



Universal Periodic Review: Sudan

Second Cycle

Submission to the Stakeholders' Summary

Alkarama Foundation, 18 September 2015

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1. Introduction

1. During its first Universal Periodic Review (UPR) in 2011, the Republic of the Sudan (Sudan) accepted the majority of the recommendations made by the Member States of the United Nations and declared its intention to guarantee the protection of human rights within the new Constitution. This report seeks to highlight what Sudan has achieved since, most notably in relation to torture, unfair trials, impunity for human rights violations, and the right to freedom of expression and opinion, association, and peaceful assembly.
2. A country of 34 million inhabitants, Sudan continued to be stirred by political and social problems since the first cycle of the UPR. Despite the signing of the Comprehensive Peace Agreement between the government of the Republic of the Sudan and the Sudan People's Liberation Movement (SPLM) in 2005, the conflict between the non-state armed groups and the army has continued and it remains very difficult to gain humanitarian access to the conflict regions.¹ The clashes in the regions of Darfur, Blue Nile and South Kordofan have forced thousands of people to leave their homes.
3. The repercussions of South Sudan's proclamation of independence on 9 July 2011 continue to be felt in Sudan as problems between the two Parties remaining unresolved. Accordingly, the living conditions of the Sudanese remain alarming. Human rights violations continue on a large scale and notwithstanding the numerous commitments made by the authorities, no credible actions have been taken in support of human rights and the restrictive laws criticised during the first UPR remain in force to date.

2. Constitutional and legislative framework

4. Sudan is a Federal Republic presided over by Omar Al Bashir, who has been in power since the military coup in 1989. He was re-elected in April 2015 – as was the National Congress Party (NCP) – during presidential and legislative elections that were boycotted by the opposition and criticised at the international level.²
5. While a process for the adoption of a new constitution was launched in 2011, it has not been finalised to date. The national dialogue established between the NCP and the opposition parties to this effect failed as a result of the constant harassment of political opponents by the authorities and the National Intelligence and Security Services (NISS). The Interim National Constitution of 2005 thus remains in force. As such, it contains a Charter of Fundamental rights, guaranteeing a certain number of rights and freedoms to Sudanese citizens. The authorities adopted a national action plan for the protection of human rights for the period of 2013-2023,³ aimed at promoting a culture of respect for human rights in the country and elaborating legislative reforms to this effect. A National Human Rights Commission was also established in 2012, but remains inoperative to date. Despite these efforts, it must be concluded that no genuine reforms were undertaken by Sudan and that human rights violations persist.

3. International obligations and cooperation with the human rights mechanisms

6. Sudan ratified the International Covenant on Civil and Political Rights (ICCPR) on 18 March 1986. It has not ratified its Optional Protocol, rejecting the recommendations made in respect thereto during the first UPR.⁴ In July 2014, the Human Rights Committee considered Sudan's fourth periodic report

¹ MSF Belgium, [Sudan: Brussels-based operational centre of MSF stops emergency medical aid following government's systematic denial of access](#), 29 January 2015.

² Delegation of the European Union Delegation to Sudan, Press Release, [Declaration by the High Representative on behalf of the European Union on the lack of a conducive environment for the upcoming elections in Sudan](#), 9 April 2015.

³ With the assistance of the United Nations Development Programme (UNDP).

⁴ Recommendations 83.3 (Switzerland) and 83.6 (Spain) in particular. See: Human Rights Council, Report of the Working Group on the Universal Periodic Review, Sudan, Addendum 1, A/HRC/18/16/Add.1, 16 September 2011.

on the implementation of the ICCPR during its 111st session.⁵ To date, Sudan has not submitted its follow-up report on the Committee's Concluding Observations, initially due in July 2015. The authorities must present their next periodic report in July 2017.

