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Ending Torture. Seeking Justice for Survivors



Chairperson, Committee on Economic, Social and Cultural Rights
Office of the High Commissioner for Human Rights
UNOG-OHCHR
CH 1211 Geneva 10
Switzerland

1 October 2014

Dear Mr. Kedzia,

56th Session of the Committee on Economic, Social and Cultural Rights – Pre-Sessional Working Group on Sudan

We are writing with a view to the pre-sessional meeting of the working group on Sudan during the 54th Session from 1-5 December 2014.

Please find below a brief update of developments pertaining to the main concerns of REDRESS and the African Centre for Justice and Peace Studies (ACJPS) in relation to the state party's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

I. Renewed conflict, ongoing human rights violations and impunity

The situation in Sudan since 2000, when the Committee on Economic, Social and Cultural Rights last considered a report by the State party,¹ has been marked by considerable developments and changes, including the adoption of the Comprehensive Peace Agreement in 2005, the Interim National Constitution in 2005 and the independence of South Sudan in 2011. Nonetheless, most of the concerns identified in the Committee's concluding observations of 2000 have not been adequately addressed, and several new issues of concern have arisen since.

The situation in Sudan continues to be characterised by ongoing human rights violations, armed conflict, impunity and a weak rule of law. Lack of democracy, marginalisation (of the periphery and of groups within Sudan, particularly women) and weak governance are among the key factors that have contributed to this systemic crisis. Since 2011, this crisis has been compounded by a deteriorating economic situation, with Sudan ranking 166 out of 187 countries in the UN Human Development Index of 2014.² According to a summary contained in the report of the UN Special Rapporteur on IDPs based on UN sources:

While Sudan is the third largest country in Africa, and benefits from considerable natural resources, endemic poverty affects 47 per cent of the population. The lack of access to basic services and a social safety net, particularly in peripheral regions, is reflected in indicators such as low access to improved drinking water and sanitation facilities (20.8 per cent), primary school completion (62.7 per cent), full immunization of children (39.3 per cent), birth registration (59.3 per cent) and high under-five and maternal mortality rates. The United Nations estimates that 4.4 million people are in need in Sudan.³

A large proportion of available funds is spent on the military and security services,⁴ and corruption is reported to be systemic, with Sudan ranking 174 out of 177 countries in the 2013 corruption perceptions index.⁵

Various sources have documented serious violations of international human rights law and international humanitarian law, such as extrajudicial killings, enforced disappearances, torture and ill-treatment, the bombing of schools and hospitals, and large-scale displacement in the course of ongoing armed conflicts in Kordofan and Blue Nile, as well as in Darfur.⁶ These conflicts are due to a combination of factors but many observers have attributed them to ethnic and religious discrimination and marginalisation, and the lack of respect for minority rights.⁷

¹ *Concluding observations of the Committee on Economic, Social and Cultural Rights: Sudan*, UN Doc. E/C.12/1/Add.48, 1 September 2000.

² See UNDP, *2014 Human Development Report - Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, <http://hdr.undp.org/en>

³ Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Benyani, *Addendum: Mission to Sudan*, UN Doc. A/HRC/23/44/Add.2, 25 June 2013, para.7 (footnotes omitted).

⁴ See Maira Martini, 'Corruption and Anti-Corruption in Sudan', U4 Anti-Corruption Research Centre, 22 August 2012, 3: "Another area of budget-related concern is linked to the security situation of the country. Major parts of the government budget are allocated to military spending, and this situation has persisted beyond the signature of the CPA. According to Global Integrity 2006, military budgets are not disclosed and large amounts of funds are secretly used by the Presidency for 'classified security operations'. The Ministry of Finance allegedly does not have records of expenditures of presidential, security and defence affairs."

