsortium.org/darfur_crisis/SKBNUupdates.html)

<sup>32</sup> In one case, Médecins Sans Frontières documented how a Sudan Air Force fighter jet dropped 13 bombs, of which two landed inside a hospital compound and the others just outside the hospital fence. See, Médecins Sans Frontières, "MSF hospital bombed in South Kordofan," 22 January 2015. Since 2011, the SAF has bombed 26 health facilities (hospitals, clinics and health units) in South Kordofan. There are now only two hospitals operating to serve a population of 1.2 million people. See, Amnesty International, "Don't We Matter?: Four Years of Unrelenting Attacks against Civilians in Sudan's South Kordofan State," 4 August 2015, <https://www.amnesty.org/en/documents/afr54/2162/2015/en/>.

<sup>33</sup> The use of cluster bombs on civilian areas was documented in February, March and June 2015. See, The Sudan Consortium, "Eight cluster bombs fall on Umdorein County", June 2015, [http://www.sudanconsortium.org/darfur\\_consortium\\_actions/reports/2015/SKBNJune2015FINAL.pdf](http://www.sudanconsortium.org/darfur_consortium_actions/reports/2015/SKBNJune2015FINAL.pdf).

<sup>34</sup> Human Rights Watch news release, "Soldiers, Militias, Killing, Raping Civilians," December 14, 2014, <http://www.hrw.org/news/2014/12/14/sudan-soldiers-militias-killing-raping-civilians>.

<sup>35</sup> The African Centre for Justice and Peace Studies (ACJPS) documented that between April and May 2015 the SAF burned three villages, comprised mainly of people from the Ingessana ethnic group, to the ground and ordered the residents of at least four others to evacuate their homes. Residents told ACJPS they were threatened with arrest for presumed membership in the opposition party if they stayed behind. A campaign of incommunicado and arbitrary detentions followed the displacements. See, ACJPS, "Sudan forcibly displaces and sets villages on fire in Blue Nile; civilians presumed to be affiliated with rebels detained incommunicado" <http://www.acjps.org/sudan-forcibly->

retaliation attacks on civilian communities presumed to support Government forces.<sup>36</sup>

## Darfur

The long-standing armed conflict in Darfur continues to devastate the lives of civilians and cause mass forced displacement. Levels of violence in Darfur are currently reported to be at their highest level since 2004 accompanied by an “especially high” number of killings.<sup>37</sup>

In early 2015 the UN Panel of Experts on Sudan characterized the Government strategy in Darfur as one of “collective punishment” and “induced or forced displacement” of communities from which the armed opposition groups are believed to come or operate.<sup>38</sup> Government offensives against communities perceived to support the armed opposition have followed a pattern of aerial bombardment followed by ground attacks, including the destruction and looting of villages. The Rapid Support Forces (RSF), a paramilitary government force under the command of the NISS and consisting largely of former militias, and other government forces, have led a number of brutal counterinsurgency campaigns against civilian populations since their creation in mid-2013, supported by aerial bombardment.<sup>39</sup>

The human rights violations associated with attacks on civilian communities in Darfur since 2011 have included the forced displacement of entire communities; the destruction of the physical infrastructure necessary for sustaining life in a harsh desert environment (i.e. wells, food stores, shelter, farming implements); the plunder of the collective wealth of families, such as livestock; and widespread, severe physical and sexual abuse, including mass rape, torture and killings.<sup>40</sup> Arbitrary detention, torture including instances of rape and sexual violence, and extra-judicial

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displaces-and-sets-villages-on-fire-in-blue-nile-civilians-presumed-to-be-affiliated-with-rebels-detained-incommunicado/.

<sup>36</sup> Seven civilians were killed on 12 April when the SPLA-N shelled Almadina 10, just south of El Damazein, presumed to be occupied by pro-government civilians, three days after the SAF burned and forcibly displaced the residents of Mediam al Jabal village. See, ACJPS, “Attacks on Civilians by Sudanese Armed Forces and Sudanese Peoples’ Liberation Movement – North in Blue Nile”, 1 May 2015, <http://www.acjps.org/attacks-on-civilians-by-sudanese-armed-forces-and-sudanese-peoples-liberation-movement-north-in-blue-nile/>.

<sup>37</sup> See also International Criminal Court, Officer of the Prosecutor, Twenty-first report pursuant to paragraph 8 of UN Security Council Resolution (UNSCR) 1593, 29 June 2015, para 18-20, [http://www.icc-cpi.int/iccdocs/otp/21st-report-of-the-Prosecutor-to-the-UNSC-on-Darfur\\_%20Sudan.pdf](http://www.icc-cpi.int/iccdocs/otp/21st-report-of-the-Prosecutor-to-the-UNSC-on-Darfur_%20Sudan.pdf).

<sup>38</sup> UN Security Council, Letter dated 16 January 2015 from the Vice-Chair of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council, 19 January 2015, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2015/31](http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/31).

<sup>39</sup> ACJPS, FIDH, IRRI, Human Rights Watch, Amnesty International et al, NGO Letter regarding human rights situation at 30th session of the UN Human Rights Council, 3 September 2015, <http://www.acjps.org/ngo-letter-regarding-human-rights-situation-at-30th-session-of-the-un-human-rights-council/>.

<sup>40</sup> See ACJPS and REDRESS, Sudan’s human rights crisis, above, note 4. See also ACJPS et al, “NGO Letter regarding human rights situation at 30th session of the UN Human Rights Council”, <http://www.acjps.org/ngo-letter-regarding-human-rights-situation-at-30th-session-of-the-un-human-rights-council/>.

killing cases<sup>41</sup> continue to be documented. Scores of individuals have been detained incommunicado for prolonged periods of time in Military Intelligence and NISS custodies.<sup>42</sup>

Government forces have proven unwilling or unable to protect civilians in the context of a surge in inter-communal violence in Darfur and in some cases have participated in the fighting.<sup>43</sup>

Sudan has continued to deny peacekeepers from the African Union-United Nations Mission in Darfur (UNAMID) access to much of Darfur. In 2014, the authorities denied UNAMID appropriate access to verify reports of the mass rape in October 2014 of more than 200 women and girls by Sudanese armed forces in Tabit, North Darfur.<sup>44</sup> Shortly after, Sudan asked UNAMID to close its office in Khartoum.

