

UNMIS Submission to the Universal Periodic Review

Sudan

1. The United Nations Mission in Sudan (UNMIS) was established pursuant to UN Security Council Resolution 1590 to support the implementation of the Comprehensive Peace Agreement (CPA) to end the conflict between Northern and Southern Sudan. UNMIS Human Rights is responsible for the implementation of the human rights aspect of the Security Council mandate.
2. UNMIS Human Rights monitors, investigates and reports on the rights and freedoms as set forth in the CPA, the Interim National Constitution (INC) and other international conventions/instruments to which Sudan is party, with a view to forming engagement strategies with the Government and formulating capacity building programs to address gaps and challenges and build national capacity for the promotion and protection of human rights, including women's rights. UNMIS Human Rights also provides technical and advisory assistance to the Government regarding its engagement with the international human rights mechanisms including ratification processes, implementation of international human rights standards and treaty reporting obligations. Furthermore, UNMIS Human Rights strengthens civil society capacity to promote and protect human rights in Sudan. UNMIS Human Rights represents the UN High Commissioner for Human Rights and implements its programme of action in Sudan.
3. This report includes information since 2006 and is limited to Northern and Southern Sudan¹, the geographic area covered by UNMIS.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations²

<i>Core universal human rights treaties³</i>	<i>Date of ratification, accession or succession</i>	<i>Declaration /reservations</i>	<i>Recognition of treaty bodies</i>
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¹ This excludes Darfur, the area covered by UNAMID, the UN African Union Hybrid Mission.

² Unless indicated otherwise, the status of ratifications of the instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General*; Status as at 20 October 2010, supplemented by the official website of the United Nations Treaty Collection database, Office of the Legal Affairs of the United Nations Secretariat, <http://treaties.un.org/>.

³ The following abbreviations have been used for this document:

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICCPR: International Covenant on Civil and Political Rights

ICCPR-OP 1: Optional Protocol to ICCPR

ICCPR-OP 2: Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

OP-CEDAW: Optional Protocol to CEDAW

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OP-CAT: Optional Protocol to CAT

CRC: Convention on the Rights of the Child

OP-CRC-AC: Optional Protocol to CRC on the involvement of children in armed conflict

ICERD	21 Mar. 1977	None
ICESCR	18 Mar. 1986	None
ICCPR	18 Mar. 1986	None
CRC	3 Aug. 1990	None
OP-CRC-AC	26 Jul. 2005	Yes ⁴
OP-CRC-SC	2 Nov. 2004	None
CPD	24 Apr. 2009	None
OP-CPD	24 Apr. 2009	None

Core treaties to which the Sudan is not a party: ICCPR-OP 1, ICCPR-OP 2, CEDAW, CAT (signature only, 1986), ICRMW, CED

*Other main relevant international instruments
accession or succession*

Ratification,

Convention on the Prevention and Punishment of the Crime of Genocide	Yes
Rome Statue of the International Criminal Code	No
Palermo Protocol ⁵ (2000)	No (signature only,
Refugees and stateless persons ⁶	Yes, except Protocol,
1954 Convention relating to the status of Stateless Persons, and 1961 Convention on the Reduction of Statelessness	?
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁷	Yes, except Protocol III
ILO fundamental conventions ⁸	Yes, except ILO Conventions No 87 and No. 105

⁴ Article 3 (2).

⁵ Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime.

⁶ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁷ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Convention relative to the Treatment of Prisoners of War (Third Convention); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.

⁸ International Labor Organisation Convention No. 29 concerning Forced or Compulsory Labor; Convention No. 105 concerning the Abolition of Forced Labor, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise; Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

4. While the Sudan is a party to several core international human rights instruments, it is yet to ratify other key universal human rights treaties, including the Convention Against Torture (CAT) and the Convention for the Elimination of Discrimination Against Women (CEDAW) or the Protocol to the African Charter on Human and Peoples' Rights (the African Charter) on the Rights of Women in Africa.

B. Constitutional and legislative framework

5. Pursuant to the CPA, Sudan adopted a Constitutional framework providing for three equal and branches of Government with separation of powers, checks and balances, and a bill of rights which incorporates international treaties to which Sudan is party. The National Legislature,⁹ responsible for law making; the judiciary responsible for interpretation of laws; and an Executive headed by the Presidency¹⁰ for the execution of laws. The Constitution also provides for a National Human Rights Commission (NHRC) to serve as a national institution for the promotion and protection of human rights and a number of autonomous commissions to enhance good governance.¹¹

6. The CPA also provided a limited amount of autonomy to Southern Sudan, pursuant to which an Interim Constitution of Southern Sudan (ICSS) was adopted. This also with provides for three branches of Government, a bill of rights and a number of independent commissions including a Southern Sudan Human Rights Commission (SSHRC). Since the adoption of the Constitutional framework, significant progress has been made in legislative and institutional reform in accordance with the CPA in both in the North and in the South, including the passage of the Electoral Act, Southern Sudan Referendum Act, the Popular Consultations for the Blue Nile and Southern Kordofan, and the Abyei Referendum Act.¹²

7. Aspects of some national laws, however, are not consistent with the CPA and the INC and contravene obligations undertaken by the State under international and regional obligations including the ICCPR, ICESCR, and the CRC. Significant among these are the 2009 National Security Act, the 2009 Press and Printed Materials Act ("Press Act), the 2006 Voluntary and Humanitarian Work Act and the 1991 Criminal and Criminal Procedures Acts, all of which are apply in Northern Sudan. These laws contain provisions which frustrate a number of civil and political rights including the rights to personal liberty and due process, as well as press freedom and the freedoms of expression, association and assembly. Significant progress was noted in harmonization of domestic law with international standards by the adoption of the Child Act of 2009 and the National Disability Act of 2009.