⁵ See Transparency International, *Corruption Perceptions Index*, 2013, <http://cpi.transparency.org/cpi2013/results/>

⁶ See in this regard also *Interights, Human Rights Watch, Sudan Democracy First Group, and REDRESS v. Sudan*, Communication 402/2011 (pending before the African Commission on Human and Peoples' Rights), <http://www.redress.org/case-docket/redress-sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta>

⁷ AUPD's mandate *Darfur: The Quest for Peace, Justice and Reconciliation*, Report of the African Union High-Level Panel on Darfur (AUPD), PSC/AHG/2 (CCVII) (29 October 2009), 2, para.9, referred to the situation as the "Sudanese crisis in Darfur"

Restrictions on the rights to freedom of expression, association and assembly have increased since the cessation of South Sudan in July 2011. The documented restrictions are manifold: journalists and media houses have been harassed, intimidated and subjected to pre-and post-print censorship.⁸ Civil society organisations (CSOs) have been forced to close;⁹ members of political opposition parties and those perceived to be affiliated to political opposition parties have been detained for prolonged periods by the National Intelligence and Security Service (NISS) without formal charges lodged and without access to lawyers or their families;¹⁰ and individuals participating in public protests or forums or accused of organising such events, particularly student activists, have been harassed and detained without charges by the NISS.¹¹

Popular protests which were held throughout the period 2011-2013, which included protests against austerity measures, were met with excessive use of force,¹² including extra-judicial executions, mass arbitrary detentions as well as torture and ill-treatment of protestors and protest organisers. Human rights defenders, including journalists and lawyers monitoring the detentions have also been subject to harassment, intimidation and detention by the NISS.¹³ In demonstrations that took place across Sudan from September – October 2013, ACJPS documented the deaths of 185 demonstrators, verifying the names of 144.¹⁴ Since 20 September 2014, roughly a year after the outbreak of the demonstrations, at least 59 persons, including score of well-known youth and political activists, have been arrested in Khartoum, Khartoum Bahri, and Omdurman. At least 50 activists remain detained in unknown locations and without access to their families and their lawyers.¹⁵

II. The situation of Internally Displaced Persons (IDPs) in Sudan

The UN Special Rapporteur on IDPs, in his report on his 2012 mission to Sudan, attributed patterns of internal displacement in Sudan to “deeply rooted ... political tensions between the centre and peripheral regions, often related to demands for reforms in the distribution of wealth, power and greater recognition of the country’s diversity.”¹⁶ According to his report,

but this characterisation applies equally to several other parts of the country.

⁸ For example, in just three months between January – March 2014 over fifteen newspapers were subjected to post-print censorship by the NISS, some more than once, see 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, <http://www.acjps.org/wp-content/uploads/2014/05/SHRM-December-2013-January-2014.pdf>

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

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

¹¹ See REDRESS, ACJPS and Sudan Democracy First Group, *Comments to Sudan’s 4th and 5th Periodic Report to the African Commission on Human and Peoples’ Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment*, April 2012, <http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf> and ACJPS, Amnesty International, Human Rights Watch, FIDH, and Redress, ‘Sudan: End Arbitrary Detention of Activists’, 25 June 2014, <http://www.acjps.org/sudan-end-arbitrary-detention-of-activists/>

¹² ACJPS and Amnesty International, ‘Excessive and deadly: the use of force, detention and torture against protestors in Sudan’, 3 September 2014, http://reliefweb.int/sites/reliefweb.int/files/resources/SUDANReport_0.pdf

¹³ 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/?p=1060>

¹⁴ ACJPS and Amnesty International, *Excessive and deadly*, above note 12.

¹⁵ 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/category/pressreleases/>

¹⁶ Report of the Special Rapporteur, above note 3, para.13.

The United Nations has reported a total of 4.4 million people in need in Sudan, including over 1.4 million IDPs in camps in Darfur, who are receiving food aid; nearly 140,000 IDPs and/or severely affected people in Blue Nile; and over 500,000 in South Kordofan. Between 220,000 and 350,000 people of South Sudanese origin living in Sudan are also of concern; many of them require assistance.¹⁷