### *Excessive use of force*

Since 2011, Sudanese authorities including the police, the NISS and other security forces, have repeatedly used unnecessary and excessive force, including lethal force, to disperse demonstrations and public gatherings, and during arrests.<sup>45</sup> During nation-wide anti-austerity demonstrations in 2012, twelve people – including 10 children - were killed when the police and NISS fired live ammunition into the crowd on 31 July in Nyala, South Darfur. At least 80 others were injured.<sup>46</sup> In September and October 2013, at least 185 people were killed during anti-austerity demonstrations that took place across the country during late September and early October 2013. The majority were shot in the head or chest. Many others were shot in the back.<sup>47</sup>

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<sup>41</sup> On 6 April 2014, Military intelligence officers admitted the dead bodies of two men showing signs of beatings and burns, 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. See, ACJPS, “Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict affected areas”, 19 May 2014. On 19 July 2015 the dead body of another man, Abakar Adam Ishag, showing signs of torture, was admitted by a SAF commander to a West Darfur hospital. He had been arrested two days earlier, accused of providing information to the rebel Justice and Equality Movement (JEM). See, ACJPS, Two men at serious risk after torture and custodial death at West Darfur Military Base, 29 July 2015, <http://www.acjps.org/two-men-at-serious-risk-after-torture-and-custodial-death-at-west-darfur-military-base/>.

<sup>42</sup> ACJPS, “Civilian deaths following aerial bombardment, extrajudicial killings and custodial violence in Sudan’s conflict-affected areas”, 19 May 2014.

<sup>43</sup> In one incident in July 2013, ACJPS documented the use of government vehicles and ammunition fighting between Ma’alia and Rizeigat tribes in East Darfur causing the displacement of approximately 400 families. The Rizeigat fighters were identified by witnesses as being affiliates of the pro-Government Rizeigat militia leader, Mohamed Hamdan Dogolo, nicknamed ‘Hemeti’ who was later declared commander of the RSF. See ACJPS, “Sudan Human Rights Monitor”, March – April 2013, July 2013. For other incidents see e.g. 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>. See also, Sudan Democracy First Group, “Monthly Newsletter Issue (1) May 2013”, 18 May 2013.

<sup>44</sup> UN News Centre, “‘Deeply troubled’ by Darfur rape allegations, Ban urges ‘unfettered’ access to town”, <http://www.un.org/apps/news/story.asp?NewsID=49360#.VfnKWniLHdk>; Human Rights Watch, “Mass Rape in Darfur,” February 11, 2015, <https://www.hrw.org/report/2015/02/11/mass-rape-north-darfur/sudanese-army-attacks-against-civilians-tabit>.

<sup>45</sup> See for example testimonies documented by ACJPS and Amnesty International in *Excessive and Deadly: The use of force, arbitrary detention and torture against protestors in Sudan*, September 2014, <http://www.acjps.org/wp-content/uploads/2014/09/Excessive-and-Deadly.pdf>. See also, Amnesty International and Human Rights Watch joint statement, “Torture, Abuse of Demonstrators”, 11 July 2012, <http://www.hrw.org/news/2012/07/11/sudan-torture-abuse-demonstrators>; ACJPS, “Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan”, 27 July 2012, <http://www.acjps.org/?p=1060>.

<sup>46</sup> ACJPS, Twelve dead, including ten children, and over eighty injured following police and NISS excessive use of force in Nyala, 2 August 2012, <http://www.acjps.org/twelve-dead-including-ten-children-and-over-eighty-injured-following-police-and-niss-excessive-use-of-force-in-nyala/>.

<sup>47</sup> ACJPS and Amnesty International, *Excessive and Deadly* above, note 45. Other cases include: In March 2014, student Ali Abaker died from gunshot wounds sustained when security forces including the NISS and pro-government

### *Arbitrary detention, torture and other ill-treatment*

Over the past four years the NISS has used its powers of arrest without charge for up to four-and-a-half months to arbitrarily detain scores of perceived opponents and other people with real or perceived links to the rebel movements who are often targeted because of their ethnic origin. The NISS routinely holds detainees incommunicado and without charge for prolonged periods, including in excess of the four and a half months permitted by the NSA 2010,<sup>48</sup> and has subjected detainees to torture and other forms of ill-treatment.<sup>49</sup> The NISS has also used intimidation and harassment tactics such as repeated summonses and threatening phone calls to frighten perceived political opponents and activists, and refusing individuals permission to leave the country.<sup>50</sup>

Hundreds of protesters have been arbitrarily detained in response to mass anti-government and anti-austerity protests that have taken place each year since 2011.<sup>51</sup> In an apparent attempt to obstruct the coordination of protests, the NISS has 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 have also been targeted.<sup>52</sup> During nation-wide protests in September and October 2013 security officials detained at least 800 protestors, opposition party members and activists, arresting many from their homes. Many of those arrested by the police were released within days, often following summary trials leading to floggings or fines, but others were held by the NISS for weeks or months without charge or access to family or lawyers.<sup>53</sup> In September 2014, at least 59 people, including scores of well-known youth and political activists, were arrested in a clear attempt to stop memorial events to mark the anniversary of the brutal suppression of protests in 2013.<sup>54</sup> During anti-austerity protests in June-July 2012 ACJPS documented over 300 arbitrary arrests of protestors and activists.<sup>55</sup>

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student militia fired live ammunition and rubber bullets during a demonstration at the University of Khartoum. In May 2013, nine students sustained gun-shot wounds when the police, the NISS and an armed pro-government student group fired live ammunition into a crowd of unarmed students on the main campus of El Fashir University, North Darfur. 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. See, African Centre for Justice and Peace Studies, “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>; 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>48</sup> ACJPS, Amnesty International, Human Rights Watch, Sudan: End arbitrary detention of activists and investigate torture allegations, FIDH and REDRESS, 25 June 2014, <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/sudan/15648-sudan-end-arbitrary-detention-of-activists-investigate-allegations-of>.

