

# THE UPR PROJECT AT BCU



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## About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through world leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and in international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in providing support to the UPR Pre-sessions, capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world,

and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights.

## Our Partner:

For this submission the UPR Project at BCU partners with the Sudanese Human Rights Initiative (SHRI) based in Khartoum, Sudan. SHRI is a nongovernmental Sudanese organization founded by Sudanese lawyers in 2008, in response to human rights violations committed by the state. SHRI was established with the goal to defend the rights of Sudanese people and to build the capacities of Sudanese civil society to do the same. SHRI has now more than 500 members, and an expansive network of lawyers, human rights defenders and journalists. SHRI UPR Contact: Catie Harvey. Email: [harvey.catie@gmail.com](mailto:harvey.catie@gmail.com). Address: Sudanese Human Rights Initiative SHRI, P.O Box 131345, Khartoum, Sudan.

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## INTRODUCTION

1. Sudan is party to five of the nine core international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC); and, the Convention on the Rights of Persons with Disabilities (CRPD).<sup>1</sup>
2. This Stakeholder Report recommends that Sudan upholds its treaty obligations and commitments with particular reference to the ICCPR. It focuses upon four themes: **(1) capital punishment; (2) unlawful detention and torture; (3) freedom of religion or belief; and, (4) impunity for state actors.** We make recommendations to the Government of Sudan on these key issues, implementation of which would also see Sudan moving towards achieving Sustainable Development Goal 16 which aims for peaceful and inclusive societies, access to justice for all and effective, accountable and inclusive institutions at all levels.

## CAPITAL PUNISHMENT

### A. Sudan and International Law on the Death Penalty

3. The death penalty has remained a distinctive feature of Sudan's penal system prior to the country's independence through to the Transitional Government's rule. Precolonial practices of the death penalty in Sudan were largely characterised by customary law. Present laws on the death penalty are, to a large degree, the result of Islamization efforts of the 1980s and the early 1990s.<sup>2</sup>
4. Although the Constitutional Charter for the Transitional Period of 2019 omits most other articles from the old 1998 Constitution that relate to Islamic precept and notions, it maintains the sovereign right to impose the death penalty. Article 44 provides every human being with the fundamental right to life and Article 54 follows the same limitations as the 1998 Constitution, namely that "the death penalty may only be inflicted as retribution (qisas), a hudud punishment, or as a penalty for crimes of extreme gravity, in accordance with the law" but fails to define what it considers as 'crimes of extreme gravity'. Those under 18 or above 70 are exempt from the death penalty, however an exception to this rule is made for over 70s in cases of qisas or hudud.
5. There is a procedural nuance within the 2019 Constitution as Article 42(2) (incorporating international obligations) and Article 44 (inherent right to life) suggest the non-application of the death penalty in general but Article 54 explicitly permits the use of the punishment contrary to international human rights law.

*International Law Promoting the Restriction and Abolition of the Death Penalty*

6. The United Nations' framework for regulating the application of the death penalty comprises a corpus of international human rights law and jurisprudence. Of particular relevance are Articles 6, 7, and 14 ICCPR,<sup>3</sup> its Second Optional Protocol,<sup>4</sup> the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty,<sup>5</sup> the Secretary General's quinquennial reporting,<sup>6</sup> the Secretary General's Question on the Death Penalty,<sup>7</sup> and the Human Rights Committee decisions.<sup>8</sup> Other relevant treaties include the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment<sup>9</sup> and the Convention on the Rights of the Child.<sup>10</sup>
7. The General Comment on the Right to Life<sup>11</sup> provides an interpretive lens on the death penalty. Concerning ICCPR Article 6(6), which states "[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment", it reaffirms the position that "States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future."<sup>12</sup>
8. Sudan has been a consistent signatory to the Joint Permanent Missions' *note verbale* of dissociation, which records a formal objection to the Secretary General of the United Nations on the attempt to create a global moratorium on the death penalty.<sup>13</sup> This is also reflected in Sudan's comments made at the 2015 Human Rights Council's High-level Panel on the Death Penalty. During the discussions, Sudan referred to "the principle of non-interference in the internal affairs of a country and each country can choose its own legal and judicial system based on national legislation in order to guarantee peace and stability to all citizens."<sup>14</sup>
9. The death penalty remains a lawful punishment in Sudan for offences and conduct which contravene the evolving jurisprudence on 'most serious crimes' under international law.<sup>15</sup> For example, in Sudan's Criminal Act 1991,<sup>16</sup> Firearms and Ammunitions Act 1986,<sup>17</sup> Drugs and Narcotics Act 1994,<sup>18</sup> The Anti-Terrorism Act 2001,<sup>19</sup> Armed Forces Act 2007,<sup>20</sup> The National Security Act 2010,<sup>21</sup> and The Combating Human Trafficking Act 2013.<sup>22</sup>