The International Displacement Monitoring Centre reported that “at least 470,000 people were newly displaced in Sudan in 2013. They fled increased fighting between armed groups, pro-government militias and the security forces, inter-communal violence and tribal conflicts in states including South and North Kordofan, Blue Nile and the Darfur States.”¹⁸ The Office for the Coordination of Humanitarian Affairs (OCHA) has also reported that the scale of new displacement in 2014 and the type of violence inflicted on the civilian population was reminiscent of the early years of the Darfur conflict from 2003 – 2005.¹⁹

IDPs have suffered from poor living conditions, insecurity, gender-based violence and further displacement.²⁰ The Special Rapporteur on IDPs reached the following conclusions following his 2012 country-visit:

While the various agreements to which the Government of Sudan has committed offer new opportunities to work towards peace and durable solutions, visible results for affected communities continue to be challenged by a number of factors, including the lack of comprehensive political solutions and the slow pace of implementation of existing agreements, insecurity, limited access and capacity, and insufficient preventive measures, such as conflict-resolution mechanisms. The resulting human and socioeconomic toll on the country has created deep vulnerabilities among displacement-affected communities, already affected by environmental challenges, including more frequent and prolonged droughts and food insecurity which is exacerbated by conflict and rising food prices.²¹

In addition to concerns over a lack of protection and humanitarian access, IDPs – who live across Sudan, particularly in and around Khartoum – suffer from a weak protection of their rights and their inability to effectively access justice.²² In a well-known incident, several hundred residents of Soba Aradi, an IDP camp in the South East of Khartoum, were arbitrarily detained by the police in 2005 for over a year following protests in which IDPs had resisted forced relocation. The African Commission on Human and Peoples’ Rights, in its decision of January 2014 in *Abdel Hadi, Ali Radi and Others v Sudan*, found Sudan responsible for the violation of a series of rights, including the prohibition of torture, the right to liberty and security, the right to a fair trial and the obligation to give effect to the Charter rights (article 1 of the African Charter which is similar to article 2(1) and (2) of the Covenant).²³ This includes the failure to effectively investigate complaints of torture, ill-treatment and other violations raised by the complainants in 2006 and to provide reparation. Sudan has yet to take measures to implement the decision.

¹⁷ Ibid.

¹⁸ IDMC, ‘Sudan: Internal Displacement in Brief’, Summary, 31 December 2013, <http://www.internal-displacement.org/sub-saharan-africa/sudan/summary/>

¹⁹ UN Office for the Coordination of Humanitarian Affairs, ‘Darfur: New displacement – first quarter 2014’, March 2014.

²⁰ Report of the Independent Expert on Human Rights in the Sudan, Mashood Baderin, UN Doc. A/HRC/24/31, 18 September 2013, para.41.

²¹ Report of the Special Rapporteur, above note 3, para.62.

²² See UNHCR, Country Operation Profile-Sudan, 2014, <http://www.unhcr.org/pages/49e483b76.html>

²³ African Commission on Human and Peoples’ Rights, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication 368/10 (2014).

III. The adverse human rights impact of dam projects

The construction of the Merowe Dam which began in 2003 and was completed in 2009, as well as the Kajbar Dam, both in Northern Sudan, which started in 2005 and is currently on hold, have raised considerable human rights concerns.²⁴ The construction of the Merowe Dam reportedly resulted in the displacement and forced eviction of over 50,000 people.²⁵ Government forces reportedly used excessive force to quell protests against the construction of the dam. On 22 April 2006, armed militia, in the presence of police guards, reportedly killed at least three anti-dam protesters during a peaceful gathering at a school courtyard and injured around 40 others. To date, perpetrators of these attacks have not been prosecuted and no formal investigations have been concluded.²⁶ On 13 June 2007, heavily armed Sudanese security forces fired on a peaceful anti-dam demonstration, reportedly killing four demonstrators and wounding more than 15 others; 26 individuals were arrested and held for several weeks, including journalists who tried to cover the protest.²⁷ The perpetrators of the attacks have not been prosecuted, despite numerous complaints and requests filed by aggrieved individuals. While construction of the Kajbar dam was halted for several years, Sudan has recently expressed its intent to resume the construction of the dam.²⁸ ACJPS has also documented cases of arrests of activists demonstrating against the construction of dams in Sudan and development-induced displacement. On 25 December 2011, Juang Peter Mackol, a 27 years old art student at the University of Khartoum, was arrested on campus and assaulted by riot police. The arrest followed a demonstration of the Al-Manasir community against the Merowe Dam. An initial investigation was opened before the prosecutor in Khartoum in January 2012 and the case was still pending without progress made at the time of writing.²⁹ Four activists were arrested in January 2013 after they made comments to *Al Sahafa* newspaper publicly criticizing the construction of Setiet dam in Kassala, eastern Sudan.³⁰

