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# **ADVANCE UNEDITED VERSION**

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## **Human Rights Committee**

### **Concluding observations on the fourth periodic report of the Sudan**

1. The Committee considered the fourth periodic report submitted by the Sudan (CCPR/C/SDN/4) at its 3070th and 3071st meetings (CCPR/C/SR.3070 and 3071), held on 8 and 9 July 2014. At its 3090th meeting (CCPR/C/SR.3090), held on 22 July 2014, it adopted the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the submission of the fourth periodic report of the Sudan and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/SDN/Q/4/Add.1) to the list of issues (CCPR/C/SDN/Q/4), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

#### **B. Positive aspects**

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) Adoption of the National Human Rights Commission Act, in 2009;
- (b) Adoption of the Persons with Disabilities Act, in 2009;
- (c) Adoption of the Child Act, in 2010;

(d) Adoption of the National Action Plan for the Promotion and Protection of Human Rights for the period 2013-2023.

4. The Committee, recalling its previous concluding observations (CCPR/C/SDN/CO/3, paragraph 7), welcomes the adoption of the Southern Sudan Referendum Act in 2009 as well as the holding of the referendum on 9 January 2011, on the basis of the Interim National Constitution of 2005.

5. The Committee also welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities and the accession to its Optional Protocol, in 2009.

## C. Principal matters of concern and recommendations

### Constitutional and legal framework

6. While welcoming the commencement of a constitutional review process, the Committee is concerned by reports that it has not been conducted with full inclusiveness nor under conditions allowing full freedom of debate. In addition, the Committee regrets not receiving sufficient information on the measures taken to ensure that the text of the new Constitution will be in full conformity with the Covenant (arts. 2 and 19).

**The Committee recommends that the State party take all the necessary measures to ensure transparency in all stages of the constitutional review process and to guarantee the effective and meaningful participation of all relevant actors, including representatives of opposition parties and the full range of civil society. The State party should ensure that the text of the new Constitution is fully consistent with the Covenant.**

7. The Committee is concerned that, despite article 27 of the Interim National Constitution of 2005, the rights protected by the Covenant have not yet been recognized and given full effect in the national legal framework. The Committee is also concerned about the lack of clarity on the primacy of the Covenant over conflicting domestic law, including the rules concerning personal status, family law and penal law (art. 2).

**In light of the Committee's previous concluding observations (CCPR/C/SDN/CO/3, paragraph 8), the State party should ensure that its legislation gives full effect to all the rights recognized in the Covenant. The State party should take appropriate measures to ensure that its domestic law, including the rules concerning personal status, family law and penal law, are not interpreted or applied in ways incompatible with its obligations under the Covenant. It should also raise awareness about the Covenant and its applicability in domestic law amongst judges and judicial officers. In addition, the Committee encourages the State party to accede to the Optional Protocol to the International Covenant on Civil and Political Rights on individual communications.**

### Allegations of human rights violations in the context of armed conflicts

8. The Committee is concerned at reports of serious human rights violations, including rape, torture, arbitrary detention, large-scale displacements and extrajudicial killings, which have been and continue to be committed in conflict-affected areas, in particular Darfur, South Kordofan and Blue Nile, and lack of accountability for these crimes. The Committee is further concerned at reports indicating that State party authorities have at times arbitrarily denied the timely access of life saving humanitarian assistance for civilian populations in some conflict-affected areas, particularly those controlled by rebel groups (arts. 2, 6, 7, 9 and 12).

**In light of the Committee's previous concluding observations (CCPR/C/SDN/CO/3, paragraphs 9 and 11), the State party should:**

**(a) Ensure that State forces and groups under its control do not perpetrate human rights violations under any circumstances and take all feasible measures to avoid civilian casualties;**

**(b) Ensure that State bodies and agents afford the protection needed by victims of serious abuses perpetrated by third parties;**

**(c) Ensure that no financial support or materiel is afforded to groups that engage in deliberate targeting of civilians;**

**(d) Ensure that all allegations of human rights violations are independently, promptly and thoroughly investigated; and that perpetrators are**

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brought to justice and, if convicted, adequately sanctioned. The State party should ensure that investigations and prosecutions regarding the serious human rights violations committed in Darfur since February 2003 are accelerated, and should increase its cooperation with international mechanisms of accountability, including the International Criminal Court;

(e) Ensure that investigative authorities have sufficient human, technical and financial resources to be able to carry out their functions efficiently;

(f) Authorize and facilitate the timely and unrestricted access of humanitarian assistance to civilian populations in all conflict-affected areas in full compliance with the prohibition of arbitrary denial of humanitarian access;

(g) Guarantee that victims receive adequate reparation, including rehabilitation services.