7. Sudan signed the Convention against Torture (CAT) on 4 June 1986, but has not ratified it subsequently, despite accepting recommendations invited to this effect during the previous UPR.⁶ Sudan has not ratified the Rome Statute of the International Criminal Court (ICC). The Sudanese president has been pursued for international crimes since 2009, but the Sudanese authorities have refused to collaborate with the ICC to date, in direct violation of United Nations Security Council Resolution 1593 (2005).⁷ Furthermore, Sudan has not ratified the Convention on the Protection of All Persons from Enforced Disappearance.
8. An Independent Expert on the situation of human rights in Sudan was first appointed in 1993, with a mandate regularly renewed by the Human Rights Council and reports directly thereto.⁸ While "security and administrative constraints" meant the he was not granted access to certain regions during his visit, the Independent Expert welcomed the constant cooperation and support of the authorities in implementing his mandate.⁹ His next report will be presented at the 30th session of the Human Rights Council in September 2015.
9. While Sudan has accepted visits from various special procedures, it has constantly refused the visit of the Working Group on Enforced or Involuntary Disappearances.¹⁰ Finally, while the authorities may have largely responded to urgent appeals of the UN special procedures, the Special Rapporteur against Torture expressed regret over the fact that "the Government's reply does not sufficiently address the concerns raised in the initial communication".¹¹

4. Torture

10. It is worth recalling here that to this day, Sudan has neither ratified the Convention against Torture nor declared its intention to do so. While the country remains bound by the prohibition of torture as provided for in Article 7 of the ICCPR, as well as the 2005 Interim National Constitution, which does not, however, define torture as a separate offence. Sudanese law does not provide for the guarantees established by the international conventions on this subject, thus impeding an effective prevention of this phenomenon and otherwise fostering impunity of the perpetrators of such crimes. The 1991 Criminal Act, prohibits torture, but does not define it, and provides for shorter sentences for perpetrators.¹²
11. Systematic and widespread practice of torture persists in Sudan, including outside of conflict areas.¹³ In direct contravention of the international standards concerning the prohibition of torture, Sudanese law provides for different types of corporal punishment, such as flogging and stoning. Several

⁵ Human Rights Committee, [Concluding Observations on the fourth periodic report of Sudan](#), CCPR/C/SDN/CO/4, OHCHR, 19 August 2014.

⁶ Sudan accepted recommendations 83.5 (Brazil) and part of 83.14 (Australia).

⁷ UNSC, 518th Meeting, Resolution 1593, S/RES/1593 (2005), 31 March 2005.

⁸ Mr. Aristide Nononsi is the current mandate holder.

⁹ Human Rights Council, Report of the Independent Expert on the situation of human rights in Sudan, Mashood A. Baderin, Advance Edited Version, A/HRC/27/69, 4 September 2014, para.4.

¹⁰ Requests sent in 2008, 2009, 2010 and 2011.

¹¹ See: Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, Addendum, Observations on communications transmitted to Governments and replies received, A/HRC/28/68/Add.1, 5 March 2015, para. 499.

¹² Article 115: "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."

¹³ HCDH, [UN report reveals "endemic impunity" in Darfur](#), 21 August 2015.

detainees have died in detention as a result of corporal punishment inflicted on court orders, in violation of the right to life.¹⁴