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

Constitution

Article 27 (3) of Sudan's Interim National Constitution of 2005 (INC) provides that '[a]ll rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill [of Rights].'

However, economic, social and cultural rights are not explicitly set out in the Bill of Rights with the exception of the right to education, rights of persons with special needs and the elderly and public

²⁴ Egyptian Initiative for Personal Rights, 'The Other Side of the Sudan Dams Complaint before the African Commission seeks justice for victims of Sudanese dams', 7 October 2013, <http://eipr.org/en/blog/post/2013/10/07/1839>.

²⁵ The UN Special Rapporteur on Adequate Housing, Miloon Kothari, estimated the numbers affected by the construction of the Merowe Dam at 60,000, see UN High Commissioner on Human Rights, 'U.N. Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects', 27 August 2007, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7513&LangID=E>

²⁶ See in this regard Egyptian Initiative for Personal Rights, 'The Other Side of the Sudan Dams Complaint before the African Commission seeks justice for victims of Sudanese dams', 7 October 2013, <http://eipr.org/en/blog/post/2013/10/07/1839>

²⁷ Human Rights Watch, *World Report 2008*, p.169, <http://www.hrw.org/reports/2008/01/30/world-report-2008>

²⁸ See Peter Bosshard, 'New Chinese Dam Project Fuels Ethnic Conflict in Sudan', 20 January 2011, <http://www.internationalrivers.org/blogs/227/new-chinese-dam-project-fuels-ethnic-conflict-in-sudan>

²⁹ ACJPS and REDRESS, '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, para. 101, <http://www.redress.org/downloads/publications/140613SubmissionSudanHRC.pdf>

³⁰ ACJPS, 'Sudan Human Rights Monitor Update: January – February 2013', March 2013, <http://www.acjps.org/wp-content/uploads/2013/07/SHRM-Update-January-February-2013.pdf>

health care. Other than this, some broad references to economic, social and cultural rights are contained in the non-binding Guiding Principles and Directives in Chapter II of the INC.³¹

Beyond this formal recognition, several factors undermine the effective implementation of the Covenant in Sudan.³² The Bill of Rights - of which article 27 (3) forms an integral part – lists some rights contained in the Covenant, but adopts definitions that diverge from the Covenant.³³ Access to the Constitutional Court tasked with the protection of fundamental rights is hampered by the requirement to pay considerable court fees (\$1,000). Further, the Court's jurisprudence has been weak in terms of providing effective protection of human rights; in most fundamental rights cases, the Court found no violation even where there were apparent inconsistencies with international standards.³⁴ The recently established National Human Rights Commission has a complaints procedure in place but this is not well known and has been weak, therefore not providing for effective protection of rights either.

The current constitutional review process necessitated by South Sudan's secession is widely seen as lacking transparency and adequate public consultation. The Government of Sudan has not set out clearly how the Covenant will be effectively incorporated, including its status in Sudanese law, also vis-à-vis Sharia law.³⁵

Statutory law

Sudan has not enacted (or repealed) the requisite laws to bring Sudan's legislation in conformity with the Covenant. No information is available on any comprehensive review of the compatibility of Sudan's laws with its international obligations in this regard. Reforms undertaken have not addressed a number of critical areas, such as women's rights (non-discrimination, protection against sexual violence), leaving significant gaps in recognition and protection. Regional public order laws, including the Khartoum Public Order Act of 1998, the Trade Union Act of 2010, the Press and Publication Act of 2009 and the Voluntary and Humanitarian Work (Organisation) Act of 2006 retain provisions that are incompatible with, or raise concerns regarding their compatibility with the rights guaranteed under the Covenant, including the right to non-discrimination, the right to form and join trade unions, and the right to health.³⁶