**B. Implementation of Recommendations from Cycle Two in 2016**

10. Sudan received 244 recommendations in the Second Cycle of which 180 were accepted and 64 were noted. A total of 22 recommendations focused on the death penalty and all were 'noted' by Sudan.<sup>23</sup>

*Recommendations concerning Sudan's Adoption of International Law*

11. **Albania** (para 141.2), **Honduras** (para 141.1), **Luxembourg** (para 141.4), **Madagascar** (para 140.14), **Montenegro** (para 141.2), **Poland** (para 141.2), **Portugal** (para 141.3), and **Uruguay** (para 141.2) all recommended Sudan to ratify the Second Optional Protocol to the ICCPR.

### *Recommendations concerning Abolition*

12. **Congo** (para 141.23), **Costa Rica** (para 141.6), and **Slovakia** (para 141.24) recommended Sudan to abolish the death penalty. **Australia** (para 141.26), **Austria** (para 141.28), **Belgium** (para 141.27), **France** (para 141.31), **Georgia** (para 141.31), **Italy** (para 141.25), **Mexico** (para 141.29), **Namibia** (para 141.30), **Portugal** (para 141.3), **Sierra Leone** (para 141.31) and **Spain** (para 141.31) recommended a moratorium on the death penalty with a view to domestic abolition. Austria, Mexico, and Namibia also urged Sudan to ensure that the death penalty is never applied to persons under the age of 18. Whilst such recommendations are welcomed, it is crucial that they remain specific and measurable in order to assess the level of implementation as broad recommendations, whilst easy to accept, lack any impetus to bring about real change.<sup>24</sup>
13. We welcome the news that the death penalty is no longer applicable for apostasy and has been revoked for the Child Act 2010. Noura Hussein was sentenced to death in 2018 for killing her husband during an alleged rape. Ms. Hussein, at age sixteen, had been forced to marry a husband twice her age. Her death sentence was subsequently commuted to five years in prison. While the abolition of the death penalty for children is welcomed, there are still young people such as Ms. Hussein who continue to have their lives crippled as a result of its historic implementation.
14. It is concerning to note that the Transitional Government has dismissed high ranking judges from the constitutional court and is yet to replace them. This means that the death penalty currently can be imposed without reference to the constitutional court.
15. Leaders of the previous regime and 23 members of the National Intelligence and Security Services (NISS) are currently facing the death penalty. Those responsible for abuses of power under al-Bashir's regime should face a fair trial and sentencing without recourse to such a punishment.
16. In December 2019, a Sudanese court sentenced 29 intelligence officers to death for the torture and killing of a teacher, Ahmad al-Khair. Al-Khair, 36, died in custody in February following his arrest for taking part in protests against al-Bashir's government. The court found that al-Khair was beaten and tortured to death by the officers at a detention centre in the eastern state of Kassala.
17. On 14 February 2021, the Supreme Court upheld the convictions issued by the court of first instance against the killers of Ahmed al-Khair from Defendants No. 1 through to No. 27, No. 33 and No. 37 under Articles 21/130 of the Criminal Law Act 1991, Amendment 2015 and upheld the death sentence against them.

### **C. Further Points for Sudan to Consider**

*Adopting the UPR Recommendations to Enable the People of Sudan to Benefit from Advances in Effective Penology*

18. The right to benefit from scientific advancement should also apply to the progress in social science research on the death penalty. The Universal Declaration of Human Rights, Article 27, states, “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,”<sup>25</sup> and the ICESCR article 15 (1)(b) recognises the right of everyone, “[t]o enjoy the benefits of scientific progress and its applications.”
19. Roger Hood and Carolyn Hoyle have produced the leading social science and criminological investigations into the death penalty worldwide and have concluded:
- [t]hose who favour capital punishment ‘in principle’ have been faced with yet more convincing evidence of the abuses, discrimination, mistakes, and inhumanity that appear inevitably to accompany it in practice. Some of them have set out on the quest to find the key to a ‘perfect’ system in which no mistakes or injustices will occur. In our view, this quest is chimerical.<sup>26</sup>
20. Social science investigations now demonstrate that reflecting appropriate government means that whilst capital punishment could be created within a legitimate parliamentary process,<sup>27</sup> it is now clear that the application of the death penalty renders an illegitimate and inhumane outcome.<sup>28</sup> Abolition in Sudan would enable the people of the country to benefit from the advancement of the leading social scientific research on punishment policies.