<sup>49</sup> For cases, see ACJPS and REDRESS, Sudan’s human rights crisis, above, note 4. See also complaints against Sudan submitted to the African Commission on Human and Peoples’ Rights.

<sup>50</sup> See various cases documented in the ACJPS bi-monthly publication, Sudan Human Rights Monitor.

<sup>51</sup> ACJPS and Amnesty International, Excessive and Deadly above, note 45.

<sup>52</sup> See e.g. ACJPS special report, Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan, 27 July 2012, <http://www.acjps.org/excessive-force-mass-arbitrary-detentions-ill-treatment-and-torture-used-to-crack-down-on-popular-protests-in-sudan-3/>.

<sup>53</sup> ACJPS and Amnesty International, Excessive and Deadly above, note 45.

<sup>54</sup> ACJPS, Sudan responds to calls for justice and accountability with mass detentions of activists on anniversary of protest killings, 26 September 2014, <http://www.acjps.org/sudan-responds-to-calls-for-accountability-with-mass-detentions-of-activists-on-anniversary-of-protest-killings-in-sudan/>.

<sup>55</sup> ACJPS Special Report: Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan, 27 July 2012, <http://www.acjps.org/excessive-force-mass-arbitrary-detentions-ill-treatment-and-torture-used-to-crack-down-on-popular-protests-in-sudan-3/>.



Authorities arrested dozens of opposition party members, students, and political activists in the lead up to, during and after, the General Elections which took place from 13 to 16 April 2015.<sup>56</sup> Many were detained for several days and subjected to harsh beatings before being released without charge.<sup>57</sup>

Prominent leaders of political opposition parties have been especially targeted by the NISS for detention. A number have been detained incommunicado, often without charge. Others have been charged with serious criminal offences for speaking out against government policy, and released when charges are dropped after a number of months. For example, prominent human rights defender Amin Mekki Medani, political opposition leader Farouq Abu Eissa, and political activist Farah Ibrahim Alagar, were detained for over four months after returning from political negotiations in Addis Ababa. They were detained in December and held incommunicado for 15 days before being charged with crimes against the state that carry the death penalty. They were released on 9 April 2015 after the Minister of Justice exercised discretionary powers to drop the case.<sup>58</sup>

In May 2014 authorities arrested Sadiq al Mahdi, head of the opposition Umma Party, for criticizing the Government's Rapid Support Forces, releasing him after a month. The NISS and police also detained Ibrahim Elsheikh, leader of the Sudanese Congress Party (SCP) and several members for similar criticisms.<sup>59</sup> Mariam Al Sadiq al-Mahdi, deputy leader of NUP, was arrested in Khartoum on 11 August 2014 after attending talks in Paris, France, between the NUP and the Sudan Revolutionary Front; she was released without charge a month later.<sup>60</sup>

Scores of detainees have testified to ACJPS their experiences of ill-treatment and torture at the hands of the NISS, police and armed forces. Reports have included, *inter alia*, the use of beatings with water pipes, gun butts, metal bars, sticks and fists, being beaten on the soles of their feet (a practice known as falanga) and hung or suspended by their hands or feet, being stamped on and bitten by interrogators. Detainees have reported being injected with unknown substances and having blood samples taken, including whilst blindfolded, without their consent or explanation. Detainees have been subjected to prolonged enforced standing, exposure to bright sunlight and heat, extremely cold temperatures, sleep deprivation, blindfolding, death threats against detainees and their families, threats of sexual violence and exposure to the torture and beatings of fellow

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<sup>56</sup> ACJPS and FIDH, Detentions, civil society closures, media restrictions on eve of Sudan elections, 12 April 2015, <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/sudan/detentions-civil-society-closures-media-restrictions-on-eve-of-sudan>.

<sup>57</sup> The NISS continued to arrest and detain political activists in the following months. In August 2015, At least 17 political party members, mostly from the SCP, were detained by the NISS. Several were subjected to violence, including severe beatings by heavily armed NISS personnel. See, ACJPS and Human Rights Watch, Sudan: Wave of Opposition Arrests, 28 August 2015, <http://www.acjps.org/acjps-and-human-rights-watch-sudan-wave-of-opposition-arrests/>. For SCP detentions see also, Amnesty International "URGENT ACTION, Three Opposition Members Harassed by NISS", 17 August 2015, <https://www.amnesty.org/en/documents/afr54/2271/2015/en/>.

<sup>58</sup> FIDH, "Release of human rights activist" 13 April 2015," <https://www.fidh.org/International-Federation-for-Human-Rights/impacts/sudan-release-of-human-rights-defender-dr-amin-mekki-medani>; FIDH, "African Commission should call on Sudan to release prominent activists facing stiff penalties in national security trial", 20 February 2015, <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/sudan/17034-african-commission-should-call-on-sudan-to-release-prominent-activists>.

<sup>59</sup> In June 2014 the NISS arrested Ibrahim Elsheikh, leader of the Sudanese Congress Party (SCP), after he criticized the government's Rapid Support Forces at a party symposium in Al Nuhud, West Kordofan. He was charged with six offenses, including undermining the constitutional order, which carries the death penalty. All charges were later dropped and he was released after three months on 15 September 2015. ACJPS documented at least 28 SCP members detained in June-July 2014 after his arrest. See, ACJPS, Sudan: guarantee safety of detainees, 19 June 2014, <http://www.acjps.org/sudan-guarantee-safety-of-detainees/>; ACJPS and Human Rights Watch, Sudan: Wave of Opposition Arrests, 28 August 2015, <https://www.hrw.org/news/2015/08/28/sudan-wave-opposition-arrests>.

<sup>60</sup> Amnesty International Report 2014/15: Sudan, <https://www.amnesty.org/en/countries/africa/sudan/report-sudan/>.

detainees, as well as verbal and racist insults. Detainees have been held in inadequate facilities with no electricity, bedding or sufficient ventilation. Some detainees were forced to provide their email, Facebook and Skype passwords.<sup>61</sup>

### ***Freedoms of Expression, Association and Assembly***

The 1991 Criminal Act and the 1991 Criminal Procedure Act and other laws contain various provisions used to restrict freedoms of expression, association and assembly.<sup>62</sup> For example, offences of “rioting” and “disturbance of public peace” under the 1991 Criminal Act are vaguely defined and have been routinely used to restrict the right to peaceful assembly.<sup>63</sup>

### Media freedoms

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 NSA 2010.<sup>64</sup> The NISS has restricted the media through blacklisting, prosecuting and harassing journalists,<sup>65</sup> subjecting journalists to repeated summonses and threats of prosecution, detaining journalists, and making threatening visits or telephone calls to editors ordering them not to report outside of “red lines” determined by the government.<sup>66</sup> In an emerging trend since 2013, traditionally pro-government newspapers have also been censored.<sup>67</sup> TV and access to electronic media sites has also been blocked.