³¹ See further, REDRESS, Faculty of Law-University of Khartoum and Sudanese Human Rights Monitor, *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives*, January 2014, <http://www.redress.org/downloads/publications/140127FINAL%20Sudan%20UoK%20Report.pdf>

³² See REDRESS and Sudanese Human Rights Monitor, *Criminal Justice and Human Rights: An agenda for effective human rights protection in Sudan's new constitution*, March 2012, <http://www.redress.org/downloads/publications/1203%20Sudan%20Criminal%20Justice%20and%20Human%20Rights.pdf>

³³ Right to Education, Article 44: "(1) Education is a right for every citizen and the State shall provide access to education without discrimination as to religion, race, ethnicity, gender or disability. (2) Primary education is compulsory and the State shall provide it free; Rights of Persons with Special Needs and the Elderly"; Article 45: "(1) The State shall guarantee to persons with special needs the enjoyment of all the rights and freedoms set out in this Constitution; especially respect for their human dignity, access to suitable education, employment and full participation in society.(2) The elderly shall have the right to the respect of their dignity. The State shall provide them with the necessary care and medical services as shall be regulated by law"; Public Health Care, Article 46: "The State shall promote public health, establish, rehabilitate, develop basic medical and diagnostic institutions, provide free primary health care and emergency services for all citizens."

³⁴ See REDRESS and Sudanese Human Rights Monitor, *Arrested Development: Sudan's Constitutional Court, Access to Justice and the Effective Protection of Human Rights*, August 2012, http://www.redress.org/downloads/publications/1208arrested_development_sudan.pdf

³⁵ See in this regard also subject of concern raised by the Committee in its 2000 concluding observations, para.18.

³⁶ See for materials on law reform in Sudan, <http://www.redress.org/africa/sudan>

V. Discrimination, lack of equality between men and women and inadequate protection against sexual violence (articles 2 and 10 of the Covenant)

Sudan's Bill of Rights recognises equality before the law and equal rights of men and women.³⁷ However, Sudan's statutory law discriminates against women or fails to provide equal protection, which has been the subject of sustained protests and advocacy for reforms.³⁸

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.³⁹ Women also sometimes have curfews on the hours they can work, limiting their ability to generate income. Tea sellers and women that work late into the evening are often vulnerable to arrest by public order police, exploitation, and/or sexual assault.⁴⁰ In the applied law of evidence, for some offences, such as adultery, only men can provide admissible evidence which amounts to *de jure* discrimination.⁴¹ Public order laws and provisions, such as article 152 of the Criminal Act 1991 that makes the wearing of 'indecent' or 'immoral' dress punishable by whipping, have a disproportionate impact on women who are *de facto* the sole targets of this provision.⁴² In practice, the enforcement of public order laws by the public order police has frequently been discriminatory and arbitrary.⁴³

As highlighted by the Committee:

Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.⁴⁴

The laws on sexual violence fail to provide equal and adequate protection of women's right to physical and mental integrity, which constitutes both discrimination and a failure to implement positive obligations arising from article 2 of the Covenant. Article 149 of the Criminal Act of 1991 defines rape with reference to adultery, which creates confusion over evidentiary requirements for a prosecution (adultery requires four male eye-witness of the act) and puts a woman at risk of facing prosecution for adultery if she cannot prove rape.⁴⁵ The definition of rape is narrow in scope and

³⁷ Articles 31 and 32 of the INC respectively.

³⁸ See Asma Abdel Halim, 'Gendered Justice: Women and the Application of Penal Laws in the Sudan', in Lutz Oette (ed.), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate, Farnham, 2011), pp. 227-241.