#### **D. Recommendations**

We recommend the government of Sudan to:

- i. Uphold and enforce its international obligations to safeguard the right to life, pursuant to Articles 6, 7 and 14 of the ICCPR.
- ii. Ensure it complies with the ‘most serious crimes’ principle, under Article 6 ICCPR, which restricts punishment to crimes of intentional killing only.
- iii. Develop, in consultation with civil society and relevant regional bodies, a comprehensive action plan to work towards a moratorium, with a view to abolition, within the next three years.
- iv. Affirm its commitment to SDG 16 on access to justice and strong institutions through its support at the next biennial vote on the UNGA Resolution on the moratorium on the use of the death penalty.

## UNLAWFUL DETENTION AND TORTURE

### A. Sudan and International Law on Torture

21. The prohibition of torture and inhuman treatment is enshrined in numerous regional and universal human rights instruments such as, but not limited to, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); Article 5 UDHR; Articles 4, 7, 10 ICCPR; and Article 4 of the African Charter on Human and Peoples' Rights.
22. This prohibition is universally accepted as a fundamental principle of customary international law and, therefore, is binding upon all States, irrespective of any ratification of the international instruments explicitly codifying the prohibition. In sum, "torture and inhuman treatment are prohibited for everyone, everywhere and in all circumstances."<sup>29</sup>
23. In his latest report, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has confirmed that this prohibition requires States to:

adopt a holistic approach to eradicate, prevent, investigate and prosecute any such abuse, and to ensure adequate and effective reparation to victims and their families. This includes a duty to integrate all these elements into national legislation and policies; applying implementation procedures, such as procedural safeguards, training of law enforcement, and warranting humane conditions of detention; and creating mechanisms of accountability and oversight.<sup>30</sup>
24. The only reference to torture in the 2019 Constitution of Sudan appears in Article 51 which states that "[n]o one may be subjected to torture or harsh, inhumane, or degrading treatment or punishment, or debasement of human dignity" however it fails to define the term itself.

### B. Implementation of Recommendations from Cycle Two in 2016

25. There were sixteen recommendations made regarding legal safeguards against torture of which Sudan expressed support for ten.<sup>31</sup> However, seven of these ten recommendations were significantly weakened by the non-committal language with which they were presented, for example 'Consider...' or 'Strengthen efforts to...' This left only three recommendations (138.7, 138.75 and 138.74) where Sudan supported the implementation of a robust action.
26. Five recommendations related to the definition and criminalisation of torture under Sudanese law: **Ireland** (para 141.18), **Timor Leste** (para 138.74), **Maldives** (para 138.75), **Japan** (para 138.22), **Malaysia** (para 138.90). Sudan 'supported' four of these recommendations including Timor Leste and Maldives' recommendation to "adopt legislation that clearly defines and criminalizes torture."<sup>32</sup> Despite this, the 2019

Constitution and current law in Sudan do not contain a definition of torture as a criminal act, in line with UNCAT.

27. The 2019 Constitutional Declaration replaced the NISS with the General Intelligence Services (GIS). Unlike its predecessor, GIS' powers are restricted to gathering and analysing information. In July 2019, the National Security Act (NSA) was amended to reflect this change in the Constitution. Despite this, in May 2020, a spokesman for GIS publicly claimed that the organisation retained powers to arrest, detain and interrogate. In practice, the agency continues to detain individuals, including former regime security officers. A statement from GIS documents the arrest on 7 February 2020 of Major General Anas Omar, a former security officer and leader of the dissolved National Congress Party.
28. The legal conditions of arrest, whether undertaken by the police or by GIS, remain a cause for concern. Under the Criminal Act 1991, a detained person is not granted the right to immediate legal representation; their family cannot be informed of the arrest unless it is with the approval of the Prosecuting Attorney or the Court; there is no standard requirement for making and retaining interrogation records; and detainees cannot request a medical examination following their arrest. Importantly, the Act does not require the detained person to be given an independent judicial review within 24 hours of their arrest.
29. The absence of these basic legal safeguards is a failure to protect the Sudanese people from torture and mistreatment. This is of great concern, and even more so given the institutionalised acceptance of human rights abuses by state officials in the past. Without these safeguards, members of the security forces persist in abusing their power to target activists and political dissenters.
30. Muammar Musa Mohammed Elgarari and Mikhail Boutros Ismail Kody have been detained without trial at a police station in Khartoum North since 2 June 2020 on accusation of harassing members of the committee that handles the legacy of the former regime. Mr. Mohammed Elgarari and Mr. Ismail Kody are both opposition activists and members of the Future Movement Group.
31. Ahmed Al-Dai Bishara was arrested on 13 October 2020, following the release of videos in which he criticised the Transitional Military Council (TMC), the Forces for Freedom and Change Party (FFC) and Prime Minister Abdullah Hamdock. Mr. Al-Dai Bishara was beaten during his arrest. He faces charges of undermining the constitutional order, endangering the country's security and unity, and insulting the reputation of Mohamed Hamdan Dagalo ('Hemeti'), the Commander of the RSF, in addition to violation of articles of the Criminal Code.
32. Activist Bahaa Al-Din Nuri was detained by two armed-security personnel at the market in Al-Kalakla on 16 December 2020. He was held at the RSF detention centre in Alsafia, Khartoum North. Four days later, his family were informed that Mr. Al-Din Nuri had died. Upon collection of the deceased's body from hospital, the family found evidence that he had been subjected to torture. An autopsy subsequently revealed that the wounds on his body were fatal.