Post-print censorship, whereby entire print runs of daily editions are confiscated prior to morning distribution, is used increasingly as a control tactic by the NISS, at great cost to newspapers. For example, on 16 February 2015, the entire print runs of 14 newspapers were confiscated by the NISS without reasons being given.<sup>68</sup> Censorship is often ramped up around key events.<sup>69</sup> For

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<sup>61</sup> For testimonies, see ACJPS, Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan, 27 July 2012, <http://www.acjps.org/excessive-force-mass-arbitrary-detentions-ill-treatment-and-torture-used-to-crack-down-on-popular-protests-in-sudan-3/>. See also, ACJPS, Sudan: On the international day in support of torture survivors, end torture and repeal enabling legislation, 26 June 2015, <http://www.acjps.org/sudan-on-the-international-day-in-support-of-torture-survivors-end-torture-and-repeal-enabling-legislation/>.

<sup>62</sup> Under article 124 of the 1991 Criminal Procedure Act, a police officer or prosecutor has the power to order the dispersal of any unlawful assembly likely to result in a riot or disturbance of public peace. According to articles 125 and 126 of the Criminal Procedure Act of 1991, the police, the NISS and the armed forces are authorised to disperse assemblies and demonstrators for offences such as rioting and breach of public peace.

<sup>63</sup> ACJPS and Amnesty International, Excessive and Deadly above, note 45.

<sup>64</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/>

<sup>65</sup> For example in January 2015, the editor of Al Maidan newspaper, Madiha Abdaulla, was charged with crimes against the state in connection with articles published in the paper including comments made by an SPLA-N leader. The case is ongoing. See, ACJPS, “Attacks on Civilians by Sudanese Armed Forces and Sudanese Peoples’ Liberation Movement – North in Blue Nile”, 1 May 2015, <http://www.acjps.org/attacks-on-civilians-by-sudanese-armed-forces-and-sudanese-peoples-liberation-movement-north-in-blue-nile/>.

<sup>66</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>67</sup> See e.g. 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.

<sup>68</sup> ACJPS, “Sharp increase in media restrictions 5 weeks before Sudanese General Elections”, 26 February 2015, <http://www.acjps.org/sharp-increase-in-media-restrictions-5-weeks-before-sudanese-general-elections/>; ACJPS and FIDH, “Detentions, civil society closures, media restrictions on eve of Sudan elections”, 12 April 2015,

example in September 2013, authorities tightened restrictions to prevent coverage of the nationwide anti-austerity protests and in early April 2015 to prevent coverage of an elections boycott by opposition parties.

Journalists have been targeted for arbitrary arrest, detention, ill-treatment and torture for reporting on certain issues. Cases include that of Somia Ismail Ibrahim Hendusa detained and tortured after her arrest on 29 October 2012.<sup>70</sup> During the September 2013 anti-austerity protests, Amal Habani, a freelance journalist, was arrested and detained incommunicado for over a week. Non-Sudanese journalists were also summoned for questioning.<sup>71</sup> On 10 June 2014, journalist Hassan Ishag, an SCP member who had reported the detention two days earlier of the SCP leader on social media, was arrested by plain-clothed police officers and lost consciousness when he was beaten and kicked during interrogations. He was detained without charge under the 1997 Emergency Act for more than 3 months before his release on 19 September 2014.<sup>72</sup>

### Restrictions on political parties and their members

Authorities imposed heavy restrictions on political opposition parties and their members by refusing permission for events, cancelling events and arbitrarily detaining members, including senior party leaders.<sup>73</sup> Each year President al-Bashir said promised to release all “political detainees” and ease restrictions on opposition parties and the media. On 6 April 2014, the President made such a commitment only to issue decree No.158 on 15 April 2014 which forbids political parties from organizing meetings in their own venues without approval and requires permission for public meetings 48 hours in advance.<sup>74</sup> In May 2014, Sudan’s authorities refused a registration application from the Republican Party on grounds, *inter alia*, that its policies contradicted Islamic Sharia law.<sup>75</sup> Penalties that carry corporal punishments have also been used to restrict the right to freedom of expression and association of political opposition members.<sup>76</sup>

### Crackdowns on civil society organisations

Authorities, including the NISS and government regulatory bodies, such as the Ministry of

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<https://www.fidh.org/International-Federation-for-Human-Rights/Africa/sudan/detentions-civil-society-closures-media-restrictions-on-eve-of-sudan>.

<sup>69</sup> For other examples and analysis see e.g. 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>70</sup> ACJPS, “Sudanese journalist tortured and subjected to racist abuse by NISS”, 8 November 2012, at: <http://www.acjps.org/?p=896>.

<sup>71</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>72</sup> ACJPS and Human Rights Watch, Sudan: Wave of Opposition Arrests, 28 August 2015, <http://www.acjps.org/acjps-and-human-rights-watch-sudan-wave-of-opposition-arrests/>. Full testimony on file with ACJPS.

<sup>73</sup> A number of opposition party leaders have been detained for prolonged periods on serious criminal charges, which have later been dropped, for campaigning against the ruling NCP. See section above on arbitrary detention, torture and ill-treatment.

<sup>74</sup> ACJPS, Sudan’s Political Parties Affairs Council bans Republican Party amidst calls for national dialogue, 8 May 2014, <http://www.acjps.org/sudans-political-parties-affairs-council-bans-republican-party-amidst-calls-for-national-dialogue/>.

