



**African Centre for Justice and Peace Studies (ACJPS),  
International Federation for Human Rights (FIDH), and  
International Refugee Rights Initiative (IRRI)**

## **Key Concerns and Recommendations for the Universal Periodic Review of Sudan 2016<sup>1</sup>**

### **Sudan's legal and institutional framework and international instruments**

Human rights and fundamental freedoms are provided for in Sudan's Bill of Rights, enshrined in the 2005 Interim National Constitution (INC). Article 27(3) of the INC provides that all human rights treaties ratified by Sudan are an integral part of the Bill of Rights and Article 27(4) provides that legislation "shall not detract from or derogate any of these rights". 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 and has suffered from a lack of independence.

The constitutional review process, which has been overdue since the secession of South Sudan in July 2011, is stalled. Officials have repeatedly asserted that the new Constitution will be based on Shari'a (Islamic law) without transparent or inclusive consultation and in January 2015, a number of amendments to the INC were passed without public consultation and in breach of the required procedure. This included an amendment that broadened the powers and mandate of Sudan's National Intelligence and Security Service (NISS), designating it as a regular force with a mandate to combat a range of political and social threats and to take precautionary measures against them.

In early 2016, the Government of Sudan announced plans to review 63 laws including the Criminal Procedure Act (1991), National Security Act (2010), the Press and Publications Act and the Evidence Act (1994).<sup>2</sup> Human rights groups have consistently raised concerns about the compatibility of provisions of these and other laws with Sudan's regional and international human rights commitments. The revision of these laws should be undertaken in an open and transparent manner and in line with the human rights treaties to which Sudan is a state party. Any

new draft legislation should be published in good time and subject to meaningful public consultation and parliamentary debate.

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), a lack of funding and the obstruction of its work by Government security services. For example, on 30 December 2012, the NISS prevented civil society activists from delivering a memorandum to the commission on the forced closures of civil society organizations, arrested three activists and beat a journalist who was present.<sup>3</sup>

During the previous review, Sudan accepted a recommendation to become a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), but has not done so to date. In order to strengthen safeguards against torture, protect women's rights and safeguard against other serious human rights violations, Sudan should also consider becoming a party to the Optional Protocol to UNCAT (OPCAT), the Protocol to the African Charter on Human and Peoples' Rights (African Charter) on the Rights of Women, and the International Convention for the Protection of All Persons from Enforced Disappearance.

#### ***Recommendations:***

##### ***Legislative framework***

- Undertake a review and where necessary amend national laws to bring them in line with regional and international human rights treaties to which Sudan is a state party.
- Guarantee draft amendments to 63 laws recently announced by the Government of Sudan are in line with regional and international human rights treaties to which Sudan is a state party, are published in good time, and are the subject of full and transparent public consultation and parliamentary debate.
- Repeal amendments that were made in 2015 to the Interim National Constitution without any public consultation and ensure full transparency, participation and inclusiveness, within the constitutional review process. Further ensure that the provisions of the new Constitution are consistent with Sudan's regional and international human rights obligations.
- Take concrete steps to improve the independence of the judiciary including with regards to ensuring the interpretation of domestic laws in line with the Bill of Rights.

##### ***National Human Rights Institution***

- 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 civil society organisations (CSOs), and its adequate funding and material resources.

##### ***International instruments***

- 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 expedite,

without further delay or reservation, its ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and its Optional Protocol (OPCAT) establishing an international inspection system for places of detention, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, and 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 officials.