33. ‘Hemeti’ has ordered for immunity to be lifted from those suspected of killing Mr. Al-Din Nuri, leading to a criminal case being filed. While we welcome a criminal investigation into the torture and death of Mr. Al-Din Nuri, it is insufficient that a prosecution against members of the RSF is subject to the consent of its Commander. Mr. Al-Din Nuri’s treatment is indicative of the lack of protection against abuse for detainees.
34. Musa Hilal, the Darfuri tribal leader and former government adviser, whose role overseeing human rights abuses in Darfur is well-documented, was arrested at the order of ‘Hemeti’. Hilal has been detained since November 2017 and is standing trial in the military headquarters with other members of the Revolutionary Awakening Council, a political party he formed in January 2014. The authorities should make known the whereabouts of Mr. Hilal.
35. We welcome the news that Sudan’s Sovereign Council has approved two draft laws to join the Convention against Torture and the Convention for the Protection of All Persons from Enforced Disappearances. By ratifying UNCAT, the government has a legally binding commitment to prevent, investigate and prosecute all cases of torture including those documented above.

### **C. Further Points for Sudan to Consider**

*The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals*

36. Sudan should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government’s commitment to promoting the Sustainable Development Goals.<sup>33</sup> The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.<sup>34</sup>
37. SDG 16 provides for “Strong Institutions and Access to Justice and Build Effective Institutions,” but the application of torture is inconsistent with this goal. Specifically, SDG 16.1 aims to reduce death rates, promote equal access to justice, and “protect fundamental freedoms,” and to further this, SDG 16.A.1 identifies the importance of relevant national institutions, for building capacity at all levels, to prevent violence and combat terrorism and crime.

### **D. Recommendations**

We recommend the government of Sudan to:

- i. Uphold and enforce its international obligations to prohibit the use of torture, pursuant to Article 7 of the ICCPR.
- ii. Ensure the implementation of UNCAT provisions by undertaking the necessary legislative, policy and institutional measures. This includes the criminalisation of torture in Sudan’s domestic laws, and reforming the policies and practices of the police, intelligence services and armed forces.
- iii. Incorporate a definition of torture, in line with UNCAT, into its legislative framework.

- iv. Provide a public clarification of the extent of the powers of GIS officers to arrest and detain, with reference to the Constitution and the National Security Act.

## **FREEDOM OF RELIGION OR BELIEF**

### **A. Sudan and International Law on Freedom of Religion or Belief**

38. Freedom of Religion or Belief is protected under UDHR Article 18 and ICCPR Article 18. The Human Rights Committee’s General Comment No. 22 states that Article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or to have or adopt a religion or belief of one’s choice.”<sup>35</sup> The Special Rapporteur on the Freedom of Religion or Belief has affirmed the “absolute protections covering the right to have, adopt or change one’s religion or belief (or have any beliefs at all) under international human rights law.”<sup>36</sup>
39. The 2019 Constitution includes a Bill of Rights containing fundamental rights and freedoms. Similar to the 2015 Interim National Constitution, it denotes a significant departure from previous constitutions in that Sudan does not assume a specific identity based on ethnic, cultural, linguistic, or religious unity, rather it embraces a plurality of religions and cultures. Sudan is not defined as an Islamic republic nor is Islam considered the state religion as enumerated by its 1998 predecessor and sovereignty is vested back in the people under Article 5.
40. Article 56 provides for freedom of religion or belief and that “no one shall be compelled to convert to a religion they do not believe in or to practice rites or rituals they do not voluntarily accept.”