³⁹ See Zeinab Abbas Badawi, 'Needed Reforms in Family Muslim Laws and Customary Laws in Sudan', in Akolda Tier and Balghis Badri (eds), *Law Reform in Sudan* (Ahfad University of Women, Khartoum, 2008), pp. 207-237. Article 40 (2) of Sudan's Personal Status Act for Muslims of 1991 states that eligibility for marriage is reached by the age of ten for both boys and girls, which sanctions underage children. The Law does not permit a woman to terminate a marriage contract when she reaches adult age. In rural areas, child marriage is estimated at 39%.

⁴⁰ Nobel Women's Initiative and the International Campaign to Stop Rape and Gender Violence in Conflict, 'Survivors Speak Out: Sexual Violence in Sudan', November 2013, <http://nobelwomensinitiative.org/wp-content/uploads/2013/12/Survivors-Speak-Out-Sudan-web.pdf>

⁴¹ Article 149 Criminal Act 1991. See REDRESS/KCHRED, *Time for Change: Reforming Sudan's Legislation on Rape and Sexual Violence*, November 2008, pp. 28, 29, <http://www.redress.org/downloads/publications/Position%20Paper%20Rape.pdf>

⁴² See Strategic Initiative on Women in the Horn of Africa (SIHA), *Beyond Trousers: The Public Order Regime and the Human Rights of Women and Girls in Sudan*, A Discussion Paper, Submission to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 12 November 2009.

⁴³ Ibid. See also ACJPS' bi-monthly Sudan Human Rights Monitor (SHRM). In its March-April 2013 issue, ACJPS documented one case in which 150 women working as tea sellers in Nyala, South Darfur, were prosecuted under Article 152 of the Sudanese Penal Code 1991 (Indecent or immoral acts) and ordered to pay a fine of 300 SDG (approximately \$69) each for wearing tight clothes and not wearing socks. See ACJPS, SHRM March-April, <http://www.acjps.org/?p=1493>

⁴⁴ Committee on Economic, Social and Cultural Rights, *General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2005/4, 11 August 2005, para.27.

⁴⁵ *Concluding observations of the UN Human Rights Committee: Sudan*, UN Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007,

does not reflect legislative reforms and best practices elsewhere.⁴⁶ There is only one offence covering all other forms of sexual violence, which carries an inadequate maximum punishment of two years imprisonment. In addition, rape in marriage, forms of sexual harassment and certain types of female genital cutting/mutilation are not criminal offences.⁴⁷ According to a recent UNICEF household survey in 2010, 34.5 % of girls aged 5 to 9 have been subjected to FGM.⁴⁸

The Government of Sudan has discussed the reform of rape laws but effective steps have yet to be taken in this regard.⁴⁹

VI. Lack of effective remedies in case of violations of Covenant rights

Article 35 of the Bill of Rights provides that '[t]he right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice.' However, the Constitutional Court has failed to act as a constitutional protector of rights and remedies provided for in statutory law have proved largely ineffectual. A victim of human rights violations may claim damages for tort under civil law⁵⁰ but due to immunity and lack of investigations there is virtually no practice of victims having effective access to justice and obtaining reparation. In a recent development, during the September 2013 demonstrations, Sudanese authorities acknowledged just 85 deaths. A majority of death certificates issued listed the cause of death as "mysterious circumstances", despite a majority of victims having been shot in the head or chest. Out of at least 85 criminal complaints pursued by victims' families, only one has progressed to court, with the final decision pending. This is the only known case of immunity provisions in Sudanese law being lifted to allow for criminal proceedings against a state official accused of using excessive force during the 2013 protests.⁵¹

VII. Protection of the Family and right to health (articles 10 and 12 (2))

In addition to discrimination and gender-based violence highlighted above (at V), there are serious concerns about the treatment of women in detention, particularly when giving birth.⁵² In a recent case, Mrs. Meriam Yahia Ibrahim, who had been sentenced to death for apostasy and to 100 lashes for adultery by a Sudanese court in May 2014 (the verdict was later overturned on appeal), was detained for almost four months in Omdurman's Women Prison. She was detained with her one year old infant son and was forced to give birth in prison while being held in shackles, which also endangered the health of her baby.⁵³

This case illustrates the lack of adequate facilities and protection for mothers who are detained during a reasonable period before and after childbirth, and the lack of provision made for a healthy birth and development of the child. In practice, children are often detained with their mothers over two years of age without any special provision made.⁵⁴

para.14 (b).