C. Institutional and human rights infrastructure

⁹ Chapter IV of the INC

¹⁰ Part XI, Chapter I INC

¹¹ Article 142 INC

¹² UNSCR 1590 (2005)

8. In addition to the judiciary¹³, which serves as the guardian of rights and freedoms, the CPA and the INC provide for the establishment of a NHRC at national level, while the ICSS provides for a SSHRC, both of which are intended to serve as important elements of the national human rights protection system. In April 2009, the National Assembly in Khartoum passed the NHRC Act, the enabling law for the establishment of an independent National Human Rights Commission. Despite this, sixteen months after the enactment, the Commission is yet to be established due to the Government's failure to appoint Commissioners. Although the Act contains a number of provisions which are in line with the Paris Principles on the status of National Human Rights Institutions, the provisions on the selection of Commissioners, financial independence and the presence of six government representatives in advisory roles are of concern. Other concerns include the lack of subpoena powers and the delineation of mandates and jurisdiction between the NHRC and the SSHRC.

9. The SSHRC has been operational since 2007, following the appointment of its five Commissioners by Presidential Decree in October 2006. It was not until February 2009, however, that the enabling legislation, the Southern Sudan Human Rights Commission (SSHRC) Act, came into force. According to the ICSS and the SSHRC Act, Commissioners are appointed by the President with the approval of the Assembly by a simple majority. Despite this, neither the initial nor the subsequent appointments followed a transparent, participatory and inclusive process. The SSHRC is headquartered in Juba and has established a presence in all but two Southern Sudanese states¹⁴. In addition to the Commissions, both the National Assembly in the North and the Legislative Assembly in the South have Human Rights Committees to facilitate the incorporation of human rights in law making and law reform. In the North, the Government has established an Advisory Council on Human Rights (ACHR) within the Ministry of Justice to facilitate coordination of human rights concerns within the executive branch of Government, while in the South a Directorate on Human Rights and Treaties has been established in the Ministry of Legal Affairs and Constitutional Development to serve the same functions. Some Southern states have also established Human Rights Committees in their Legislative Assemblies.

D. Policy measures

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

1. Cooperation with Treaty Bodies¹⁵

OHCHR to complete

2. Cooperation with Special Procedures

10. The Special Rapporteur (SR) on the Human Rights Situation in the Sudan visited Sudan on four occasions since July 2007. The GoS requested the termination of

¹³ This includes the Supreme Court with authority as a court of cassation in respect of any criminal, civil and administrative matters as per article 125 INC

¹⁴ Northern Bahr El Ghazal and Warrap States

¹⁵ To be assessed by OHCHR

the SR's mandate following her fourth country visit in May 2009, alleging, *inter alia*, that she made unconstructive criticism rather than focusing on avenues for improving human rights. Following this request, UNMIS Human Rights used a Human Rights Forum meeting in August 2009 to request the GoNU to extend an open invitation for Special Procedures mandate holders who are interested in visiting Sudan, which was rejected by the ACHR. A new mandate holder, the Independent Expert (IE) on the Human Rights Situation in Sudan, was established in June 2009. The IE visited Sudan in January/February 2010. In his subsequent report, he noted key steps towards democratic transformation initiated by the GoS, but expressed concern particularly about the legislative framework and restricted political space in Northern Sudan and political intimidation and killing of civilians in the South. In October 2010, the UN Human Rights Council voted to extend the mandate of the IE for one year despite the GoS' objections that, given the presence of UNMIS and UNAMID, along with Human Rights Forums in Khartoum and Darfur, the IE was not necessary.

11. Since 2007, UN Human Rights Council mandated Special (thematic) Rapporteurs have issued 22 Urgent Appeals to the GoS on issues in the UNMIS mission area. These were based on information on individual cases of concern, submitted by UNMIS¹⁶ and NGOs both in and outside Sudan. The Government failed to respond to most of these appeals. Cooperation with Special Procedures was unsuccessful in many cases including, for example, the January 2010 execution of six men implicated in the killing of 13 policemen during riots in the Soba Aradi neighborhood of Khartoum in 2005. The executions that went ahead in January 2010 did so in spite of Urgent Appeals from three UN Special Rapporteurs, concerned with violations of due process and fair trial guarantees and requesting a stay of execution.

12. In February 2010, following the demonstrated lack of cooperation by the Government, UNMIS Human Rights proposed that it investigate human rights concerns in Sudan and allow for exhaustion of local remedies, including engagement with relevant Government institutions, prior to the submission of Urgent Appeals. Between February and June 2010 UNMIS Human Rights wrote and engaged the Government on eleven occasions with reference to different human rights cases.¹⁷ Only one written response was received.¹⁸ On September, UNMIS referred the case of Mohamed Musa to the Special Procedures for their intervention.