12. The NISS, responsible for the majority of the acts of torture identified in the country, operates with total impunity.¹⁵ This is largely the consequence of the 2010 National Security Act (NSA), the annulment of which was recommended by several countries during the last UPR.¹⁶ The NSA gives the NISS extensive powers of arrest and detention and grants immunity to officers in cases of abuse.¹⁷ Such immunity is equally prescribed in the 2007 Armed Forces Act¹⁸ and 2008 Police Act.¹⁹ Accordingly, numerous reported cases pertained to torture in custody, including allegations of sexual abuse.²⁰ Moreover, the 1994 Evidence Act specifies that evidence obtained in violation of the procedures in place for criminal trials may nevertheless be permitted, provided that the means of obtaining such evidence is considered acceptable and independent; a decision which is left to the discretion of the judge.²¹ As such, it is possible that confessions obtained through torture are admitted at trial.²²
13. The NISS predominantly target human rights defenders, political opponents and journalists; the latter often become the victims of torture and other forms of ill treatment.²³ Additionally, the authorities regularly resort to the use of excessive force in dispersing peaceful demonstrations, which can be considered a form of ill treatment.²⁴ Finally, the authorities fail to undertake investigations following allegations of torture or when complaints are filed to this effect, domestic remedies are thus ineffective.²⁵ Sudanese law also establishes a special justice system tasked with adjudicating police officers and the NISS. This extraordinary jurisdiction does not meet the standards of independence and impartiality.
14. **Recommendations:**
 - a) Ratify the Convention against Torture as well as the OP-CAT and bring domestic legislation in conformity with the pertinent international standards;
 - b) Repeal the 2010 National Security Act, the 2007 Armed Forces Act, and the 2008 Police Act;
 - c) Prosecute perpetrators of torture and ill treatment and ensure effective remedies for victims thereof.

5. Unfair trials

5.1 Arbitrary detention

¹⁴ African Centre for Justice and Peace Studies, [Detainee Die Following Detention and Flogging by Public Order Court in Port Sudan](#), 8 August 2014.

¹⁵ See: African Centre for Justice and Peace Studies, Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan, July 2012, p. 10

¹⁶ Sudan did not accept recommendations 83.21 (Austria), 83.22 (France), 83.23 (Canada), 83.24 (Ireland), 83.25 (Republic of Korea), 83.26 (Switzerland) and 83.27 (United Kingdom).

¹⁷ Article 52 of the NSA (2010).

¹⁸ Article 42(2).

¹⁹ Article 45(1).

²⁰ Amnesty International, "Restrictions on Freedom of Opinion and Expression Persist in Sudan", April 2012.

²¹ Article 10 of the Evidence Act (1994).

²² See: Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention, Opinion n°38/2008 (The Sudan), 2 March 2010, A/HRC/13/30/Add.1, p. 94, para. 16.

²³ Redress and ACJPS, 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.

²⁴ *Ibid.*

²⁵ See: African Commission on Human and Peoples' Rights, Monim Elgak, Osman Hummeida and Amir Suliman against Sudan, Communication 379/09, Decision on Admissibility, August 2012.

15. Under the NSA, the NISS can make arrests without legitimate suspicion that the individual in question committed a criminal offence. One may then be detained without charge for up to 45 consecutive days, often *incommunicado*, and without any obligation to be brought before a judge during the first four and a half months of detention. This repressive legislation is used against members of the opposition and human rights defenders in particular.²⁶ Even outside the scope of application of this law, a large number of arbitrary arrests have been denounced by local as well as international organisations.
16. Sudanese criminal law does not stipulate whether an individual must be brought before a judge within 48 hours of arrest, and citizens are commonly denied their right to presence of a lawyer during interrogations. Furthermore, the 2001 Anti-Terrorism Act, which only vaguely defines terrorism,²⁷ has introduced a 'special courts' system,²⁸ the procedural rules of which were clarified by the President of the Supreme Court and the Minister of Justice, in violation of the principle of separation of powers. They allow for trials to be held *in absentia* and leave open the possibility for these courts to convict the accused on the basis of confessions, notwithstanding the manner in which these were obtained. Hundreds of individuals have been brought before these courts since 2001.²⁹ Furthermore, detention conditions remain problematic, prisons are overcrowded, unhygienic and insecure, and detainees are deprived of adequate medical care, food and water.