<sup>75</sup> *Ibid.*

<sup>76</sup> On 6 July 2015, three members of the Sudanese Congress Party - Mastor Ahmed Mohammed, Asim Omer Hassan, and Ibrahim Mohamed Zain – were convicted of disturbing the public peace after they participated in an event calling for the release of party members who had been detained in connection with a boycott of the national elections. The penalty of 20 lashings each was implemented immediately without legal representation or an opportunity to appeal. See, ACJPS and Human Rights Watch, Sudan: Wave of Opposition Arrests, 28 August 2015, <http://www.acjps.org/acjps-and-human-rights-watch-sudan-wave-of-opposition-arrests/>.

Culture and the Humanitarian Affairs Commission (HAC), have imposed severe restrictions on the operation and mandates of civil society organizations and a number have been forcibly closed. Authorities have refused permission for or cancelled their activities, arrested and intimidated staff, through repeated summonses, and obstructed groups from legally registering.<sup>77</sup>

In December 2012, security officials shut down three civil society groups and one literary forum, and summoned leaders of other groups for questioning. The Sudanese Studies Centre (SSC), ARRY Organisation for Human Rights and Development (ARRY), Al Khatim Adlan Centre for Enlightenment and Human Development (KACE) and the Cultural Forum for Literary Criticism, were each ordered to cease work.<sup>78</sup> Also in December 2012, the NISS prevented the Sudanese Confederation of Civil Society Organisations from holding a press conference to mark its launch.<sup>79</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>80</sup> and in March 2013 the NISS in Khartoum shut down a workshop convened by the Al Ayaam Center for Cultural and Development Studies (ACCDs) on constitutional reform.<sup>81</sup> In June 2014 authorities ordered the closure of Salmaah Center, a women's rights organization in Khartoum<sup>82</sup> and on 21 December 2014, the NISS raided the offices of the Sudanese Human Rights Monitor (SHRM) in Khartoum whilst a workshop on the Universal Periodic Review of Sudan taking place, confiscated and documents and briefly detained a journalist present at the workshop.<sup>83</sup> In February 2015, officials closed the Sudanese Writer's Union<sup>84</sup>, and on 18 January 2015, they raided and closed down the Mahmoud Mohammed Taha Cultural Center.<sup>85</sup> On 26 March 2015, armed NISS officers raided the Khartoum-based TRACKS for Training and Human Development whilst it was hosting a training session. Participants were accused of discussing the boycott of the upcoming General Elections. Four laptop computers and the central computer server were seized. Three weeks later, human rights defender Adil Bakheit, whose laptop had been confiscated, was arrested. He was held in police custody for 17 days before his release on bail and serious criminal charges against him have not been dropped.<sup>86</sup>

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<sup>77</sup> For example two groups in White Nile state, Qanuniat, which provides legal aid to women and children, and a child's rights organization, were not able to operate at all in 2013 because authorities have not yet processed their applications for renewal of registration, made in January 2013. See African Centre for Justice and Peace Studies, "Sudan Human Rights Monitor", March-April 2013.

<sup>78</sup> ACJPS, "Civil society organisations closed in renewed clamp down on freedom of association in Sudan", 9 January 2013, <http://www.acjps.org/?p=1346>; Human Rights Watch, "End Crackdown on Civil Society," January 13, 2013, <http://www.hrw.org/news/2013/01/13/sudan-end-crackdown-civil-society>; East and Horn of Africa Human Rights Defenders Project, "Sudan: End Harassment of Human Rights Defenders," 18 January 2013, <http://www.defenddefenders.org/2013/01/sudan-end-harassment-of-human-rights-defenders/>.

<sup>79</sup> ACJPS, "Sudan Human Rights Monitor" Update, January-February 2013.

<sup>80</sup> *Ibid.*

<sup>81</sup> ACJPS, above, note 15.

<sup>82</sup> Frontline Defenders, Sudan – Closure of Salmah Women's Resource Centre, 26 June 2014, <https://www.frontlinedefenders.org/node/26391>.

<sup>83</sup> ACJPS, Sudan's Security Services raid and order closure of Mahmoud Mohamed Taha Cultural Centre, 23 January 2015, <http://www.acjps.org/sudans-security-services-raid-and-order-closure-of-mahmoud-mohamed-taha-cultural-centre/>.

<sup>84</sup> ACJPS, "Sudan's Ministry of Culture orders the closure of the Sudanese Writer's Union", 3 February 2015, <http://www.acjps.org/sudans-ministry-of-culture-orders-the-closure-of-the-sudanese-writers-union/>.

<sup>85</sup> ACJPS, "Sudan's Security Services raid and order closure of Mahmoud Mohamed Taha Cultural Centre", 23 January 2015, <http://www.acjps.org/sudans-security-services-raid-and-order-closure-of-mahmoud-mohamed-taha-cultural-centre/>.

<sup>86</sup> ACJPS, "Sudanese human rights defender detained on baseless charges and others at risk after armed raid on Khartoum training centre", 18 April 2015, <http://www.acjps.org/sudanese-human-rights-defender-detained-on-baseless-charges-and-others-at-risk-after-armed-raid-on-khartoum-based-training-centre/>; FIDH, "Sudan: release on bail of Mr. Adil Bakheit", 18 May 2015, <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/sudan/sudan-release-on-bail-of-mr-adil-bakheit>.

### *Non-discrimination and women's rights*

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>87</sup> The Evidence Act of 1994 also discriminates against women and stipulates that the testimony of two female witnesses equals that of one male witness.

Sudanese authorities disproportionately apply broadly and ill-defined criminal offences, known as “public order” offences which forbid, *inter alia*, “indecent and immoral” acts, against women and girls, particularly from marginalised ethnic groups in Sudan.<sup>88</sup> Public order offences found in the 1991 Criminal Act and other laws enacted by localities, carry lashing penalties that are frequently carried out immediately after summary trials without legal representation or notice of right to appeal. Government figures for 2008 reportedly showed that 43,000 women were arrested for clothing-related offenses in Khartoum alone.<sup>89</sup> In practice, the enforcement of public order laws by the public order police and courts has often been discriminatory and arbitrary. The police, prosecution and courts have broad discretion to judge whether a person has acted in “an indecent manner, or “a manner contrary to public morality”, or “wears an indecent, or immoral dress, which causes annoyance to public feelings.”<sup>90</sup>

Public order laws have also been used to stifle the freedom of expression, association and assembly rights of human rights defenders and peaceful activists.<sup>91</sup>

Sudan amended Article 149 (rape) of the 1991 Criminal Act in early 2015 in an important step to bring the law in line with international standards but gaps remained.<sup>92</sup> The revised law did not set out aggravating factors, such as rape in detention or resulting from abuse of office and the definition of sexual harassment is vague.<sup>93</sup>

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<sup>87</sup> ACJPS and REDRESS, Sudan's human rights crisis, above, note 4.