3. Cooperation with the Office of the High Commissioner for Human Rights

13. Over the years, a number of initiatives have been taken to enhance collaboration between the Government and OHCHR, as represented in Sudan by UNMIS Human Rights. The Human Rights Forum¹⁹ was designed as a venue where

¹⁶ Information on individual cases of concern submitted by UNMIS resulted in approximately 23 Urgent Appeals to the GoS

¹⁷ Letters sent on 24 June (on the detention of 5 UPF members), 17 June (police misconduct in Feitimab), 9 June (detention of doctors in strike), 7 June (over 1 year detention of four UPF members), 1 June (arrest of doctor Turabi), 26 May (health of Abuzar Ali Al Amin), 14 February to 6 May (numerous letters about the killing of Mohamed Musa), and April (access to prisons)

¹⁸ In February 2010, the ACHR responded that NISS was not implicated in the death of Mohamed Musa.

¹⁹ In 2007, the mechanism for engagement with the GoS was Joint Implementation Subcommittee on Human Rights and Protection (Sub-JIM), a subsidiary body of the Joint Implementation Mechanism, established in 2005 and co-chaired by UNMIS and the ACHR.

UNMIS Human Rights and the ACHR (which co-chairs the Forum with the Chief Human Rights Officer), would meet together with the Diplomatic Community and other UN partners, government institutions and civil society to discuss and formulate strategies on key human rights issues of concern in the country. The Human Rights Forum, which has met five times since its establishment in February 2009, was suspended on 18 October 2010 by the GoS as a reaction to the extension of the IE's mandate and pending a Government assessment of the Forum as a mechanism for engagement with UNMIS and international partners. The suspension of the Human Rights Forum, compounded by the GoS' failure to establish a NHRC, has limited the options for constructive engagement with Government in the North on key human rights issues²⁰. Meanwhile, no Forum as yet exists in Southern Sudan. Following consultations with relevant Government institutions in the South, however, including the Human Rights Commission, the National Assembly and the Ministry of Justice, a Human Rights Forum for Southern Sudan is due to be launched on 17 November 2010. The body will be comprised of UN, GoSS, and diplomatic and civil society representatives.

14. At the regional level, UNMIS Human Right has enjoyed continuous engagement with the SSHRC and has strengthened the capacity of the Commission to perform its statutory functions. The Commission functions at both the regional and the state level and has opened offices in eight of the ten states in Southern Sudan. It is mandated to monitor the application of the human rights guarantees enshrined in the ICSS, as well as regional and international human rights treaties to which Sudan is party. At the state level, UNMIS Human Rights works closely with SSHRC monitors, sharing information, carrying out joint visits and undertaking joint advocacy efforts.

15. Engagement between UNMIS Human Rights and the SPLA at regional level began formally in 2008. Although some of these meetings provided UNMIS Human Rights with a forum to raise human rights concerns, little progress has been made in addressing the ongoing human rights violations, including allegations of killings, rape, arbitrary arrest and detentions, in which SPLA personnel are implicated. UNMIS Human Rights still lacks access to SPLA facilities where civilians are reported to be detained throughout the South. Recently, a coordination mechanism between UNMIS Human Rights and the SPLA has been reinvigorated, providing for periodic submission of reported violations for SPLA action. Training of SPLA leadership on human rights and democracy is also scheduled for November 2010, with financial support from OHCHR's Technical Cooperation Programme.

16. At local level, engagement with state level officials and county level officials in Southern Sudan continued to grow in the past four years. In the Transitional Areas, with a few exceptions, engagement with state and local authorities was possible as UNMIS Human Rights enjoyed access to government counterparts and key institutions. In Northern Sudan, avenues of engagement with local authorities, including key actors such

²⁰ In April 2009, the National Assembly passed the National Human Rights Commission Act, to pave the way for the establishment of a National Human Rights Commission (NHRC) as mandated by the CPA. The Act contained provisions consistent with the Paris Principles on the establishment of national Human Rights Institutions; however, the provisions in the Act for the appointment of the commissioners did not lend itself to transparency, participation and inclusiveness. By the end of 2009, the NHRC was still not operational due to a failure to select and appoint Commissioners.

as the police and NSS, were limited due to ACHR's insistence that all interactions with the Government be channeled through their office. However, there was a relaxation of this rule when the ACHR Rapporteur stated at the Human Rights Forum meeting in May 2010 that UNMIS can deal directly with all institutions of Government.

17. Engagement with civil society counterparts exists throughout the country. In the South, UNMIS Human Rights has not suffered major interference by government institutions and has been able to work closely with civil society in raising awareness on human rights and strengthening capacity through regular training programs. In the TA and Northern Sudan, although engagement with civil society has been regular, it has been less vibrant due to the restrictive political environment for civil society activities since the International Criminal Court (ICC) indictment of the GoS President in 2009.