#### **Internally displaced persons**

9. The Committee, while noting the measures taken by the State party to address the situation of internally displaced persons, is concerned by the fact that large-scale displacements continue to occur due to many factors, including the actions of the armed forces in the context of armed conflicts. The Committee is also concerned about insufficient protection of internally displaced persons, not only in camps but especially when they are placed in host communities (arts. 2, 7 and 12).

**The State party should take all measures at its disposal to prevent and avoid displacement of persons, including by training its security forces on how to avoid tactics that lead to displacement. In light of the Committee's previous concluding observations (CCPR/C/SDN/CO/3, paragraph 23), the State party should also ensure that adequate and effective protection is provided to internally displaced persons in camp and non-camp situations.**

#### **Non-discrimination and equal rights of men and women**

10. The Committee is concerned by the persistence of discriminatory provisions against women in legislation, including in the areas of family and personal status. The Committee is also concerned at reports of discriminatory enforcement against women of certain provisions, particularly the vaguely worded article 152 of the 1991 Criminal Code, on indecent conduct or clothing (arts. 3, 23 and 26).

**Recalling its previous concluding observations (CCPR/C/SDN/CO/3, paragraph 13) and its general comment No. 28 (2000), the Committee recommends that the State party strengthen its efforts to guarantee de jure and de facto equality between men and women. In this respect, the State party should:**

(a) Speed up the review of its domestic laws, including those governing the family and personal status and those concerning public indecency, in order to bring them into full conformity with articles 3, 23 and 26 of the Covenant;

(b) Intensify its efforts to raise awareness among the public, and train State officials, in particular judges, prosecutors and police, about women's rights.

11. The Committee is concerned by the lack of comprehensive anti-discrimination legislation prohibiting discrimination on grounds such as age, sexual orientation, gender identity and health status (in particular people living with HIV/AIDS) (arts. 2 and 26).

**The State party should consider adopting comprehensive anti-discrimination legislation, which includes provisions for protection against discrimination on grounds such as age, sexual orientation, gender identity and health status (in particular people living with HIV/AIDS). It should also prioritize the**

**implementation of programmes to eliminate stereotyping and discrimination and guarantee tolerance and respect for diversity.**

#### **Violence against women**

12. The Committee notes with concern that violence against women remains a serious problem, including in conflict-affected areas. The Committee is also concerned that articles 145 (adultery) and 149 (rape) of the 1991 Criminal Code, which deter women from reporting rape, have not yet been amended (arts. 3 and 7).

**In light of the Committee's previous concluding observations (CCPR/C/SDN/CO/3, paragraph 14), the State party should redouble its efforts to prevent and combat all forms of violence against women and, in this respect, it should:**

**(a) Ensure adequate protection of women against violence in legislation, including by swiftly amending articles 145 and 149 of the 1991 Criminal Code as well as by criminalizing domestic violence and marital rape;**

**(b) Increase its awareness-raising activities about the negative effects of violence against women and reinforce its training activities for State officials, in particular judges, prosecutors and police, in order to ensure that they are able to respond effectively to all forms of violence against women;**

**(c) Facilitate the reporting of rape and ensure that all cases of violence against women are promptly and thoroughly investigated; perpetrators brought to justice and adequately sanctioned; and that victims have access to adequate reparations and means of protection, including access to specialized shelters or centres.**

#### **Female Genital Mutilation**

13. The Committee welcomes the efforts undertaken by the State party to combat female genital mutilation (FGM), including its prohibition in some states. However, it is concerned by the persistence of FGM in the State party and by the absence of a specific law prohibiting it at the national level (arts. 3, 7 and 24).