5.2 Military trials

17. An amendment introduced to the 2007 Armed Forces Act in 2013, extended the competence of Sudanese military tribunals, granting them jurisdiction to try civilians.³⁰ It further established a list of 16 offences for which a civilian may be brought one of these tribunals, including offences relating to the "spreading of false news" or aimed at "undermining the constitutional system", wording that aimed at all opponents and journalists. In September 2014, a military tribunal sentenced nine individuals to seven years in prison.³¹
18. **Recommendations:**
 - a) Repeal laws establishing the jurisdiction of military tribunals to try civilians;
 - b) Bring the 2001 Anti-Terrorism Act, the rules of procedure of the special courts, as well as the provisions of the Criminal Code relating to the repression of terrorism in conformity with the relevant international standards;
 - c) Ensure that detention conditions are brought in conformity with the United Nations Standard Minimum Rules on the Treatment of Prisoners.

²⁶ For example, several human rights defenders and political opponents were arrested in December 2014 on their return from Addis Ababa, where they had signed the "Sudan Call", a declaration seeking to reform the country and advance towards true democracy. These men were held *incommunicado* during several days before being indicted by the NISS. They were released without charge in April 2015. See: FIDH, [Sudan: Release of human rights defender Dr. Amin Mekki Medani and political activists Faruq Aby Eissa and Farah Ibrahim Alagar](#), 13 April 2015.

²⁷ See: FIDH, Counter-Terrorism Measures and Human Rights: Keys for Compatibility, Human Rights Violation in Sub-Saharan African Countries in the Name of Counter-Terrorism: A High Risks Situation, 2007, p.11.

²⁸ Article 13 of the Terrorism Law of 2001. See: Redress, Criminal Law and Transitional Justice, Human Rights Perspective for Sudan, Ashgate Publishing, 2011.

²⁹ Redress, *ibid.*

³⁰ Human Rights Watch, [Sudan: New Law Allows Military Trials of Civilians. Repeal Amendments to Armed Forces Law](#), 9 July 2013.

³¹ Dabanga, [Nine civilians sentenced by Sudan military court](#), 18 September 2014.

6. Freedom of expression and opinion, peaceful assembly and association

19. The various laws cited above establish several offences criminalising the exercise of the right to freedom of expression. As such, over the past couple of years, many journalists have been arrested and numerous newspapers have been banned and seized by the NISS,³² characterising a form of *de facto* censorship.³³ It has become increasingly difficult for independent media to operate freely in the country or to obtain necessary licenses. Despite criticisms and invitations for its reform, which Sudan accepted during the previous UPR,³⁴ the 2009 Act on press freedom has not been modified, whereby its restrictive provisions remain in force.³⁵
20. These restrictions also apply to the right to freedom of peaceful assembly; in 2013 at least 700 persons were arrested and many killed during peaceful protests, in violation to the right to life and the freedom of peaceful assembly.³⁶ With regard to the freedom of association, the 2006 law on humanitarian work and volunteering severely limits the actions of humanitarian organisations, and civil society in general, reinforcing the control of the authorities.³⁷ This law also had to be changed after the UPR. The NISS continues to closely monitor NGOs; many of which have closed in recent months.³⁸
21. **Recommendations:**
- a) Ensure the full exercise of the freedom of expression and opinion, association, and peaceful assembly;
 - b) Bring the 2009 law on freedom of the press and the 2006 law on humanitarian work and volunteering in conformity with existing international standards;
 - c) Release all journalists, human rights defenders, and political opposition members arbitrarily detained.

³² The Guardian, [Sudan seizes print runs of nine newspapers in media crackdown](#), 25 May 2015.

³³ CPJ, [Journalist arrested in Sudan, held without charge](#), 28 October 2014.

³⁴ See: recommendations 83.28 (Austria) and 83.29 (Canada).

³⁵ Library of Congress, Sudan: Controversial Press Law Approved by Parliament, 15 June 2009.

³⁶ Sudan Tribune, [Amnesty International says more than 200 killed in Sudan protests](#), 4 October 2013.

³⁷ Amnesty International, Sudan: Entrenched Repression, Freedom of Expression and Association under Unprecedented Attack, 2 April 2015.

³⁸ *Ibid.*