## Justice, accountability and effective remedies

### *Impunity and lack of 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, statutes of limitation, lack of adequate victim and witness protection and a system of special courts for the police and security forces. Decisions concerning complaints against Sudan before the African Commission on Human and Peoples' Rights (ACHPR) illustrate the lack of effective local remedies for serious human rights violations including torture.<sup>4</sup> The government of Sudan has repeatedly failed to ensure prompt, thorough, impartial and effective investigations into allegations of torture, ill-treatment and excessive and lethal force used by security forces, and has failed to ensure effective remedies or provide reparation to the victims. While it has reportedly set up committees with a mandate to investigate some incidents of the excessive use of force over recent years, their composition, mandate and findings have never been made public. Further, despite well-documented and publicised cases of torture and other ill-treatment, there have been no known successful prosecutions of NISS officers for such acts. When, exceptionally, authorities have successfully prosecuted other officials for abuses the courts have acquitted them. For example, just one criminal complaint concerning the killing of 185 people by government forces in 2013 proceeded to court and the murder conviction of the accused, a Sudanese Armed Forces (SAF) officer, was subsequently overturned on appeal.<sup>5</sup>

Access to individual complaints procedures at the regional and international level provides an important avenue for redress for victims and a means of supervision for state compliance with legal commitments. Sudan has not accepted any international supervisory mechanism, but has accepted the jurisdiction of the ACHPR under the African Charter. The ACHPR has to date found violations of the African Charter in seven cases, including of Article 5 (prohibition of torture and other ill-treatment), and made recommendations including for reparation to victims. Sudan has yet to comply with the ACHPR's recommendations.

There are similarly no effective justice and accountability mechanisms for serious violations of human rights and humanitarian law in conflict zones and government authorities continue to commit abuses with impunity.<sup>6</sup> There has been no justice for the thousands of victims of the ongoing conflict in Darfur. In its August 2015 report on Darfur the Office of the High Commission on Human Rights (OHCHR) found that Sudan's criminal justice system has failed to have a meaningful impact in combatting impunity and strengthening accountability in that region.<sup>7</sup>

### ***Recommendations:***

- Ensure that all allegations of serious human rights violations including unlawful killings, enforced disappearances, torture and other ill-treatment, are promptly and effectively investigated by an independent and impartial authority and that perpetrators are held to account without delay, before independent and impartial courts, in accordance with international standards of fairness and without resort to the death penalty. Further ensure that victims of serious human rights violations receive protection and reparation measures.
- Repeal all provisions that grant immunity from prosecution for state officials including the police, the National Intelligence and Security Services (NISS), the armed forces, and the Rapid Support Forces, and subject officials to the jurisdiction of ordinary courts;
- Accept the competence of regional and international human rights courts and bodies to consider individual complaints, including by ratifying the First Optional Protocol to the International Covenant on Civil and Political Rights, and implement promptly and comprehensively all recommendations of the African Commission on Human and Peoples' Rights (ACHPR).
- Make public the full findings of inquiries announced into the killing of at least 185 people during protests in 2013 and promptly bring those responsible to justice in accordance with international fair trial standards and without recourse to the death penalty.
- Ensure that those suspected of being responsible for serious human rights violations and 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.
- 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 reparations.

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

### ***Indiscriminate attacks on civilians and other violations of international humanitarian law***

Although the Sudanese government previously accepted UPR recommendations to “end the deliberate and indiscriminate attacks against civilians in Darfur and prosecute those responsible for these attacks” and to “end all indiscriminate attacks against civilians and other violations of international humanitarian and human rights law, especially in Darfur,” the conflict there has intensified and continued to spread with the deployment of the Rapid Support Forces (RSF), a Sudanese government force consisting largely of former militias. Outside Darfur, there have been daily reports of indiscriminate and targeted attacks by government forces, including the RSF, against civilians and other violations of international humanitarian law in South Kordofan and Blue Nile states since conflict broke out in 2011.

### ***Darfur***

Levels of violence in Darfur are reported to be at their highest level since 2004 accompanied by an “especially high” number of killings.<sup>8</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>9</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 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>10</sup>

The human rights violations associated with attacks on civilians 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>11</sup> Arbitrary detention, torture including instances of rape and sexual violence, and extra-judicial killing cases<sup>12</sup> continue to be documented. Scores of individuals have been detained incommunicado for prolonged periods of time in Military Intelligence and NISS custodies.<sup>13</sup> Government forces have also 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>14</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>15</sup> Shortly after, Sudan asked UNAMID to close its office in Khartoum.