⁴⁶ REDRESS/KCHRED, *Time for Change*, above note 41, pp. 28, 29.

⁴⁷ *Ibid.*, pp. 55-58. See also Committee on the Rights of the Child, *Concluding Observations: Sudan*, UN Doc. CRC/C/SDN/Co/3-4, para.56.

⁴⁸ Sudan Tribune, 'FGM on decline in Sudan as attitudes shift: UNICEF', 12 February 2014.

⁴⁹ UN Human Rights Committee: *Sudan*, above note 45, paras. 13-15 and *Information received from Sudan on the implementation of the concluding observations of the Human Rights Committee* (CCPR/C/SDN/CO/3), UN Doc. CCPR/C/SDN/CO/3/Add.1, 18 December 2009, para.24.

⁵⁰ Article 153(1) Civil Transaction Act of 1984.

⁵¹ ACJPS, 'Sudan responds to calls for justice and accountability', above note 15.

⁵² Committee on the Rights of the Child, *Concluding Observations: Sudan*, UN Doc. CRC/C/SDN/Co/3-4, para.62.

⁵³ See complaint filed by REDRESS, the African Centre for Justice and Peace Studies (ACJPS), the Sudanese Organisation for Development and Rehabilitation (SODR), The Sudanese Human Rights Initiative (SHRI) and the Justice Centre (JCALC) in the case of Meriam Yahia Ibrahim, *Daniel Wani and their two children, Martin Wani and Maya Wani*, v *Sudan* on 2 June 2014, <http://www.redress.org/downloads/meriam-yahia-ibrahim-submission-2-june-2014.pdf>

⁵⁴ ACJPS and REDRESS, 'Sudan's human rights crisis' above note 29, para.124.

This is contrary to the requirements set out by the Committee, namely:

The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child” (art. 12.2 (a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.⁵⁵

VIII. Torture and ill-treatment (article 12)

As highlighted by the Committee,

The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.⁵⁶

A number of well-documented cases⁵⁷ show that torture and ill treatment is systemic and has been used predominantly to suppress opposition, to obtain confessions or to discriminate against marginal groups, including Darfurians and Southerners who are often also IDPs. Political opponents, students, journalists and human rights defenders have been particularly at risk of torture because of their background, (perceived) affiliation, or conduct (or all of these factors taken together). In several instances, individuals are believed to have been tortured to death or tortured before being killed. Public protests against austerity measures and calling for regime change in 2011,⁵⁸ 2012⁵⁹ and 2013⁶⁰ have been met with excessive force leading to serious injuries and deaths. Student meetings and demonstrations held in or on the issue of Darfur have also been met with excessive force. Sudanese authorities fired live ammunition to disperse anti-government protestors in cities throughout Sudan in late September and early October 2013.⁶¹ The cases show that the authorities have used excessive force during demonstrations that amounted to ill-treatment. The torture and ill-treatment of demonstrators has included verbal abuse of a sexual nature, threats of sexual assault,

⁵⁵ Committee on Economic, Social and Cultural Rights, *General Comment 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 14 (footnotes omitted).

⁵⁶ Ibid., para.3.

⁵⁷ See REDRESS, ACJPS and SDFG, *Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and Peoples' Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment*, April 2012, <http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf>. See also ACJPS, *Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan*, July 2012, <http://www.acjps.org/?p=1060>

⁵⁸ See ACJPS, 'Youth Mass Protests Spark 113 Arrests and One Death', 1 February 2011, <http://www.acjps.org/youth-mass-protests-spark-arrests-one-death/>

⁵⁹ See ACJPS special report, 'Excessive force, mass arbitrary detentions, ill-treatment and torture used to crack down on popular protests in Sudan', 27 July 2012, <http://www.africancentreforjustice.org/wp-content/uploads/2012/12/07-27-12-Excessive-force-mass-arbitrary-detentions-ill-treatment-and-torture-used-to-crack-down-on-popular-protests-in-Sudan.pdf>