<sup>88</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>89</sup> The Equal Rights Trust, In Search of Confluence: Addressing Discrimination and Inequality in Sudan, October 2014, <http://www.equalrightstrust.org/ertdocumentbank/Sudan%20-%20In%20Search%20of%20Confluence%20-%20Full%20Report.pdf>.

<sup>90</sup> For example, in March 2014, 150 women working as tea sellers in Nyala, South Darfur, were arrested and prosecuted under Article 152 of the 1991 Criminal Act (indecent and immoral acts) and ordered to pay fines for wearing tight clothing and / or not wearing socks. See ACJPS, Sudan Human Rights Monitor, March-April 2013, <http://www.acjps.org/?p=1493>.

<sup>91</sup> 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. See, Amnesty International, Urgent Action: women's rights activist continues to face charges, 30 June 2014, <http://www.amnestyusa.org/sites/default/files/f2u25313.pdf>.

<sup>92</sup> Article 149 of the Criminal Act of 1991 was amended in February 2015 to separate the definition of rape from adultery and add an offence of sexual harassment. Before the amendments, Article 149 defined rape as a form of *zina* (adultery) and placed complaints of sexual violence at risk of prosecution for adultery if they were unable to “prove” they did not consent to the sexual act.

<sup>93</sup> Furthermore, immunity provisions for officials remain in place undermining the likelihood of prosecution where the alleged perpetrator is a state actor. See, REDRESS, **Universal Periodic Review Sudan 2016: Ensuring respect for the prohibition of torture in Sudan, September 2015.**

Sudan has failed to take any steps to criminalise marital rape and domestic violence<sup>94</sup> and there is no law explicitly criminalising the practice of female genital mutilation.<sup>95</sup>

### ***Restrictions on Religious Freedoms***

Increasing restrictions on religious freedoms have been documented since 2013, particularly targeting members of Christian churches in Sudan. This has included raids on churches and harassment and arrests of church members by the NISS.<sup>96</sup> In early 2013 authorities shut down four Christian educational institutes, arresting staff and confiscating property.<sup>97</sup> In March 2013 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.<sup>98</sup> That year, it is estimated that the government deported, or otherwise forced over 170 foreign church members to leave Sudan.<sup>99</sup> On 2 December 2014 police raided the Evangelical Church of Khartoum Bahri to disperse a sit in concerning a corruption scandal. Police beat a number of peaceful demonstrators with pipes and water sticks and arrested 38 church members. Later in December 2014 and January 2015, authorities arrested two South Sudanese pastors and detained them for more than seven months, including more than two months incommunicado, and charged them with various serious crimes that carry the death penalty and flogging. They were arrested after making public remarks criticizing the corruption scandal at the Khartoum Bahri church and the treatment of Christians in Sudan.<sup>100</sup>

Under Article 126 of the 1991 Criminal Act, a Muslim who renounces Islam is guilty of ‘apostasy’, punishable by death unless he or she recants within three days. The provision undermines constitutional and international freedom of religion guarantees.<sup>101</sup> In January 2015, Sudan amended article 126 to widen the definition of apostasy to target other schools of Islam as

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<sup>94</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>.

<sup>95</sup> 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 organisations protested against this decision and published a memorandum on section 13. See “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>96</sup> ACJPS, “Sudan Human Rights Monitor”, March-April 2013, <http://www.acjps.org/?cat=6>.

<sup>97</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. See, African Centre for Justice and Peace Studies, “Sudan Human Rights Monitor” Update, January-February 2013.

<sup>98</sup> ACJPS, Sudan Human Rights Monitor, Issue 22, March – April 2013, <http://www.acjps.org/sudan-human-rights-monitor-march-april-2013/>.

<sup>99</sup> ACJPS, Amnesty International, Human Rights Watch, FIDH et al, NGO Letter Regarding Human Rights Situation in Sudan at the 27th session of the Human Rights Council, 18 July 2014, <http://www.acjps.org/wp-content/uploads/2014/07/NGO-Letter-Regarding-Human-Rights-Situation-in-Sudan-at-the-27th-session-of-the-Human-Rights-Council.pdf>.

<sup>100</sup> They were detained incommunicado by the NISS until 1 March when they were charged by the Prosecutor with crimes against the state and transferred to Kober Prison. They received their first family visit on 2 March and were released on 5 August. See ACJPS, “Two South Sudanese Pastors face death penalty for voicing opposition to corruption scandal at Khartoum Bahri Church”, 2 June 2015, <http://www.acjps.org/two-south-sudanese-pastors-face-death-penalty-for-voicing-opposition-to-corruption-scandal-at-khartoum-bahri-church/>; Amnesty International, Sudan: Further information: Two pastors sentenced to time served, released: Reverend Yat Michael and Reverend Peter Yen, 6 August 2015.