### **South Kordofan and Blue Nile**

In South 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 Sudan People’s Liberation Army-North (SPLA-North) in 2011. 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. Over the calendar year 2015, the National Human Rights Monitoring Organisation documented 333 attacks against civilians.<sup>16</sup> This monitoring has also 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, just one example includes the aerial bombardment in May and June 2015 that disrupted cultivation activities before the rainy season.<sup>17</sup> Over four years, government forces have dropped on average three bombs a day destroying civilian property including villages, health facilities, schools, mosques and churches, and the authorities continue to prevent 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>18</sup> Indiscriminate aerial bombardment – using barrel and cluster bombs - and flights over civilian areas has had a profound psychological impact over the course of the conflict.<sup>19</sup> There is also evidence that Government aircraft has deliberately bombed hospitals and other humanitarian facilities and has used cluster bombs.<sup>20</sup> Since 2011, the Sudanese Air Force 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.<sup>21</sup> Levels of resilience are being worn away by the continuing violence which has not only caused physical harm in the

form of fatalities or injuries, but have also spread fear that has led hundreds of thousands to flee their homes.<sup>22</sup>

In Blue Nile, Government forces have arbitrarily detained residents, raped women and girls, and restricted residents' movements, farming, and access to food.<sup>23</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>24</sup> The SPLA-North has also launched retaliation attacks on civilian communities presumed to support Government forces.<sup>25</sup>

#### ***Recommendations:***

- 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 UNAMID in Darfur, including by facilitating its full and unfettered access to all parts of Darfur, and ensure that the mission can carry out its mandate to protect civilians freely and without hindrance.

## **Arbitrary detention, unfair trials, torture and the role of the NISS**

### ***Torture and other ill-treatment***

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 and other applicable offences, such as causing hurt or abuse of office, do not adequately capture the seriousness of torture or impose appropriate sanctions. There is a lack of clarity in the Evidence Act of 1994 concerning the admissibility of evidence obtained through torture and courts have regularly dismissed allegations that confessions had been extracted under torture.

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 themselves and their families, threats of sexual violence and exposure to the torture and beatings of fellow 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>26</sup>

### *The National Intelligence and Security Service (NISS)*

The National Security Act of 2010 (NSA 2010) grants the 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 and unequivocal access to a lawyer of one's choice or the right to medical care, and grants immunity to officials. This and other laws fail to provide adequate safeguards, permit arbitrary detention, 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, the confiscation of assets belonging to civil society organizations, and the confiscation of entire print runs of newspapers for censorship.

#### ***Arbitrary detentions***

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. NISS routinely holds detainees incommunicado and without charge for prolonged periods, including in excess of the four and a half months permitted the NSA 2010,<sup>27</sup> and has subjected detainees to torture and other forms of ill-treatment. 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 has refused permission for individuals to leave the country.

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>28</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 leading to the killing of at least 185 people in 2013.<sup>29</sup>

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>30</sup> Many were detained for several days and subjected to harsh beatings before being released without charge.<sup>31</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 opposition Sudanese Congress Party (SCP) were detained by the NISS.

A state of emergency is in force in the five states of Darfur, South Kordofan and Blue Nile, bringing Sudan's emergency laws into operation. The legal framework for emergencies as set out in the Emergency and Protection of Public Safety Act of 1997, read together with the Emergency and Public Safety Bylaw of 1998, permits preventive arrest and detention on vague grounds. These include the belief of the authorities that the person in question has acted or may act in a way that "affects public security, or public safety, or ... participated in any crime related to the declaration". The 1998 Bylaw provides neither time limits for this type of detention, nor judicial oversight, and therefore authorises prolonged if not indefinite detention. The broad powers given to the Executive under the 1997 Act and 1998 Bylaw have repeatedly given rise to concerns over

arbitrary arrest and detention, ill-treatment and torture, and violations of the right to a fair trial, which are facilitated by the virtually complete absence of safeguards and judicial oversight.<sup>32</sup>