### **B. Implementation of Recommendations from Cycle Two in 2016**

41. Six recommendations focused on freedom of religion or belief and all were ‘supported’ by Sudan except one from **Ireland** (para 142.18). Although Ireland’s recommendation urged the state to “abolish the crime of apostasy,”<sup>37</sup> similar to other recommending States, it is most likely that this was not accepted due to the nature of the recommendation itself which was very broad in scope and covered a large range of issues such as torture, corporal punishment, impunity and ratification of treaties.
42. **Italy** (para 140.25) and **Australia** (para 140.25) recommended Sudan to revise its 1991 Penal Code and abolish the criminalisation of apostasy. **Spain** (para 140.24) also recommended the abolition of apostasy and other laws contrary to freedom of religion or belief. **Poland** (para 138.28), **Honduras** (para 141.17) and **Slovakia** (para 138.95) recommended the adoption of legislative measures to “ensure full respect for freedom of religion or belief and the human rights of the persons belonging to ethnic and religious minorities, in line with the international human rights law.”<sup>38</sup>
43. The Transitional Government has taken some concrete steps to advance the protection of religious freedom within a number of key areas. In December 2019, the Transitional

Government repealed the repressive public order law that the former regime of al-Bashir systematically used to punish individuals, particularly women, who did not conform to its strict interpretation of Sunni Islam. Both Muslims and non-Muslims suffered the consequences of this punitive law.

44. In July 2020, the Transitional Government adopted the Miscellaneous Amendments Act, which repealed the apostasy law, ended flogging for blasphemy, banned female genital mutilation (FGM), permitted non-Muslims to drink alcohol, and abolished the guardianship law that required women to get a permit from a male guardian when traveling abroad with their children. Whilst welcome, these reforms do not go far enough in amending the laws of the al-Bashir regime. Significantly, blasphemy is still a criminal offence, punishable with up to six months imprisonment.
45. The 2019 Constitution guarantees the freedom to worship and assemble, establish and maintain places of worship. Despite these protections, severe violations of freedom of religion or belief persist in areas in Sudan. Post revolution, the freedom to worship and hold open air meetings is not possible; the Christian community finds itself unable to express its faith publicly.
46. Furthermore, in April 2019 it was announced that no new permits would be issued for the construction of Christian churches. Between 2019 and 2020, there have been incidents of four churches in the Blue Nile State being the subject of arson attacks. The churches, belonging to the Sudan Internal Church, the Catholic Church and the Orthodox Church, were burned to the ground on 28 December and rebuilt, only to be attacked again on 16 January. On 21 January 2020, Sudan's Minister of Religious Affairs, Nasr al-Din Mufreh, disputed the reports arguing that only one church had been affected by arson, and that the police had arrested one person who was released due to insufficient evidence. The government statement said that this church would be rebuilt.
47. The claims of churches whose property the former regime destroyed or confiscated must also be addressed. The Minister of Religious Affairs and Endowments stated he is working with the Minister of Justice to compile documentation for churches to reclaim their land and property that was seized and/or destroyed in years past. However, stakeholders informed SHRI that no church has seen property restored to its rightful owners, and these efforts are currently hampered by convoluted bureaucratic processes. Furthermore, the Transitional Government had not issued any permits for new churches.
48. In the context of urban development plans it is essential that provisions are made for measures of compensation regarding the destruction of places of worship, in particular by providing sites for the construction of such places. The State should exercise its responsibility to protect places of worship and ensure that they are shielded from religious extremism, obscurantism and from the consequences of the conflict in the South to the Sudan.

### **C. Further Points for Sudan to Consider**

#### *Promoting Religious Freedom through Reform of the Education System*

49. The director of the National Centre for Curricula and Educational Research, Dr Omar El Garai, submitted his resignation to Prime Minister Abdallah Hamdok in January 2021, following the PM's decision to suspend the Centre's development of the new curricula and form a new committee. El Garai's National Centre was, until January, tasked with the reform of Sudan's education system.
50. Progress was being made on wide-ranging reform of institutions in the educational system; for example, the Ministry of Education was working on implementing a comprehensive curricula reform to replace intolerant content in textbooks issued by the former regime with new materials and accompanying teacher training.
51. The hate campaign against El Garai, including death threats, led by a number of scholars, is not driven by motives of preserving religion but is rather a political campaign aimed at obstructing change in the country. The PM instructed the National Centre to stop developing new school curricula as their proposals were causing controversy in the country.
52. It is concerning to note that reform of Sudan's education system has been halted. These important revisions will be essential in promoting inclusivity and religious tolerance among the next generation of Sudanese citizens.