18. Notwithstanding, engagement with civil society organisations in Northern Sudan, the TA and Southern Sudan in the context of preparations for the Universal Periodic Review (UPR) process through training workshops has been exceptional, with outreach to an expanded network of civil society groups throughout the country and positive feedback and engagement with UNMIS Human Rights as the UPR reporting deadlines approach.

B. Implementation of international human rights obligations

1. Right to life, liberty and security of the person

19. Due to the well established institutional mechanisms in the North, excluding the TA, respect for life, liberty and security was generally upheld, except in isolated cases involving the NSS and other security forces, and the application of the death penalty.

20. In the South and the TA, large scale loss of life has continued and increased throughout the four years under review due to perennial ethnic and communal violence, LRA attacks, and the inability of the State either to prevent these incidents or to bring those responsible to account. While members of the state security forces were at times affected, the overwhelming majority of those killed in these acts of violence were civilians, in particular women and children. Perpetrators ranged from individual bandits to heavily armed tribal groups, mobilised *en masse*. Tensions between different groups in Southern Sudan and the TAs had existed for generations but with the end of the civil conflict and the combined effect of the absence of a common enemy, scarce resources, and the proliferation of firearms, the violence has increased dramatically in recent years.

21. From 2007 until May 2008 a series of deadly clashes occurred between Dinka and Misseriya in and around Abyei, reaching borders with Southern Kordofan and Unity State²¹. 2009 witnessed large scale inter-tribal violence and attacks in Southern Sudan, resulting in over 2,000 civilians killed²². The worst of the violence and attendant

²¹ In May 2008 direct military clashes between SAF and SPLA in Abyei occurred, and each side was supported by armed civilians. The worst of the fighting took place between 14 and 20 May, resulting in scores of civilian and military casualties and the displacement of virtually the entire civilian population of Abyei and surrounding villages

²² Some sources elevate the number of civilians killed to 6,000. [Please specify the source, or delete]

loss of lives took place in Jonglei State in the first half of 2009 in a series of revenge attacks between the Lou Nuer people of Northern Jonglei and the Murle of South Western Jonglei. Similar incidents of inter-tribal violence took place in Lakes, Eastern Equatoria, Central Equatoria and Warrab States, in the second half of 2009. The overwhelming majority of casualties were civilians, notably women, children and the elderly.

22. LRA attacks also contributed to considerable loss of lives in Southern Sudan in 2008 and 2009, when an estimated 200 civilians lost their lives as a result of these attacks. In the vast majority of cases, no arrests or prosecutions are made in relation to LRA attacks, due in part to the nature of the attacks and the terrain in which they take place, as well as capacity gaps in the justice sector. UNMIS received reports of approximately 277 abductions during LRA attacks in Greater Equatoria between January 2009 and October. Most of those abducted were women and children who were then subjected to sexual abuses during their captivity.

23. The SPLA was also accused of killing civilians in Southern Sudan, sometimes in the context of conflict and sometimes as a result of individual acts of indiscipline. There were few cases where individual soldiers implicated in civilian killings were arrested and prosecuted, but in most of the cases, there was limited accountability for violations committed by SPLA personnel. SSPS capacity gaps and the dominance of the SPLA in the governance of Southern Sudan accounted in part for the failure to arrest and prosecute SPLA soldiers suspected of perpetrating these offenses.

24. The prevalence of child abduction, particularly in the context of inter-tribal conflict in Southern Sudan, and forced recruitment of children into armed groups was also of concern to the CRC during its fifty-fifth session, which stressed that girls abducted by armed groups were frequently forced into sexual slavery. By way of example, an estimated 125 child abductions in the context of inter-tribal conflicts were monitored by UNMIS Human Rights in Jonglei State, between January and September 2009.

25. The death penalty, which remained a major challenge to the right to life, continued to be implemented, despite the UN General Assembly moratorium, due process concerns, and appeals from UNMIS and UN Special Rapporteurs. Continued application of the death penalty in Southern Sudan is of particular concern, due to severe shortfalls in the justice sector, affecting due process guarantees. Between June 2008 and February 2010 a total of 14 executions were carried out in Southern Sudan; in at least seven of these cases, the convicted inmates did not exercise and exhaust their rights to appeal. Only one of the 14 people executed reported having access to legal aid during proceedings. As a result of executions and new convictions, numbers are fluid. At the end of the reporting period, however, 110 prisoners were on death row in Southern Sudan, of which 46 were in Juba Prison, 36 in Wau and 28 in Malakal. Regular assessment of those on death row conducted by UNMIS Human Rights revealed that few those convicted were represented by counsel during the trial and the majority proceed to execution without having benefited from legal assistance to appeal their sentences.

26. In Khartoum, meanwhile, in April 2009, nine men, including one over 70 year old, were hanged, following conviction for the murder of a newspaper editor. During pre-trial detention, all nine were denied access to legal counsel and made confessions which

they later retracted in court, claiming they were made under duress. The convictions were upheld in three appeals and a petition to the Constitutional Court. Several submissions from UN Special Procedures urging Sudan to reconsider the convictions were ignored. Since then, six men were executed in Khartoum in January 2010, following conviction for murdering 13 police officers in the Soba Aradi riots of 2006. As in the above case, the defendants were denied access to pre-trial legal counsel and made confessions which they later retracted. Nonetheless, the convictions were again upheld at all levels of appeal, despite submissions by UNMIS and UN Special Procedures.