<sup>101</sup> Article 38 INC guarantees of freedom of Freedom of Creed and Worship.

well as anyone who questions the ‘credibility of the Quran, the Sahaba (the four Caliphs), or the wives of the Prophet’. 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. Meriam gave birth in her prison cell, shackled, before her convictions were overturned on appeal.<sup>102</sup>

### ***Refugees and asylum seekers***

A new Asylum Regulation Act was passed in 2014<sup>103</sup> that strengthened legal protection for refugees and individuals in need of international protection in Sudan. However, law enforcement and judicial authorities did not consistently apply the new provisions and ACJPS documented cases where individuals seeking international protection were detained and at risk of *refoulement* for entering Sudan illegally.<sup>104</sup>

An anti-trafficking law was passed in 2013 and trafficking cases have reportedly declined.<sup>105</sup> However, refugees and asylum seekers, especially those living in eastern Sudan, remained at risk of trafficking and ACJPS continued to document cases of abductions by trafficking gangs.<sup>106</sup>

### ***The death penalty***

The courts have continued to hand down death sentences, some in absentia. The death penalty, which is implemented by hanging in Sudan, is not restricted to the most serious of crimes. The crime of apostasy – which itself should not constitute a crime under international law – carries the death penalty. Crimes against the state charges that carry the death penalty have been used increasingly often since 2011 to punish and silence political opposition party members and other activists who have criticized government policy.<sup>107</sup> Since the last review the scope of application

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<sup>102</sup> Earlier in May 2014 Al Gadarif Criminal Court dropped charges against another woman accused of apostasy after she recanted her Christian faith and converted to Islam to avoid the death penalty. See ACJPS, Sudanese authorities must release pregnant Christian woman and review conviction for apostasy and adultery, 12 May 2014, <http://www.acjps.org/sudanese-authorities-must-release-pregnant-christian-woman-and-review-conviction-for-apostasy-and-adultery/>; FIDH and ACJPS, FIDH and ACJPS: Death penalty pronounced in apostasy case, 20 May 2014, <http://www.acjps.org/fidh-and-acjps-death-penalty-pronounced-in-apostasy-case/>; and, 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, <http://www.acjps.org/update-death-penalty-confirmed-in-khartoum-apostasy-case-after-woman-confirms-her-christian-faith-new-apostasy-case-comes-to-light-in-al-gadarif/>.

<sup>103</sup> Sudan adopted a new Asylum Regulation Act in 2014 which bans the removal from Sudan of any person with a genuine fear of persecution in their country of origin.

<sup>104</sup> ACJPS, 32 Eritreans at Risk of Forced Return from Sudan, 1 June 2015, <http://www.acjps.org/32-eritreans-at-risk-of-forced-return-from-sudan-2/>. In July 2014 UNHCR expressed concern that Sudan had forcibly returned 74 Eritrean asylum seekers, violating the principle of non-refoulement, in grave violation of international law. The 74 Eritreans were reportedly sent back to Eritrea through the Laffa border crossing point in Eastern Sudan on 30 June 2014, after being convicted of illegal entry into Sudan. They were not given access to asylum procedures in order to have their claims reviewed by the competent authorities. See UNHCR, UNHCR concerned over forced returns of refugee and asylum-seekers from Sudan, 4 July 2014, <http://www.unhcr.org/53b69a4f9.html>.

<sup>105</sup> 2015 UNHCR country operations profile – Sudan, <http://www.unhcr.org/pages/49e483b76.html>.

<sup>106</sup> See for example, ACJPS, Sudan Human Rights Monitor, December 2013-January 2014, <http://www.acjps.org/wp-content/uploads/2014/05/SHRM-December-2013-January-2014.pdf>.

<sup>107</sup> For example, Ibrahim el Sheikh, leader of the Sudanese Congress Party, was detained in June 2014 and charged with undermining the constitutional order, a crime that carries the death penalty, after he criticized atrocities committed by the Government’s Rapid Support Forces. See ACJPS, Sudan: Guarantee Safety of Detainees, 19 June 2014, <http://www.acjps.org/sudan-guarantee-safety-of-detainees/>.

of the death penalty has been widened. The crime of apostasy has been broadened to include additional prohibited acts<sup>108</sup> and a new crime of trafficking attracts the death penalty.<sup>109</sup>

### ***Corporal punishment***

Sudanese law recognises several forms of corporal punishment - stoning, amputation, cross-amputation and lashing.<sup>110</sup> Lashing is routinely implemented by Sudanese courts as *hudud*<sup>111</sup> punishment for adultery, wrongful accusation of adultery and drinking of alcohol, and for 18 other offences in the 1991 Criminal Act. Lashings are also implemented routinely under public order laws enacted by the localities.<sup>112</sup> For example, the Khartoum Public Order Law provides for lashing in respect of 17 prohibited acts including a failure of men and women to queue separately.<sup>113</sup> Lashing penalties are routinely implemented in the court complex immediately after a summary hearing in which the accused does not have legal representation raising serious concerns about the right to fair trial.

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>114</sup> At the time, Government officials confirmed that 16 cases of amputation had been carried out since 2001.<sup>115</sup> ACJPS documented two subsequent cases where six defendants were sentenced to amputation for theft without legal representation. Both cases were commuted on appeal.<sup>116</sup>

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<sup>108</sup> See above section: Sudan's normative and institutional framework.

<sup>109</sup> Anti Trafficking Act, 2013.

<sup>110</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>111</sup> Crimes that carry a fixed penalty under *Sharia* (Islamic) law. *Hudud* punishments in Sudan include amputation, cross amputation, stoning and flogging.

<sup>112</sup> See documented cases in ACJPS bi-monthly Sudan Human Rights Monitor publication. See also cases in ACJPS and REDRESS, Sudan's human rights crisis, above, note 4.

<sup>113</sup> 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 International Covenant on Civil and Political Rights to which Sudan is a state party. For cases and further information see, ACJPS and REDRESS, Sudan's human rights crisis, above, note 4.

<sup>114</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>.

<sup>115</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>116</sup> On 31 March 2013 three men were convicted of Capital Theft and sentenced without legal representation to amputation of the right hand from the wrist at the El Fashir Criminal Court in North Darfur. The men were accused of stealing cooking oil from a factory. They subsequently secured legal help and the amputation penalty was commuted to five years imprisonment. See ACJPS, Three men sentenced to amputation following unfair trial in Darfur, 5 April 2013, <http://www.acjps.org/three-men-sentenced-to-amputation-following-unfair-trial-in-darfur/>. On 12 April 2015 three men from Darfur were convicted of capital theft and sentenced to amputation of the right hand after an unfair trial before El Geneina criminal court in West Darfur. The men were convicted and sentenced to the amputations without legal representation and transferred to Khartoum the following month for the implementation. The sentence was commuted on appeal. See ACJPS, Three Darfuri men at risk of court-ordered amputation of right hand, 25 May 2015, <http://www.acjps.org/three-darfuri-men-at-risk-of-court-ordered-amputation-of-right-hand/>.