### *Unfair trials*

‘Special Terrorism Courts’ established by the Chief Justice and the Minister of Justice pursuant to the 2001 Anti-Terrorism Act have raised serious concerns about the right to a fair trial and the independence of the judiciary. The ‘Special Terrorism Courts’ have the power to impose and confirm the death penalty, and afford a very limited right to appeal. Article 16 of the 2001 Anti-Terrorism Act provides convicted persons just one opportunity to appeal to the Terrorism Appeals Court. In cases where a death penalty or life sentence has been handed down by a Special Terrorism Court, Article 17 provides that the Terrorism Appeal Court is only authorised only to approve the judgement, which must then be approved by the President. This means that in death penalty cases the Terrorism Appeal Court may only ‘rubber stamp’ the judgment of the lower court. The Rules of Procedure of the ‘Special Terrorism Courts’ (Rule No. 82/2008) were formulated by the Chief Justice and Minister of Justice, pursuant to Article 13 of the 2001 Anti-Terrorism Act, but in breach of the principles of the independence of the judiciary. The Rules restrict the right of the defence to meet the accused person, permit trials in absentia, and empower courts to convict on the basis of confessions without investigating the circumstances under which they were made.<sup>33</sup>

In July 2013 Sudan’s Parliament passed amendments to the Sudan Armed Forces Act of 2007 subjecting civilians to the jurisdiction of military courts for a range of broadly defined offences. These include undermining the constitutional system, leaking classified information, and the publication of false news.<sup>34</sup>

## **Recommendations:**

### *Torture and other ill-treatment*

- Adopt legislation that defines and criminalises torture in line with international standards including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), provide effective access to justice and adequate reparation to victims of torture, and ensure that confessions obtained under torture are not used or accepted by courts under any circumstances.
- Ensure that all detainees are protected from torture or other ill-treatment, have prompt, unfettered, confidential and regular access to their legal representatives, families and any medical assistance they may require, that detention conditions meet international standards, and establish a mechanism for independent, unrestricted and unannounced visits to any places of detention.
- Ensure that all allegations of torture and other ill-treatment are promptly and effectively investigated by an independent and impartial authority and that perpetrators, including members of the NISS, police and armed forces, are held to account without delay before independent and impartial courts in accordance with international standards of fairness and without resort to the death penalty. Further ensure that victims of serious human rights violations receive protection and reparation measures.

### *Arbitrary detention and unfair trials*

- Ensure that all detainees are brought promptly, and within no more than 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 according to international standards.
- Bring the 2001 Anti-Terrorism Act, Rules of Procedure of the Special Terrorism Courts, Emergency and Protection of Public Safety Act of 1997 and Bylaw of 1998, and other relevant legislation, in line with regional and international standards concerning the right to a fair trial and absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment.
- Adopt legal measures to prohibit military courts from exercising jurisdiction over civilians.

#### *The National Intelligence and Security Service (NISS)*

- Repeal or undertake a comprehensive reform of the 2010 National Security Act by removing law-enforcement functions from the National Intelligence and Security Service (NISS), guarantee custodial safeguards such as prompt and unequivocal access to family members and lawyers to all those held in NISS custody, repeal all legal provisions that grant immunities for NISS and other officials, and subject officials to the jurisdiction of ordinary courts.
- Instruct the National Intelligence and Security Service to end harassment, arbitrary detention, torture and other abuse of human rights activists, political activists, student activists, journalists and other individuals who criticise the authorities.

## **The rights to freedom of expression, association and assembly**

### 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. The NISS has restricted the media through blacklisting, prosecuting and harassing journalists, 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. In an emerging trend since 2013, traditionally pro-government newspapers have also been censored.<sup>35</sup> TV and access to electronic media sites has also been blocked.