⁶⁰ ACJPS, 'Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan', 4 October 2013, <http://www.acjps.org/over-170-dead-including-15-children-and-800-detained-as-demonstrations-spread-throughout-sudan/>

⁶¹ ACJPS documented 185 persons killed during the September-October 2013 protests in cities throughout Sudan and has verified the names of 144 of the deceased. See ACJPS and REDRESS, 'Sudan's human rights crisis' above note 29, Annex.

and rape.⁶² Further, there have been concerns about the lack of protection if not complicity of authorities in the abuse of trafficking victims in Eastern Sudan.⁶³

Conditions in detention facilities in Sudan are very poor, and lack adequate health care and food supplies, in particular police detention centres and women's prisons, which is due to inadequate resources being made available, resulting in the perpetuation of a poor overall infrastructure of the system. The treatment of prisoners often runs counter to international standards, including prisoners being routinely shackled or subjected to solitary confinement in small cells.⁶⁴

ACJPS monitoring of prison conditions has revealed that prisons often suffer from a lack of medical staff and services, in addition to shortages in medication and medical equipment. The failure to medically examine newly admitted inmates as well as the use of a single blade to shave several inmates has increased the transmission of diseases and long-term infections in prisons.⁶⁵ Prisons also suffer from severe shortages in food supplies. These problems in Sudan's prisons, including food shortages, overcrowding and the lack of appropriate medical and other care facilities, are exacerbated by an increasing prison population and low prison budgets.

Sudanese law recognises several forms of corporal punishment - stoning, amputation, cross-amputation and whipping.⁶⁶ Sudanese courts imposed the sentence of stoning in two recent judgments, which were subsequently not carried out.⁶⁷ However, the penalty of cross-amputation (amputation of the right hand and left foot) for armed robbery was carried out against 30-year old Adam al-Muthna by Government doctors in Khartoum on 14 February 2013.⁶⁸

Whipping is provided for as hudud punishment for adultery, wrongful accusation of adultery and drinking of alcohol, and for 18 other offences in the 1991 Criminal Act. Public order laws, which are enacted by the localities, also provide for whipping as one of the punishments. The sentence of whipping is common and routinely imposed, primarily following summary trials, and often used against vulnerable members of society, particularly women.⁶⁹

⁶² African Commission on Human and Peoples' Rights, *Safia Ishaq Mohammed Issa (represented by REDRESS and the African Centre for Justice and Peace Studies) v Sudan*, see further, <http://www.redress.org/case-docket/safia-ishaq-mohammed-issa-v-sudan->

⁶³ See Human Rights Watch, *I wanted to lie down and die, Trafficking and torture of Eritreans in Sudan and Egypt*, 11 February 2014, <http://www.hrw.org/node/122899>

⁶⁴ Draft report on Sudan's prison system (on file with ACJPS).

⁶⁵ Ibid.

⁶⁶ *Curtis Francis Doebbler v Sudan*, African Commission on Human and Peoples' Rights, Communication No.236/2000 (2003); *UN Human Rights Committee: Sudan*, above note 45, 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.redress.org/downloads/publications/Corporal%20Punishment%20-%20English.pdf>

⁶⁷ See 'Update: Intisar Sharif Abdallah Released Unconditionally without Further Charge', 21 June 2012, <http://www.wluml.org/action/update-intisar-sharif-abdallah-released-unconditionally-without-further-charge>, and ACJPS, '23 Year Old Woman Sentenced to Death by Stoning for Adultery', 11 July 2012, <http://www.acjps.org/23-year-old-woman-sentenced-to-death-by-stoning-for-adultery/>

⁶⁸ 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>

⁶⁹ See further REDRESS and Sudanese Human Rights Monitor, *No more cracking of the whip*, above note 66. See also ACJPS, 'Update: Third detainee dies in custody following detention in hot crowded cell and court-ordered flogging in Port Sudan', 19 August 2014, <http://www.acjps.org/category/publications>