In 2012 Sudanese courts handed down the sentence of stoning for adultery in two judgements which were later overturned.<sup>117</sup>

## **Part C: Recommendations to Sudan**

### ***National legal and institutional framework***

- Undertake a review of national laws to bring them in line with international human rights treaties to which Sudan is a state party.
- Ensure transparency and inclusiveness, including through full participation of opposition political parties, independent civil society organisations and other relevant actors, within the constitutional review process. Further ensure that provisions of the new Constitution are consistent with Sudan's international human rights obligations.
- Ensure that the mandate and operation of the National Human Rights Commission are consistent with the Principles relating to the Status of Nations Institutions (*The Paris Principles*). Guarantee in particular its political independence, pluralism, its free interaction with NGOs, and its adequate funding and material resources.
- Ratify or accede to the regional and international human rights treaties to which Sudan is not a state party and implement them in national law. Sudan should in particular commit to ratify without further delay the Convention against Torture, the Convention against all forms of discrimination against women, the Protocol to the African Charter on the rights of women, the International Convention for the protection of all persons from enforced disappearance.
- Take all necessary measures to raise awareness about the regional and international human rights treaties ratified by Sudan and their application in domestic law among police and NISS officers, armed forces, judges and other relevant judicial officers.

### ***Justice and accountability / effective remedies***

- Ensure that all allegations of unlawful killings, enforced disappearances, torture and other ill-treatment, as well as other serious human rights violations are promptly and effectively investigated by an independent and impartial authority and perpetrators are prosecuted without delay before independent and impartial courts in accordance with international standards of fairness and without resort to the death penalty.
- Repeal all provisions that grant legal immunities to the police, NISS, armed forces, Rapid Support Forces and other security forces from criminal prosecution.
- Repeal the National Security Act of 2010 and ensure institutional and legislative reform of the NISS, including through the establishment of a judicial oversight mechanism, end the use of arbitrary and incommunicado detention.
- Ensure that those suspected of being responsible for international crimes in Darfur, South Kordofan and Blue Nile are investigated and prosecuted without delay before independent and impartial courts, without resort to the death penalty.
- Ensure that all allegations of serious human rights violations are independently, promptly and thoroughly investigated and that perpetrators, including when they belong

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<sup>117</sup> Ms Intisar Sharif Abdalla was sentenced to death by stoning in Ombada, Khartoum State in May 2012. She was convicted of adultery under article 146 of the 1991 Criminal Act after giving birth to a child allegedly conceived outside of wedlock. In July 2012, Ms Laila Ibrahim Issa Jamool was equally sentenced to death by stoning after having been convicted for adultery. The sentence was reportedly overturned on appeal. See ACJPS, "Sudan Human Rights Monitor", April-May 2012; and 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/>.

to forces and groups under State control, are brought to justice. Further ensure that victims of serious human rights violations receive protection and reparation measures.

### ***Human rights violations in armed conflict***

- Ensure that forces under State control immediately end all deliberate and indiscriminate attacks against civilians in Darfur, South Kordofan and Blue Nile states, and other violations of international humanitarian and human rights law.
- Grant full access for humanitarian aid to all populations in need, and comply with existing agreements regarding the operation of aid agencies in Sudan, including the commitment to allow aid organizations to implement human rights and protection programs.
- Fully cooperate with international mechanisms of accountability, including the International Criminal Court (ICC), in order to ensure that those responsible for international crimes committed in Darfur are brought to justice and that victims obtain reparation.
- Fully cooperate with UNAMID in Darfur and ensure that the mission can carry its mandate without hindrances.

### ***Arbitrary detention, torture and other forms of cruel, inhuman or degrading treatment or punishment***

- Abolish all corporal punishments including lashing, amputation and stoning.
- Ensure that all detainees are brought promptly, and no more than within 48 hours, before a judge to review the legality and conditions of their detention, have the right to challenge the lawfulness of their detention before a court, and are guaranteed the right to fair trial.
- End harassment, arbitrary detention, torture and other abuse of human rights activists, political activists, student activists and other individuals who criticise the authorities.
- Ensure that detainees are protected from torture or other ill-treatment, have prompt and regular access to their legal representatives, families and any medical assistance they may require, and that detention conditions meet international standards.
- Establish a mechanism for independent, unrestricted and unannounced visits to any places of detention.
- Adopt legislation that defines and criminalises torture in line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the African Charter on Human and People's Rights and the African Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment of Punishment in Africa.
- Ensure that confessions obtained under torture are not used or accepted by courts under any circumstances.

### ***Freedom of expression, association and assembly***

- Repeal provisions of the 1991 Criminal Act and the 2009 Press and Publications Act that arbitrarily restrict peaceful expression, association and assembly or amend them in line with international law and standards and end the use of these and other laws.
- End use of the 1991 Criminal Act and the National Security Act and other legislation to target the media and journalists, civil society organisations and political parties and allow full freedom of expression, association and assembly.

### ***Excessive use of force***

- Ensure that security forces carry their mandate in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Ensure in particular that security forces refrain from using excessive and disproportionate force against peaceful demonstrators and that reports of such violations are thoroughly investigated with a view to bring those responsible to justice.

### ***Non-discrimination and women's rights***

- Repeal all laws and policies that discriminate against women and girls.
- Repeal Article 152 of the 1991 Criminal Act and other public order law provisions that arbitrarily interfere with the right to non-discrimination, private and family life, and ensure that they conform with international standards.
- Criminalise acts of violence affecting women, including domestic violence and marital rape and facilitate prompt and thorough investigation with a view to bring those responsible into account. Ensure that women victims of acts of violence have access to adequate protection and reparation measures.

### ***Freedom of Religion***

- Repeal article 126 of the 1991 Criminal Act and guarantee the full exercise of the right to freedom of thought, conscience and religion.

### ***Refugees and asylum-seekers***

- Guarantee the right to *non-refoulement* and ensure all law enforcement authorities are notified of Sudan's obligations concerning individuals in need of international protection.

### ***The death penalty***

- Impose an immediate moratorium on executions, commute all death sentences and reduce the number of crimes punishable by death with a view to total abolition of the death penalty.