Censorship is often ramped up around key events with post-print censorship, whereby entire print runs of daily editions are confiscated prior to morning distribution, at great cost to newspapers, which along with other forms of harassment and intimidation, enforces self-censorship as Editors are unable to afford to publish opinions that might result in the print run being confiscated. This is being used increasingly as a control tactic by the NISS, for example, on 16 February 2015, the entire print runs of 14 newspapers were confiscated by the NISS without reasons being given.<sup>36</sup> Authorities also tightened restrictions to prevent coverage of the nationwide anti-austerity protests in 2013 and again in April 2015, to prevent coverage of an elections boycott by opposition parties.

Journalists have been targeted by the NISS for arbitrary arrest, detention, ill-treatment and torture for reporting on certain issues. During the September 2013 anti-austerity protests, Amal Habani, a freelance journalist, was arrested and detained incommunicado for over a week.<sup>37</sup> Journalist Hassan Ishag, a member of the SCP, was detained on 10 June 2014 and held without charge under the 1997 Emergency Act for more than 3 months after reporting the detention of the SCP leader on social media. Ishag was arrested by plain-clothed officers and lost consciousness when he was beaten and kicked during interrogations.<sup>38</sup>

### **Restrictions on political parties, their activities 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. Each year President al-Bashir has 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 prior approval and requires permission for public meetings to be given at least 48 hours in advance. 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>39</sup>

Prominent leaders and members of political opposition parties have been targeted by the NISS for repeated summonses and 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, and political opposition leader Farouq Abu Eissa, were detained for over four months after returning from political negotiations in Addis Ababa. They were detained in December 2014 and held incommunicado for 15 days before being charged with crimes against the state that carry the death penalty. They were eventually released on 9 April 2015 after the Minister of Justice exercised his discretionary powers to drop the case.<sup>40</sup>

### **Crackdowns on civil society organisations**

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

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>41</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>42</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>43</sup> and in March 2013 the NISS in Khartoum shut down a workshop convened by the Al Ayaam Centre for Cultural and Development Studies (ACCDS) on constitutional reform. In June 2014, authorities ordered the closure of Salmaah Centre, a women’s rights organization in Khartoum<sup>44</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 UPR of Sudan was taking place, confiscated documents and briefly detained a journalist present at the workshop.<sup>45</sup> In February 2015, officials closed the Sudanese Writer's Union<sup>46</sup>, and on 18 January 2015, they raided and closed down the Mahmoud Mohammed Taha Cultural Centre.<sup>47</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 and 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 remain.<sup>48</sup>

### ***Violent repression of protest and other restrictions on freedom of assembly***

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. During nation-wide anti-austerity demonstrations in 2012, 12 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. 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, whilst many others were shot in the back.<sup>49</sup> Protestors calling for justice and accountability for the victims have subsequently been beaten and detained.<sup>50</sup> Authorities have also violently dispersed Darfuri student gatherings on University campuses on a number of occasions, leading to deaths and serious injuries.<sup>51</sup>

The offences of “rioting” and “disturbance of public peace” under the 1991 Criminal Act are routinely used to restrict the right to peaceful assembly. On 6 July 2015, three members of the SCP 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.<sup>52</sup>

### ***Recommendations:***

#### ***Restrictions on freedom of expression, association and assembly***

- Guarantee the rights to freedom of expression, association and assembly, promptly investigate all allegations of intimidation and harassment of members of civil society, journalists and political opposition groups, and end arbitrary restrictions on independent civil society groups and political parties.
- Instruct the NISS to cease harassment and intimidation of civil society actors, including human rights defenders, journalists, members of student groups and opposition political parties.

