


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b> African Commission on Human & Peoples' Rights		<b>UNIÃO AFRICANA</b> Commission Africaine des Droits de l'Homme & des Peuples
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## **Concluding Observations and Recommendations on the 4<sup>th</sup> and 5<sup>th</sup> Periodic Report of the Republic of Sudan**

### **Part I: Introduction**

1. The Republic of Sudan (Sudan) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified the African Charter on 18 February 1986.

2. Sudan presented its Initial Report to the African Commission on Human and Peoples' Rights (the African Commission) during its 21<sup>st</sup> Ordinary Session held from 15 to 24 April 1997, in Nouakchott, Mauritania. Sudan's Second Periodic Report was presented at the 33<sup>rd</sup> Ordinary Session of the African Commission held from 15 to 29 May 2003 in Niamey, Niger. Its Third Periodic Report was presented during the 45<sup>th</sup> Ordinary Session, held from 13 to 27 May 2009 in Banjul, The Gambia.

3. The present Concluding Observations follow the presentation and examination of the Fourth and Fifth Periodic Report of Sudan at the 51<sup>st</sup> Ordinary Session of the African Commission, held from 18 April to 2 May 2012, in Banjul, The Gambia. The Report covers human rights development in the country between 2008 to 2012 and highlights the developments that have taken place in the areas of human and peoples' rights and measures put in place with a view to implementing the country's obligations under the African Charter since its last Periodic Report.

4. The Report was presented to the African Commission by Dr Mahmoud Dnadma, Head of Legal Department; Mr Mohieldin Salim Ahmed Ibrahim, Ambassador; Mr Ehab Abdelhamid, Police Officer; Alameldin Hamid, Legal Expert; Ensaf Mohamed Ali, Legal advisor, Ministry of Justice; Ms Nabwia Osman Awad, Ministry of Justice; Howaida Suliman Elhagmohmed, Legal Officer, Ministry of Foreign Affairs; Tungo, Muaz Ahmed, Advisory Council of Human Rights; Mr Osman Mohamed Musa, Political Parties Council and Mr Ahmed Gangari, the Human Rights Unit.

5. The present Concluding Observations highlight the constructive and positive factors identified in the Report, outlines areas of concerns based on

the content of the Report as well as the limited oral answers and information given during the presentation of the Report. Finally, it provides Recommendations taking into account the very limited dialogue that ensued from the examination of the Report.

## **Part II: The Positive Factors**

The African Commission:

6. Welcomes the presentation of the Fourth and Fifth Periodic Report of Sudan in accordance with Article 62 of the African Charter which conforms in format and presentation to the African Commission's Guidelines on State Reporting.

7. Commends Sudan for preparing, submitting and defending the Report given the difficult political circumstances the country finds itself in.

8. Notes that Sudan is one of the few states which are up-to-date with its Report.

9. Commends Sudan for the quality of the Report, which was easy to read.

10. Commends Sudan for taking steps to implement a key Recommendation of the African Commission's Concluding Observations of the Third Periodic Report of Sudan, which was presented at the Forty-Fifth Ordinary Session, held from 13 to 27 May 2009, in Banjul, The Gambia, that is, the improved security in the Darfur region.

11. Particularly congratulates Sudan for the peaceful conduct of the referendum, following which led to the creation of the State of South Sudan on 9 July 2011 and which were declared free and fair by national and international observers.

12. Welcomes the establishment of a National Human Rights Commission.

13. Further commends Sudan for making efforts to improve primary health care particularly its programmes on malaria control.

14. Commends Sudan for making primary and secondary education free and for having a special illiteracy eradication scheme.

15. Commends Sudan for ratifying international and regional human rights instruments.

16. Commends Sudan for enacting the following legislations which is intended to contribute to the overall enjoyment of civil, political, economic and social rights of Sudanese citizens: The 2009 National Human Rights Commission Act; The 2009 Disabled Persons Act; The 2009 South Sudan Referendum Act; The 2009 Abeye Area Referendum Act; and The 2010 Children's Act.