### **D. Recommendations**

We recommend the government of Sudan to:

- i. Uphold and enforce its international obligations to safeguard the freedom of religion or belief, pursuant to Article 18 of the ICCPR.
- ii. Protect all places of worship and ensure that such places are shielded from religious extremism, obscurantism and from the consequences of the conflict in the South.
- iii. Lift all restrictions on the construction of new places of worship.
- iv. Expediate the process to restore the land and property that was confiscated from churches or destroyed during the al-Bashir regime.
- v. Reform the educational system of Sudan to promote inclusivity and religious tolerance.

## IMPUNITY FOR STATE ACTORS

### A. Sudan and International Law on Impunity

53. Sudan is yet to ratify the Rome Statute of the International Criminal Court which aims to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole.<sup>39</sup>
54. The Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, submitted to the former UN Commission on Human Rights, define impunity as:

The impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.<sup>40</sup>

55. ‘Serious crimes’ in this context encompass grave breaches of the Geneva Conventions, other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and violations of international human rights that are crimes under international law “and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery.”<sup>41</sup>

### B. Implementation of Recommendations from Cycle Two in 2016

#### *Recommendations concerning Impunity for Security Forces*

56. Eight recommendations related to impunity specifically for security forces: **Slovakia** (para 138.91), **Togo** (para 139.11), **Spain** (para 140.26), **UK** (140.27), **Australia** (para 140.28), **Denmark** (para 141.30), **Canada** (para 140.29), **Ireland** (para 141.18). Six of these recommendations were ‘noted’ by Sudan. Slovakia’s recommendation to “carry out prompt, independent and thorough investigations into allegations of torture and excessive force by state officials”<sup>42</sup> was ‘supported’.
57. The change in regime, following the 2019 revolution, has led to some progress in legal protections against abuses committed by security forces. Perhaps, most significantly, amendments to the 2010 National Security Act (NSA) mean that NISS members can no longer rely on legal immunity from prosecution for human rights abuses. However, these amendments do not go as far to bring Sudanese law in line with international human rights law.
58. The NISS have a history of carrying out torture, extrajudicial killings, sexual assault and enforced disappearances without impunity. Under the 1999 and 2010 National Security Acts (NSA), they were provided with extensive powers to arrest and arbitrarily detain people without oversight. These powers were frequently used against human rights

activists, journalists, and political opponents in order to silence opposition to al-Bashir's regime.

59. In July 2020, Articles 50-53 were removed from the NSA. These highly criticised articles had previously protected NISS officers from prosecution. Under al-Bashir, any prosecution against members of the security forces, including NISS, the police and the military, had to be authorised by the head of the agency to which they belonged - something that only ever happened once (in 2019). The July 2020 amendment to the NSA abolished one of the many obstructions to legal remedy for victims of human rights abuses committed by NISS.
60. To date, the Transitional Government has yet to amend Article 45 of the 2008 Police Act or Article 42 of the 2007 Armed Forces Act, meaning that the police and the military retain conditional immunities from prosecution for torture, ill treatment or neglect of detainees in their care. These immunity provisions are contrary to international law.
61. Despite the NSA amendment, there remains a number of deterrents that make legal remedy impractical for victims of human rights abuses. In the absence of medical examinations after arrests and documentation of interrogations, it is difficult for survivors to produce evidence of torture. There are no safeguards in place to protect individuals making an allegation of ill treatment or their families. In addition, the 1991 Criminal Act currently stipulates that there is a two-year limitation for survivors of torture to bring proceedings.

*Recommendations concerning Impunity for Government Officials*

62. Ten recommendations were issued concerning cooperation with the International Criminal Court (ICC) and ratification of the Rome Statute: **Canada** (para 141.10), **Latvia** (para 141.11), **Guatemala** (para 141.13), **Timor-Leste**, **Honduras** and **Slovakia** (para 141.8), **Ghana** (para 141.9), **Lithuania** (para 141.12), **Austria** (para 141.36), **Iceland** (para 141.32), **Switzerland** (para 141.37), **Liechtenstein** (para 141.34). All of these recommendations were 'noted' by Sudan.
63. Justice and accountability are not accessible for the vast majority of survivors of the multitude of human rights abuses committed under the al-Bashir regime. These include violations that may amount to crimes under international law. Despite his indictment by the ICC, al-Bashir has not been transferred to the Hague to face trial.
64. A particular concern with the 2019 Constitutional Declaration is that it provides members of the Sovereignty Council, Cabinet, Transitional Legislative Council and governors of provinces with immunity from criminal procedures unless permission for prosecution is granted by the Legislative Council. The Sovereignty Council is a military-civilian coalition and includes among its members 'Hemeti', Commander of the Rapid Support Forces (RSF).
65. The RSF have been responsible for numerous human rights atrocities, including the Khartoum massacre on 3 June 2019, where at least 128 people were killed, and many

others suffered injury and sexual assault. Clause 21 of the Constitutional Declaration is an obstruction to justice for violations and abuses committed to date by the RSF.