#### ***Freedom of the media***

- Instruct the NISS to cease censorship, harassment and intimidation of journalists and take immediate steps to ensure a climate in which all citizens are able to freely express their opinions and beliefs, without fear of reprisal or retribution.
- Amend, without delay, the Press and Publications Act, to bring it in line with

international standards and best practices on freedom of expression, including online expression, and ensure journalists and members of civil society fully participate in the process of media law reform.

#### *Civil society organisations*

- Ensure that civil society organisations are able to operate freely and their members are able to fully exercise their rights to freedom of expression, association and assembly.

#### *Excessive use of force*

- Ensure that security forces carry their mandate in accordance with the UN 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 demonstrators and that reports of such violations are thoroughly and independently investigated with a view to bringing those responsible to justice promptly.

## **The death penalty and corporal punishments**

Sudan's Interim National Constitution (INC) Article 33 prohibits torture but fails to prohibit cruel, inhuman or degrading punishment. A number of national laws provide for corporal punishments including lashing, amputation, stoning and the death penalty by hanging in violation of the absolute prohibition torture and cruel, inhuman or degrading punishment or treatment to which Sudan has committed under the African Charter and the International Covenant on Civil and Political Rights (ICCPR).

Lashing is routinely implemented by Sudanese courts as *hudud* punishment for adultery, wrongful accusation of adultery and drinking of alcohol, and for 18 other offences in the 1991 Criminal Act including Article 152 prohibiting "Indecent or Immoral Acts". Lashings are also implemented routinely under public order laws enacted by the localities. 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. Lashing penalties are routinely implemented in the court complex immediately after a summary hearing in which the accused does not have legal representation or the opportunity to appeal the sentence, raising serious concerns about the right to fair trial. These are routinely applied in a discriminatory manner against women (see section below) and ethnic or religious minorities, and have also been used to target activists and members of the political opposition.

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>53</sup> At the time, Government officials confirmed that 16 cases of amputation had been carried out since 2001.<sup>54</sup> In 2012 Sudanese courts handed down the sentence of stoning for adultery in two judgments against Ms Intisar Sharif Abdalla and Ms Laila Ibrahim Issa Jamool although these were later overturned without the penalties being carried out.<sup>55</sup>

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 – also 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. For example, Ibrahim el Sheikh, leader of the SCP, 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 RSF.<sup>56</sup>

Since the last UPR of Sudan, the scope of application of the death penalty has in fact been widened. The crime of apostasy, which carries the death penalty and undermines the right to freedom of religion, has been broadened to include additional prohibited acts. Further, a new crime of trafficking under the 2013 Trafficking Act also attracts the death penalty.

#### **Recommendations:**

- Impose an immediate moratorium on executions, commute all death sentences and reduce the number of crimes punishable by death with a view to the total abolition of the death penalty.
- Repeal all laws prescribing corporal punishments including lashing, amputation and stoning.

## **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. 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. Government figures for 2008 reportedly showed that 43,000 women were arrested for clothing-related offenses in Khartoum alone.<sup>57</sup> 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”. In practice, the enforcement of public order laws by the public order police and courts has often been discriminatory and arbitrary against women and girls, especially those from marginalised religious or ethnic groups.

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 serious gaps remained. The amendments expanded the range of acts deemed to constitute rape and importantly, rape is no longer defined by reference to adultery or sodomy. However, the amendment unfortunately created further legal uncertainty relating to (i) the possible continuing conflation of the offence of rape with the offences of “adultery” and “sodomy” because the provision concerning the penalty for rape, set out under Article 149(2), remains unchanged and still refers to rape by way of those acts, leaving a continuing concern that rape complainants will risk prosecution for the offence of adultery if they fail to prove rape (ii) the evidence standards that will apply in rape cases and (iii) the age of consent and whether this will be determined by the definition of adult under the Criminal Act of

1991 (which refers to either a person of 18 years or over or “a person whose puberty has been established by definite natural features and has completed fifteen years of age”), or the definition of child under the Child Act of 2010, which sets out a child is any person under 18 years of age. Further, no provision is made for aggravating or mitigating factors to be taken into consideration in relation to punishment (for example abuse of office or torture).