**In light of the Committee's previous concluding observations (CCPR/C/SDN/CO/3, paragraph 15), the State party should:**

**(a) Adopt and enforce the necessary legislative measures to ensure that any form of FGM is prohibited in all its territory;**

**(b) Step up its efforts with a view to eradicating FGM, including by intensifying the campaigns and other measures to raise awareness among the population.**

#### **Death penalty**

14. The Committee is concerned that, despite its previous recommendation (CCPR/C/SDN/CO/3, paragraph 19), the death penalty has been maintained for crimes which do not meet the threshold of the "most serious crimes" as well as in relation to practices that the Covenant does not allow to be criminalised at all (arts. 6 and 7).

**The State party should consider abolishing the death penalty and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. If the death penalty is maintained, the State party should ensure that it is provided only for the most serious crimes within the meaning of article 6, paragraph 2, of the Covenant, and is in no case mandatory. The State party should also ensure that the death penalty is never imposed in violation of the Covenant, and never applied to crimes committed by persons below 18 years of age.**

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### **Prohibition of torture and ill-treatment**

15. While noting that legislation makes inadmissible confessions obtained as a result of inducement or coercion, the Committee is concerned that the State party's criminal legislation does not yet provide a legal definition of torture and at allegations that confessions obtained in violation of article 7 of the Covenant have been used by courts in some cases, including to impose the death penalty. It is also concerned by numerous allegations of acts of torture or ill-treatment committed by State officials (arts. 2, 6, 7 and 14).

**In light of the Committee's previous concluding observations (CCPR/C/SDN/CO/3, paragraphs 16 and 25), the State party should:**

**(a) Adopt criminal legislation that defines and criminalizes torture in accordance with international standards and provides for penalties commensurate with the gravity of the act;**

**(b) Ensure that all allegations of torture and ill-treatment are promptly, independently and thoroughly investigated; perpetrators brought to justice and, if convicted, adequately sanctioned; and that victims receive adequate reparation, including rehabilitation services;**

**(c) Ensure that judges, prosecutors, health and other relevant professionals involved in the documentation and investigation of cases of torture and ill-treatment are adequately trained on the Istanbul Protocol and on the international standards concerning torture and ill-treatment;**

**(d) Ensure that confessions obtained in violation of article 7 of the Covenant are not used or accepted by courts under any circumstances.**

### **Corporal punishment**

16. The Committee regrets that, despite its previous recommendation (CCPR/C/SDN/CO/3, paragraph 10), the State party's legislation still provides for several forms of corporal punishment, such as flogging and amputation, that violate article 7 of the Covenant (art. 7).

**The State party should abolish corporal punishment in the penal system and also act vigorously to prevent any use of such punishments until they are repealed.**

### **Immunities for State agents**

17. The Committee, recalling its previous concluding observations (CCPR/C/SDN/CO/3, paragraph 9), regrets that the State party's legislation still grants immunity from criminal prosecution to the police, the armed forces and the national security forces for violations of human rights committed in the course of their duty (arts. 2, 14 and 26).

**The State party should abolish those provisions that grant immunity from criminal prosecution to the police, the armed forces and the national security forces.**

### **Arrests and detentions under the National Security Act**

18. The Committee is concerned by the fact that, under the 2010 National Security Act, National Intelligence and Security Services officials may detain suspects for periods of up to a total of four and a half months without judicial supervision. The Committee is also concerned by reports that many detainees are held in clandestine detention centres (art. 9).

**The State party should ensure that persons detained by the national security officials are brought before a judge within 48 hours. In this respect, the State party**

**should review its national legislation, in particular the 2010 National Security Act, to bring it into line with article 9 of the Covenant. The State party should abolish all secret places of detention and should ensure that persons deprived of liberty enjoy all the legal safeguards contained in article 9 of the Covenant.**

#### **Military courts**

19. The Committee, while noting the assertion by the State party that the 2013 amendment to the Armed Forces Act “does not affect civilians in their status as such,” is concerned at reports that the Act as revised allows military authorities to try civilians in relation to a broad range of offences provided for under such Act and the 1991 Criminal Code (art. 14).