### **C. Further Points for Sudan to Consider**

#### *Infringement of the Right to Freedom of Assembly by Security Forces*

66. There were four recommendations made regarding the protection of the right to peaceful assembly: **Cyprus** (para 138.99), **Netherlands** (para 141.16), **Germany** (para 138.101), **New Zealand** (para 140.40). Sudan ‘supported’ three of these recommendations, including that “the Government ends violent suppression of protestors and arbitrary detention of political activists and journalists.”<sup>43</sup>
67. Over the last four years, Sudan has seen numerous incidents where protestors have been targeted with excessive, and at times deadly, force by state security personnel, including the June 2019 Khartoum massacre. We are extremely concerned that incidents of deadly violence and human rights violations against protestors have continued to occur under the TMC.
68. On October 15, 2020, seven protestors were killed in Kassala, after authorities responded to demonstrations with lethal force. One of the deaths was that of a sixteen-year-old boy.
69. On October 21, 2020, protestors took to the streets in Khartoum to demonstrate against poor living conditions. Police responded with unreasonable levels of force, including the use of tear gas after blocking off streets. Two civilians were killed, and doctors confirmed that one of the deaths - that of Mohamed Abdul Majeed - was caused by a member of security personnel. At least twelve other people were injured as a result of the police response to the protests.

### **D. Recommendations**

We recommend the government of Sudan to:

- i. Ratify the Rome Statue of the International Criminal Court. Engage fully with the ICC and its investigations, including giving the ICC full access to Darfur.
- ii. Remove clause 2 of Article 45 from the 2008 Police Act and clause 2 of Article 42 from the 2007 Armed Forces Act, to allow civil proceedings to be brought against members of the police and armed forces without the condition of approval from the head of the service within which they are employed.
- iii. Introduce immediate reforms to safeguard detainees from torture while under the jurisdiction of state security forces. This includes offering medical examinations within 24 hours of every arrest; documenting all interrogations; facilitating the presence of the detainee’s lawyer during interrogations, with the provision of legal aid where required.
- iv. Abolish any time bound statute of limitation for survivors of torture or their families to bring a prosecution against a member of the security forces.
- v. Ensure that Sovereignty Council, Cabinet, Transitional Legislative Council and governors of provinces are not given immunity from criminal proceedings.

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<sup>1</sup> Sudan is yet to ratify the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. At the time of this submission, the Government has approved two draft laws to join CAT and CED; this is pending.

<sup>2</sup> See Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan* (Routledge 2008); Abdelsalam and Medani, 'Criminal Law Reform and Human Rights in African and Muslim Countries with Particular Reference to Sudan' in Lutz Oette (ed), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate Publishing 2011).

<sup>3</sup> International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 6 (right to life); Article 7 (the prohibition against torture and inhuman or degrading treatment or punishment); and Article 14 (the right to a fair trial and the principle of equality of arms).

<sup>4</sup> The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, GA Res. 44/128, December 15, 1989.

<sup>5</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council Resolution, 1984/50; Additions to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic and Social Council Resolution 1989/64; and the Strengthening of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as Agreed by the Economic Council Resolution 1996/15.

<sup>6</sup> See eg, ECOSOC Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty Report of the Secretary-General UN Doc E/2015/49 (13 April 2015).

<sup>7</sup> See eg, Report of the Secretary General, Question of the Death Penalty, A/HRC/27/23, 30 June 2014.

<sup>8</sup> For example, *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

<sup>9</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 10 December 1984.

<sup>10</sup> Article 37(a) Convention on the Rights of the Child, G.A. Res 44/25, 20 November 1989.

<sup>11</sup> UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018.

<sup>12</sup> *ibid* para 50.

<sup>13</sup> UNGA, 'Note verbale dated 13 September 2019 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General' (16 September 2019) UN Doc A/73/1004.

<sup>14</sup> UNHRC, 'Panel Discussion on the question of the death penalty - 9th Meeting, 28th Regular Session Human Rights Council' (*UN Web TV*, 4 March 2015) at time 2:36:00; UN Media Release, 'Human Rights Council holds High-Level Panel on the death penalty' (*OHCHR*, 4 March 2015) HRC15/015E <[www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=15640&LangID=E](http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=15640&LangID=E)>. See also Report of the United Nations High Commissioner for Human Rights, 'High-level panel discussion on the question of the death penalty' (16 July 2015) UN Doc A/HRC/30/21, para 25; UN Doc A/46/40, para 506.