27. In November 2009 611 women and children were released from Omdurman Women's Prison. Most had been convicted for brewing alcohol. Following this, in April 2010 3,042 prisoners were released from prisons in Khartoum and elsewhere in Northern Sudan. Another 454 women were freed from Omdurman Women's Prison. In July 2010 a further 2,429 prisoners were released from prisons across Northern Sudan by Presidential Decree. Furthermore, in February 2010, 57 prisoners convicted and under process for suspected participation in Omdurman Attack were released following the signing of a framework agreement between the GoS and JEM. Fifty of those released had been sentenced to death.

2. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

28. The CPA and the INC provide for the right to freedom of expression, association and assembly. However, the realisation of these rights has been consistently frustrated by the National Security apparatus through application of the 2009 NS Act, the 2009 Press Act. (as well as previous versions of these two Acts) and the 1991 Criminal Procedure Act. Those targeted included journalists, opposition politicians, student groups, and Darfurians²³.

29. The past four years witnessed several periods of political turbulence followed by a subsequent crackdown of political rights and freedoms. Immediately after the ICC announced its decision to issue an arrest warrant for Sudanese President Omar Al-Bashir in March 2009, the GoS expelled 13 international NGOs and revoked the licenses of three Sudanese NGOs, two of which were working on the protection of victims of torture, rape and other human rights abuses through legal aid and assistance.²⁴ Following the unsealing of the ICC indictment, Human Rights Defenders operating in Northern Sudan suffered arbitrary arrest and detention, causing some to stop their work and/or flee the country.

²³ In Northern Sudan and parts of the TA, groups regularly targeted by authorities since 2008 included Darfurians especially after the May 2008 Omdurman attacks; members of political parties and civil society organisations including the Popular Congress Party (PCP) and the Communist Party of Sudan (CPS); members of student groups including the United Popular Front (UPF) and the *Girifna* movement.

²⁴ The two national NGOs which engaged in direct assistance for victims of human rights violations were the Khartoum Centre for Human Rights and Environmental Development (KCHRED), and the Amel Center for the Rehabilitation of Victims of Violence. A license of a third organization, the Sudan Social Development Organisation (SUDO) was also revoked. The NGO licenses were revoked by HAC relying on the NGO law (the Organisation of Humanitarian and Voluntary Work Bill of 2006) but provided no explanation of reasons for the decision. On 21 April 2010 a Khartoum appellate court reversed the HAC decision to cancel SUDO's registration, ruling that HAC had no legal basis to make the decision and declared it null and void.

30. The period surrounding the April 2010 elections also witnessed violations of political rights and freedoms, including personal security and liberty, press freedom, freedom of speech, assembly and association, throughout Sudan, although in varying degrees between North, South and the TA. In December 2009, a series of demonstrations protesting the NCP position on key CPA related legislation²⁵, organised by a coalition of opposition parties and the SPLM were disrupted by security forces. Security forces used tear gas and batons, beat civilians and arrested at 300 people in various locations in Northern Sudan, including Sudanese and international journalists and high-level opposition political leaders.

31. No significant progress has taken place with respect to press freedom. The NSS consistently censored the Northern Sudan print media from 2007 until September 2009, when the President ordered the discontinuation of the practice, with the caveat that journalists must “*avoid crossing the red lines*”. In May 2010, immediately following the national elections, the NSS resumed its direct pre-press censorship of newspapers on a daily basis for a period of four months. Two newspapers were also shut down by the NSS.²⁶ On 7 August the NSS announced another decision to suspend pre-print censorship, declaring it was committed to protecting freedom of expression. In this announcement, however, the NSS declared its “*constitutional right to censor*”, when deemed necessary. A number of journalists have accordingly resorted to self-censorship in order to avoid being arrested or prosecuted by NSS. The conduct of NSS gained constitutional support when the Constitutional Court in August 2009 ruled that pre-publication censorship was not unconstitutional.

32. In addition to the closure of newspapers and resumption of pre-press censorship, the post-election period witnessed the arrests of prominent opposition leaders²⁷ and the prosecution of journalists by the NSS. On 16 May 2010 senior *Rai al-Shaab* journalists were arrested by the NSS, who closed down the newspaper’s offices. Although no formal justification for the closure has been announced, it was accompanied by a statement from the Ministry of Information on 16 May accusing *Rai al-Shaab* of spreading lies and insulting the Sudanese people and the GoS. In July 2010 a Khartoum court convicted three senior *Rai al-Shaab* journalists arrested in May for crimes ranging from undermining the constitutional system, publication of false news under the Criminal Act of 1991 and violating journalistic duties under the Press Act of 2009. The Deputy Editor-in-Chief of the paper was convicted and sentenced to five years’ imprisonment and the two others received two-year sentences. The *Rai al-Shaab* newspaper was ordered closed and its assets and properties seized.

33. Although the Press Act of 2009 did not have an operative effect in Southern Sudan, political rights and freedoms, notably freedom of expression, were also restricted on an arbitrary basis by local authorities who threatened and coerced media

²⁵ Including National Security reform and the Southern Sudan and Abyei Referenda Bills.