An amendment to Article 151 (gross indecency) introduced a new offence of sexual harassment by virtue of a new Article 151 (3). The introduction of a new crime of sexual harassment would appear, on the face of it, to broaden access to justice for victims of sexual violence. However, the provision is unclear in its scope and meaning and fails to clearly prohibit acts, behaviour or speech that constitute sexual harassment, such as inappropriate touching. Instead, the new law opens the possibility for victims of sexual violence to be prosecuted for “gross indecency”.

In addition, Sudan has failed to take any steps to criminalise marital rape and domestic violence and there is no national law explicitly criminalising the practice of female genital mutilation.

#### ***Recommendations:***

- Undertake a review of all laws and policies, together with independent civil society groups, to ensure effective criminal justice responses to all forms of sexual and gender based violence, including marital rape, domestic violence, and female genital mutilation
- Ensure the availability of adequate protection and reparation measures for complainants, and the application of appropriate sanctions for offenders.
- Further revise Articles 149 and 151 of the 1991 Criminal Act, in addition to other laws pertinent to the prosecution of sexual offences such as the Evidence Act of 1994, in consultation with independent civil society groups and experts, to ensure effective prevention and responses to acts of sexual violence.
- Repeal Article 152 of the 1991 Criminal Act and all other laws that arbitrarily interfere with the right to non-discrimination, private and family life, and ensure that they conform to international standards.

## **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>58</sup> In early 2013, authorities shut down four Christian educational institutes, arresting staff and confiscating property.<sup>59</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>60</sup> That year, it is estimated that the government deported, or otherwise forced, over 170 foreign church members to leave Sudan.<sup>61</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>62</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. In January 2015, Sudan amended article 126 to widen the definition of apostasy to target other schools of Islam as 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. Meriam gave birth in her prison cell, shackled, before her convictions were overturned on appeal.<sup>63</sup>

**Recommendations:**

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

## The Rights of Refugees and Asylum Seekers

A new Asylum Regulation Act was passed in 2014 that strengthened legal protection for refugees and individuals in need of international protection in Sudan. However, law enforcement and judicial authorities have not consistently applied the new provisions and ACJPS documented cases the following year where individuals seeking international protection were detained and at risk of *refoulement* for entering Sudan illegally.<sup>64</sup>

An anti-trafficking law was passed in 2013 and according to UNHCR (2015) trafficking cases have reportedly declined.<sup>65</sup> However, refugees and asylum seekers, especially those living in eastern Sudan, remained at risk of trafficking and cases of abductions by trafficking gangs continue to be documented.<sup>66</sup> Of further concern, the new crime of trafficking carries the death penalty.

**Recommendations:**

- 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.

<sup>1</sup> This document is based on the a formal stakeholder submission made by the African Centre for Justice and Peace Studies (ACJPS), International Federation for Human Rights (FIDH) and the International Refugee Rights Initiative (IRRI) in September 2016. The full UPR submission made by our organisations, including web links to all cited material, is available online at: <http://www.acjps.org/wp-content/uploads/2015/09/ACJPS-FIDH-and-IRRI-joint-submission-UPR-Sudan-2016.pdf>.

<sup>2</sup> For example, statement delivered by Tahani Ali Mohamed, State Minister, Ministry of Justice of Sudan, during the High Level Segment of the UN Human Rights Council 31<sup>st</sup> Session, 1 March 2016.

<sup>3</sup> ACJPS, “Civil society organisations closed in renewed clamp down on freedom of association in Sudan”, 9 January 2013.

<sup>4</sup> See for example, African Commission on Human and Peoples’ Rights, Communication 379/09, “Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan”, published 2015.

<sup>5</sup> FIDH and ACJPS, “Sudan: One year after the September 2013 bloody repression victims still await truth and justice”, 22 September 2014.

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