17. Commends Sudan for enacting the Press and Publications Act of 2009, which ensures self regulation of the media.

18. Appreciates the role Sudan plays in all the programmes and activities of the African Commission.

### **PART III: Areas of Concerns**

#### **Content and Presentation of the Report**

19. While recognising the efforts of Sudan to promote and protect human rights and to promote awareness of the principles and provisions of the African Charter, the African Commission remains concerned that:

20. Sudan did not give the African Commission the opportunity to interrogate the Report and to dialogue with the Delegation, as most of the concerns and questions put to Sudan were not answered, even after Sudan was informed by the African Commission that it was quite dissatisfied with the interaction. The African Commission is also concerned that Sudan made no commitments to send written responses to the African Commission for the questions it did not provide answers to.

21. Even though the Report is well structured, it is lacking in details in terms of the concrete programmes the Government has put in place to ensure the enjoyment of rights by Sudanese.

22. The Report did not contain any details of the measures Sudan is taking to implement the Recommendations of the Third Periodic Report of the African Commission, which was made at the Forty-Fifth Ordinary Session, held from 13 to 27 May 2009, in Banjul, The Gambia.

23. The Report did not contain any details about the measures Sudan is taking to fulfil its obligations laid out in Articles 27 to 29 of the African Charter.

24. Non-Governmental Organizations working in the field of human rights did not have an input into the preparation of the Report.

25. The Report does not deal with the rights of older persons and disabled people.

#### Prison Conditions

26. Despite its concerns expressed in its Third Concluding Observations, about harsh prison conditions, arbitrary arrest and detention, including incommunicado detention, these practices are permitted by the 2010 National Security Act that allows security officials to detain suspects for up to four and a half months without judicial review before charges are levied.

27. There is undue delay in the disposal of cases, especially pre-trial detention, leading to a backlog of cases and ultimately overcrowding in prisons and detention centres.

28. The Report does not give statistics on the number of persons on death row.

29. Sudan still retains the death penalty.

30. There is no programme for legal aid for the accused during trials going on before the Courts.

#### National Security Act

31. Article 52(3) of National Security Act 2010 provides members of the NISS and their associates with immunity from criminal and civil procedures for acts connected with the official work of the member.

32. There are allegations the National Intelligence and Security Service (NISS) operates ungazetted places of detention, which has not been denied.

33. The report does not provide information on the measures taken by the authorities to deal with excesses of the police and other security agents.

#### Women's Rights

34. The Report provides only a general description of the legislation and/or policy put in place to enhance women's rights in Sudan.

35. In the absence of gender disaggregated data, there is no statistics on the prevalence and pattern of violence against women and discriminatory practices in the various parts of the country.

36. Violence against women, including the practice of FGM and rape are still prevalent.

37. There is a low level of literacy especially amongst the girl-child.

38. Child labour and recruitment of child soldiers, particularly in war torn areas are still prevalent.

39. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has not been ratified by Sudan.

#### Torture, Cruel and Degrading Treatment and Punishment

40. Sudan's laws provide for several forms of corporal punishment, including stoning, amputation, cross-amputation and whipping and that such punishment is routinely meted out, particularly against women from a marginalised background, following summary trials. The African Commission regards such forms of punishment as cruel, inhuman and degrading.

41. There is no law that criminalizes torture.

42. Though Sudan signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is yet to ratify it.

43. The Resolution on Guidelines and Measures for the prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) is not being used to train police and prison officials.

#### Press Freedom

44. That laws promulgated to regulate the press, does not guarantee free press and may be used by the state to undermine a free press.

45. Media practitioners are often arrested, imprisoned, beaten and tortured for doing their jobs.

46. While recognizing the efforts of the State Party to provide appropriate medical treatment and social security for all its citizens especially for those infected with HIV/Aids, the Report lacks details on the availability of anti-retrovirals for those infected with the HIV/Aids virus.

#### Ratification of International Instruments

47. Despite the efforts that Sudan is making to avail its citizens of economic, social and cultural rights, it has not yet ratified:

- the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights (ICESCR);

- the Charter on Democracy, Elections and Good Governance.

48. Sudan has not made the declaration under Article 34 (6) of the African Court's Protocol, allowing individuals and NGOs with Observer Status before the African Commission to bring cases before the Court.

49. Sudan has not yet domesticated the relevant human rights treaties it has ratified.

50. Border clashes with South Sudan are causing serious human rights violations.

51. Government forces persistently and indiscriminately bomb civilian areas across the Nuba Mountains, forcing people to seek shelter in caves and in mountains, where they lack food, shelter, and access to basic needs such as water and sanitation.