²⁶ The PCP-affiliated newspaper, *Rai al-Shaab*, was shut down by the NSS in May 2010 and remains closed at the time of writing. A pro-NCP newspaper, *Al Intibaha*, was suspended by the NSS in July 2010, for an “indefinite period”, reportedly for publishing articles in favour of secession, and resumed publication in October 2010.

²⁷ Dr. Hassan Al-Turabi, Chairman of the Popular Congress Party (PCP), former Speaker of the National Assembly and former Chairman of the National Islamic Front (NIF), was arrested by the NSS at his home in Khartoum on 16 May. A few days later, on 20 May, Dr. Faruq Abu Eissa, the former Chairman of the National Democratic Alliance (NDA), a coalition of opposition parties at the National Assembly, was also arrested and briefly detained by NSS personnel.

sources or arrested journalists. Crackdowns on freedom of association and assembly in the South were witnessed in 2009, when local authorities and security forces broke up a series of rallies organised by opposition parties. Leading up to the elections, the SPLM-DC was targeted throughout Southern Sudan and scores of arbitrary arrests of SPLM-DC members by the SPLA were reported.²⁸ In 2010 pro-unity supporters were also targeted in various locations by local authorities.

3. Administration of justice and the rule of law

34. Despite a functioning and relatively well-resourced justice sector, including the police, prosecution, judiciary, and the prisons in the North, serious violations of fair trial guarantees and due process rights were noted in the administration of justice in Northern Sudan. Many of these violations were occasioned by the inadequate legal framework for the protection of human rights, including in particular the National Security Act of 2009 and the Criminal Procedures Act of 1991. The exercise of arrest and detention powers by the NSS lead to numerous allegations of serious human rights and due process violations including arbitrary arrests, *incommunicado* detentions, ill-treatment, forced confessions, and lack of access to legal counsel.

35. The continued application of the Evidence Act of 1993,²⁹ which permits the use of confessions extracted under duress as evidence in court, remains a challenge. In 2006, UNMIS Human Rights monitored the trial of 18 men accused of an attempted coup in September 2004, all of whom stated they had confessed under torture. Ten were sentenced to prison terms ranging between 10 and 15 years. Also in 2006, seven people were convicted and sentenced to death in the Soba Aradi trial, some of whom stated they confessed under torture.³⁰ From June 2008 until January 2010, 158 people were tried in eleven special trials by the Omdurman Anti-Terrorism Court One hundred and six were sentenced to death (50 of whom were later released). In each trial monitored, defendants alleged they had been forced to confess. In another trial monitored in December 2008 and January 2009, a man accused of providing information to the ICC stated in court that he confessed under torture. He was convicted and sentenced to 17 years' imprisonment. Four of the five men convicted for the murders of USAID staff members in June 2009 stated before the court that they confessed under torture; all four were sentenced to death. Two of the four defendants in the *Rai al Shaab* trial of June and July 2010 stated before the court that they had been tortured. They received custodial sentences of two and five years. In one trial monitored in March 2008, the court rejected retracted confession and acquitted the defendants.

36. Another concern is the creation of special courts, including anti-terrorism courts. Special Procedures mandate holders, particularly the former SR on the Situation of Human Rights in Sudan, expressed concern about the work of these courts. The courts were set up under the Anti-Terrorism Act of 2001 after an armed

²⁸ In November 2009 the GoSS Council of Ministerial Affairs issued a directive to State Governors in Southern Sudan not to interfere with political parties "*except the SPLM-DC*". The directive was signed by GoSS President Salva Kiir.

²⁹ Article 10 of the Act provides that '*evidence shall not be rejected merely because it has been obtained by unlawful means whenever the Court is satisfied with the genuineness of its substance*'

³⁰ The sentence of one of the defendants was commuted from death to imprisonment on appeal.

attack on Omdurman in May 2008. In three rounds of trials from June 2008 to January 2010 they sentence a total 106 people to death. The SR noted that they operate in accordance with procedural norms, set out by the Chief Justice in consultation with the Minister of Justice, which override parliamentary laws and the protection they offer from unfair trial.

37. UNMIS Human Rights was unable to monitor prisons and police facilities in most of Northern Sudan due to the refusal of the relevant authorities to allow access to prisons. As such, it has been challenging to independently verify allegations of arbitrary arrests and detention, as well as ill-treatment and torture in custody.

38. In the TA, lack of formal justice systems, especially in Abyei and also in parts of Blue Nile State, present a great challenge. In Abyei, no progress was made towards the establishment of a formal justice system. As such only traditional courts operated and exercised jurisdiction over both criminal and civil matters with limited prospects of appeal. Traditional and customary laws often violate due process rights and contravene human rights provisions in the INC and relevant international treaties ratified by Sudan.

39. Southern Sudan faced significant challenges in the administration of justice throughout the four years under review. Efforts to improve the justice sector were hampered by capacity gaps, especially in terms of human resources and infrastructure, including sufficient court houses, judges and prosecutors in varying degrees. Some progress was noted during in 2009 and 2010, with the construction/renovation of court houses, and appointment of new judges and prosecutors to areas formerly without access to the formal justice system.