<sup>15</sup> See UN Doc CCPR/C/GC/R.36/Rev.2.

<sup>16</sup> Crimes against the state: undermining of the Constitutional Order (article 50), instigation of war (article 51) and espionage (article 53); Crimes against body and soul: murder (article 130) and instigation of a minor or insane person to commit suicide (article 134); Crimes of honour, public morality and reputation: adultery where the offender is married (article 146(1)), sodomy where the offender is convicted for the third time (article 148 2 (c)), rape that constitutes adultery or sodomy (article 149(3)), incest (article 150(2)), and running a place for prostitution (article 155(3)); Crimes against property: armed robbery (article 168(1)(a)); Corruption (article 177); Crimes against humanity, genocide or war crimes (article 186 of 2009 Amendment Criminal Act 1991); False testimony and fabricating evidence (article 104).

<sup>17</sup> Trade in firearms or running a private store without a license and owning, using or carrying firearms without a license (article 44 (3)).

<sup>18</sup> Trade in drugs and narcotics (article 15); Provision of drugs and narcotics (article 16); Commitment of the offences in articles 15-16 in association with an international gang, or as part of an international crime (article 17).

<sup>19</sup> Incitement to commit an act in furtherance of the purposes of a terrorist state (article 5) and committing an act of terrorism (article 6).

<sup>20</sup> Non-compliance with orders and instructions (article 142); abandonment of military posts (article 143 (1)); forcing subordinates to surrender (article 145); surrender or unconditional truce, (article 146); assistance of the enemy (article 147); joining the enemy (article 148 (1)); rebellion against constitutional order (article 162 (1)); dealing with another country with intention to harm the interests of the state (article 163); disclosure of military information and secrets (article 164); violations related to firearms and ammunition (article 182); offences related to military equipment, gear and uniforms (article 183 (1)).

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<sup>21</sup> Crimes related to collaboration with an enemy (article 55); Conspiracy and Mutiny (article 56); Endangering the internal or external security of the country (article 57).

<sup>22</sup> Human trafficking where the victim dies.

<sup>23</sup> See UNHRC, ‘Report of the Working Group on the Universal Periodic Review – Sudan’ (11 July 2016) UN Doc A/HRC/33/8.

<sup>24</sup> Amna Nazir, ‘The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan’ 4(1) RSIL Law Review 126, 153.

<sup>25</sup> It is further recalled that the Human Rights Council determined that the basis of the Universal Periodic Review includes consideration of the Universal Declaration of Human Rights, see, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 18 June 2007.

<sup>26</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (5th edn, Oxford University Press 2015) 7-8.

<sup>27</sup> John Rawls stated, “[a]t some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy,” in, *Political Liberalism* (Columbia University Press 2005) 248.

<sup>28</sup> Austin Sarat stated, “law cannot work its lethal will and ally itself with the killing state while remaining aloof and unstained by the deeds themselves,” in, *When the State Kills: Capital Punishment and the American Condition* (Princeton University Press 2001) 21.

<sup>29</sup> Nils Melzer, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (22 January 2021) UN Doc A/HRC/46/26, para 10.

<sup>30</sup> *ibid* para 11. See also UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) 10 March 1992.

<sup>31</sup> UNHRC, ‘Report of the Working Group’ (n 23) paras 138.7; 138.8; 138.9; 138.10; 138.22; 138.74 138.75; 138.76; 138.91; 139.11.

<sup>32</sup> *ibid* paras 138.74 and 138.75.

<sup>33</sup> See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.

<sup>34</sup> The first two cycles of the UPR were reviewed under a data mining procedure and of the circa. 50,000 recommendations, it was possible to link more than 50% of those to SDG targets, see, The Danish Institute for Human Rights, Linking the Universal Periodic Review to the SGGs, p. 2.

<sup>35</sup> General Comment No. 22 on the Freedom of Thought, Conscience and Religion, CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 3.

<sup>36</sup> Report of the Special Rapporteur on the freedom of religion or belief, A/HRC/34/50, para. 39.

<sup>37</sup> UNHRC, ‘Report of the Working Group’ (n 23) paras 142.18.

<sup>38</sup> *ibid* para 138.95.

<sup>39</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

<sup>40</sup> ECOSOC, Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (8 February 2005) UN Doc E/CN.4/2005/102/Add.1, 6.

<sup>41</sup> *ibid*.

<sup>42</sup> UNHRC, ‘Report of the Working Group’ (n 23) para 138.91.

<sup>43</sup> *ibid* para 140.40.