52. Sudan is increasingly deporting collectively Eritrean refugees to Eritrea in violation of the principle of *non-refoulement*.

53. Sharia law is also applied to Christians and non- Muslims groups.

54. Sudan has not responded to its request for Provisional Measures on Southern Kordofan.

## **PART VI: - Recommendations to the Government of the Republic of Sudan**

### **The African Commission recommends that the Government of Sudan:**

#### NISS

55. Takes adequate measures in combating insecurity, violence, and police and law enforcement excesses, especially those of the NISS.

56. Ensures that the conditions of arrest, preliminary interrogation and detention of suspects comply with the principles of the Robben Island Guidelines.

#### Judiciary

57. Undertakes to train members of the judiciary at all levels, state prosecutors, and members of the bar, police and prison officials on human rights law.

58. Put in place the reforms to strengthen the judiciary especially as it relates to human rights training for judges.

### Press Freedoms

59. Take the necessary measures that ensure freedom of expression and access to information.

### Death Penalty and Torture and Cruel and Inhuman Treatment and Punishment

60. In its next report provide the number of persons on death row.

61. To observe the moratorium on the death penalty and take measures for its total abolition.

62. Takes urgent and concrete measures to abolish laws that allow corporal punishment including stoning, amputation, cross-amputation and whipping.

63. Should include standards like the Robben Island Guidelines in the human rights program of Sudan Police College and the training of prison officers.

64. Consider enacting a law criminalizing torture.

65. Appoints an independent commission to investigate all extrajudicial executions, enforced disappearances and torture by the police and make public its findings.

### National Security Act

66. Repeal Article 52(3) of the National Security Act 2010 that provides members of the NISS and their associates with immunity from criminal and civil procedures.

67. Takes immediate steps to close down all unofficial places of detention.

68. Adopts a holistic approach to prison decongestion and conditions of detention in the prisons, ensuring that the Prison Service get adequate resources, including funding to improve living conditions and access to health care in prisons and places of detention.

### Women

69. Enacts legislation prohibiting female genital mutilations, violence and other discriminatory practices against women.

70. Takes measures to ensure female participation at all levels of decision making, including considering enacting a law on affirmative action.

71. In its next Periodic Report provides gender disaggregated data with its narrative Report.

72. Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

73. Ratifies the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

74. Takes legislative and other measures that address rape in Sudan.

75. Takes measures that address the low level of literacy amongst the girl-child.

76. Enact a law that encourages and promote women's participation in the political affairs of the State.

77. Takes measures to ban child labour and recruitment of child soldiers.

78. Should indicate the participation of NGOs in the preparation of its next Periodic Report.

79. Takes the necessary legislative measures and material preparations to extend free legal assistance to all crimes where the accused person cannot afford to pay legal representation fees.

80. Open up constructive dialogue, with the full involvement of the AU, with all factions of the various conflicts in Sudan, in particular South Sudan, in a bid to find a comprehensive solution to the problems in the country.

81. Ensure that the deportation of refugees within its territory conforms to international and regional human rights standards. It should explore measures such as voluntary repatriation, integration or resettlement as durable solutions for long standing refugees' problems.

#### Ratification of International / Regional Instruments

82. Takes measures to ratify international and regional human rights instruments, including:

- the Convention Against Torture;
- the International Convention on Economic, Social and Cultural Rights;
- the Additional Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;



- the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,
- and the African Union Convention on Preventing and Combating Corruption; Charter on Democracy, Elections and Good Governance.

83. Should undertake to make a declaration accepting the competence of the African Court under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.

84. Domesticates all the relevant regional and international instruments it has ratified in line with its international obligations.

#### Rights of Older Persons and the Disabled

85. In its next reporting period the report should outline how the rights of older persons and disabled people are protected.

#### General

86. Ensures that Sharia law is not applied to Christians and other non-Muslims groups.

87. Requests Sudan to respond to its request for Provisional Measures on Southern Kordofan.

88. In its next Periodic Report provide information on the measures taken by the authorities to deal with excesses of the police and other security agents.

89. Finally, the African Commission requests that the Republic of Sudan in its next Periodic Report inform the African Commission how it has implemented the recommendations in this Concluding Observations.

**Adopted at the 12<sup>th</sup> Extra-ordinary Session of the African Commission on Human and Peoples' Rights held from 29 July to 4 August 2012, Algiers, Algeria**