40. Despite guarantees enshrined in the ICSS, Southern Sudan did not benefit from a functioning a legal aid program. In the vast majority of criminal cases, including for capital offenses, UNMIS Human Rights noted that many defendants went to trial without legal representation.

41. Traditional courts run parallel with the formal justice system across Southern Sudan. Due to capacity gaps affecting the state judiciary in many areas, traditional courts were noted to operate without oversight from the state judiciary and some of them dealt with criminal cases which they lacked jurisdiction to hear. Furthermore, although the sentencing power of traditional courts is limited to six months imprisonment, UNMIS Human Rights noted that some traditional judges routinely imposed longer sentences. As a result of the absence of an effective judiciary in some states, appeals were not made against many decisions rendered by the traditional courts.

5. Economic, Social and Cultural Rights (ESCR)

42. Enjoyment of ESCR remained beyond the reach of many if not most people in Sudan. In many areas of Northern Sudan, Southern Sudan and the Transitional Areas, resources were extremely scarce and people live in abject poverty³¹. For many, access to basic social services such as water, sanitation, and educational facilities, was a long

³¹ 85% of the population in the South and 46% of the population in the North, the World bank, September 2010.

way from realisation. Health care facilities are inadequate, especially in the South and the Transitional Areas. Sudan has one of the highest maternal mortality rates in the world, for example, and indicators suggest that HIV is on the increase. During its fifty-fifth session, the CRC expressed concern that the vast majority of the Sudanese population did not have ready access to potable water or adequate sanitation facilities and the living conditions of children in situations of extreme poverty massively impeded the holistic development of children's capacities. Significant efforts are being made by the UN Agencies and international partners to address the socio-economic conditions in Southern Sudan and the Transitional areas.

43. Forced evictions took place across Sudan, although more so in the North and particularly around Khartoum and Omdurman. In Northern Sudan, UNMIS noted that IDP and the urban poor in various parts of Khartoum State, notably in the "newly urbanized areas" predominantly populated by IDPs from Southern Sudan, Darfur and the Nuba Mountains, were also victims of forced evictions from time to time. Ten large scale demolitions were recorded by UNMIS Human Rights in Northern Sudan during the period under review as a result of which at least 55,000 people lost their homes, by conservative estimate. Evictions were also recorded in other parts of Sudan, notably in Juba, Malakal, Aweil and Ed Damazin.

6. Women's rights

44. Efforts are being made to enhance the realisation of women's rights in Sudan. The 2009 elections provided for the full participation of women in the political process. However a number of challenges remain due to discriminatory laws on custody, divorce, and property rights, as well as years of entrenched cultural and traditional norms including forced and early marriage. Under the traditional system of bride wealth, women have no power in negotiations about who they should marry, and rape and SGBV are rarely recognised as crimes,

45. Female Genital Mutilation (FGM) is widespread in Northern Sudan and parts of the TA, where it is considered a traditional and customary practice. It was criminalised in Southern Sudan in the 2008 Government of Southern Sudan Penal Code, with a provision for a ten year prison term if convicted. The 2008 Southern Sudan Child Act also protected children from FGM. With the exception of Southern Kordofan State, which in November 2008 passed state level legislation outlawing FGM, the practice continues to be legal in the North.

45. The legal framework to protect women from GBV is also weak, discriminatory and in urgent need of reform. Under current legislation in Northern Sudan, a woman alleging rape run the risk of being charged with the crime of adultery, conviction of which might result in a death sentence Furthermore, the 1991 Criminal Act criminalised "indecent or improper dress, which causes annoyance to public feelings". The Act provided no details or guidance on what kind of dress shall be deemed indecent or improper and application of this article remains subject to the interpretation of the Public Order Police and the judges in the Public Order Court, which were often noted to be arbitrary. The arbitrary nature of Article 152 of the Act

runs contrary to the ICCPR as it violates due process rights.³² Non-muslim women were more frequently targeted under this Act.

46. In Southern Sudan, most of the reported cases of GBV took place in the context of armed violence and the perpetrators were SPLA soldiers³³. Rape and GBV also took place in the context of tribal conflicts and LRA attacks throughout Southern Sudan.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

Achievements-In 2009, Sudan ratified the Convention of rights of persons with disabilities.

Best Practices-In 2009 the Southern Sudan Human Rights Commission opened offices in 8 out of 10 states in an attempt to outreach to the citizens,

Challenges-Sudan is the largest country in Africa emerging from over 25 years of conflict. Lack of infrastructure, especially in the South, long distances and high poverty levels present challenges to the implementation of human rights.

Constraints-Human rights work is severely constrained by the restriction of channels of communication at national level through one single institution. Access to prisons in the north and to SPLA detention facilities in the south severely affects human rights work.

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

Pledges by the State

OHCHR should complete with information from IE and Treaty Bodies.