**The State party should adopt the necessary legal measures to prohibit military courts from exercising jurisdiction over civilians.**

#### **Freedom of religion**

20. The Committee is concerned that apostasy is still criminalised in the State party, and that other forms of discrimination against non-Muslims are embodied in legislation or exercised in practice (art. 18).

**The State party should abolish the crime of apostasy, which is incompatible with article 18 of the Covenant. The State party should also eliminate other discriminatory laws and practices that violate freedom of religion, as expounded by the Committee in general comment No. 22 (1993).**

#### **Freedom of expression, assembly and association**

21. The Committee is concerned by the numerous allegations indicating that State officials have curtailed the full and effective enjoyment of the right to freedom of expression by, *inter alia*, closing newspapers without court orders, confiscating entire newspaper editions, and subjecting journalists to intimidation and harassment. The Committee is also concerned about the obligations placed on journalists by the 2009 Press and Publications Act, and about prosecutions for disseminating “false news” (art. 19).

**In light of the Committee’s general comment No. 34 (2011) as well as its previous concluding observations (CCPR/C/SDN/CO/3, paragraph 27), the State party should adopt the necessary measures to guarantee the full enjoyment of the right to freedom of opinion or expression in all its forms in accordance with article 19 of the Covenant. In this respect, it should also ensure that its legislation, including the 2009 Press and Publications Act, is in full conformity with article 19 of the Covenant. The State party should also ensure that its officials avoid any unnecessary or disproportionate interference with the freedom of expression of the media, and should protect journalists against any form of intimidation or harassment.**

22. The Committee is concerned about the numerous reports of excessive and disproportionate use of force by law-enforcement and security officials in the context of demonstrations, which in several instances resulted in loss of lives. The Committee is also concerned at allegations indicating that State officials have subjected opponents and perceived opponents of the Government, human rights defenders and other activists to harassment, intimidation, arbitrary arrest and detention, and torture and ill-treatment (arts. 6, 7, 9, 19, 21 and 22).

**The State party should take concrete steps to prevent and put a stop to all forms of excessive use of force by State officials by ensuring that they carry out their activities in accordance with the Basic Principles on the Use of Force and Firearms**

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**by Law Enforcement Officials and other human rights standards. The State party should ensure that reports of excessive use of force and similar violations against persons seeking to exercise the rights to freedom of expression, assembly and association are thoroughly investigated and the responsible persons brought to justice.**

#### **Non-refoulement and security of refugees**

23. The Committee notes with concern the reports indicating that the principle of non-refoulement has not always been observed, in particular with regard to Eritrean refugees and asylum-seekers. The Committee is also concerned at reports of kidnappings of asylum-seekers and refugees for ransom or trafficking (arts. 6, 7, 8, 9).

**The State party should ensure that the absolute prohibition of refoulement under articles 6 and 7 of the Covenant is strictly respected in all circumstances. The State party should increase its efforts to prevent and punish the kidnapping of asylum-seekers and refugees, including by strengthening security in refugee camps.**

#### **Child soldiers**

24. While recalling its previous concluding observations (CCPR/C/SDN/CO/3, paragraph 17) and noting the efforts of the State party to prohibit the recruitment and use of child soldiers, the Committee is concerned by reports indicating that children are still being recruited and used in armed conflict, and that efforts at monitoring this practice are insufficient (arts. 8 and 24).

**The State party should redouble its efforts to detect and eradicate the recruitment and use of child soldiers as well as to ensure their prompt disarmament, demobilization and reintegration. It should also ensure that alleged perpetrators are brought to justice and, if convicted, adequately sanctioned.**

#### **Birth registration**

25. While taking note of the efforts undertaken by the State party to promote and ensure birth registration free of charge, the Committee is concerned that a large proportion of children are still not registered and at reports indicating that in some parts of the country there are formal and informal fees as well as fines for late registration (art. 24).

**The State party should strengthen its efforts to ensure that all children born in its territory are registered free of charge and receive an official birth certificate.**

#### **Dissemination and follow-up**

26. The State party should widely disseminate the Covenant, the text of its fourth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 10, 14, 15 and 18 above.

28. The Committee requests the State party to provide in its next periodic report, due for submission on 31 July 2017, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult with civil society and non-governmental organizations operating in the country.