B. Specific recommendations for follow-up.

47. The Government of Sudan and the Government of Southern Sudan are encouraged with the support of international partners to:

- Implement the necessary reforms of the legal framework consistent with the CPA and INC Guarantees including in particular the National Security Act

³² Crimes of public order were noted in two distinct cases in 2009. On 3 July 2009, Public Order Police arrested at least thirteen women at a concert hall in Khartoum, nine of whom were charged with “*indecent, or improper dress,*” under Article 152 of the Criminal Act of 1991. Most of these women pled guilty and were sentenced to receive ten lashes, along with either a fine or one month in prison. One of the women who chose to stand trial was found guilty of Article 152, based on allegations made by police officers which she denied in court

³³ For example, over twenty women were reportedly raped by the SPLA soldiers during a bout of violence between the SPLA and armed civilians taking place in Akot, Lakes State, in December 2009 through January 2010. Many rapes were also reported to have taken place during the political violence which engulfed parts of Northern Jonglei and Upper Nile State as the SPLA attempted to flush out insurgents following the April 2009 elections. SPLA disarmament operations have also provided the context for rape with civilian authorities in Cuebiet County, in Lakes State, accusing SPLA soldiers of raping eight women during a disarmament exercise on 7 July

- (NS Act), the Press and Printed Materials Act (the Press Act), the Voluntary and Humanitarian Work Act (the NGO Act), and the Criminal Procedures Act;
- Create awareness of civil and political rights enshrined in the CPA and INC among the Security Agencies especially the Police and NISS;
 - Grant UNMIS Human Rights access to detention facilities to regularly monitor the human rights situation in the prisons;
 - Establish a legal aid program to provide consultation and legal services to those whose political rights and liberties are restrained but cannot afford legal counsel;
 - Allow an inventory and assessment of prisons with the view to facilitating compliance with the CPA and international standards;
 - Build the capacity of justice sector institutions to protect civil and political rights in the administration of justice;
 - Facilitate massive a sensitization programme on civil and political rights in the various states and communities to empower the people to identify, assert and demand the protection of their rights;
 - Facilitate sensitization of the SPLA to respect human rights and freedoms in Southern Sudan;
 - Introduce a moratorium on the application of the death penalty, in line with UN General Assembly Resolution 62/149.
48. In the area of ESCR the Government of Sudan and the Government of Southern Sudan are encouraged to:
- Allocate adequate resources to basic social services, especially health and education;
 - Address the question of housing especially for the poor, and place a moratorium on forced evictions in the absence of an alternate place for relocation with necessary facilities;
 - Enhance Increased monitoring of Economic and social rights throughout the country by civil society organisations and other partners;
 - Gather information and statistics from all relevant ministries and civil society across Sudan.
49. With regard to administration of justice, the Government of Sudan and the Government of Southern Sudan are encouraged to:
- Reform the legal framework to enhance respect for human rights in the administration of justice including in particular the Evidence Act, the Civil Procedure Law, and the Criminal Procedure law;
 - Build the capacity of the justice sector institutions for the protection of human rights during trials, focusing on the Police, the Prosecution, Judges, and Magistrates;
 - Reform the bail system so as to minimize detentions prior to or during trial except for the most serious crimes, to enhance the exercise of the right of presumption of innocence in all criminal cases;
 - Make the CPA, INC, ICSS, decisions of the Supreme Courts, and international human rights instruments available to Justice Sector institutions including the Police, Courts, Prosecution for their reference;
 - Create awareness of human rights norms, standards and due process rights in the traditional justice system;

- Establish legal aid programs at the state levels to enhance protection of human rights during trials especially in capital offenses;
- Allocate resources to strengthen rule of law institutions.

50. With regard to women's rights the Government of Sudan and the Government of Southern Sudan are encouraged to:

- Ratify CEDAW;
- Amend the rape law in the 1991 Criminal Code, ensuring that women who allege rape cannot be tried with adultery;
- Enact legislation prohibiting FGM in Northern Sudan, and embarking on sensitization to bring about attitudinal change;
- Adopt and implement the national strategy for the prevention of violence against women;
- Amend the Criminal Code to give protection to women and to ensure that provisions in legislation on immoral dressing is not applied arbitrarily and in a discriminatory manner against them;
- Facilitate institutional reform to ensure that gender focus is incorporated into all areas of work of key government institutions.

Furthermore, UNMIS has continuously advocated that the Government of National Unity the news to prioritize the establishment of the National Human Rights Commission to address an institutional gap in the promotion and protection of Human Rights.

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

51. Between 2006 and 2010, the United Nations has been actively engaged in human rights capacity building activities in Sudan. Technical assistance focused on the areas of legislative reform to ensure compatibility of national legislation with applicable international, regional and national human rights standards, the ratification of universal human rights treaties and compliance with obligations under ratified human rights instruments, human rights in the administration of justice, the promotion of national human rights institutions and women's rights, among others.. Technical assistance programmes were funded by the United Nations High Commissioner for Human Rights (authorized budget from 2007 to 2010 for both North and South Sudan: USD 1,480,000) and individual donors³⁴. The capacity building interventions targeted government authorities, in particular law enforcement agents, parliamentarians, civil society and national human rights protection mechanisms in both North Sudan, including Darfur and South Sudan.

52. The 2002-2006 United Nations Development Assistance Framework (UNDAF) stated the overall UN goal by contributing to the creation of a peaceful enabling environment conducive to the fulfillment of the rights of Sudanese people to survival, development and equal participation through achieving the following 3 objectives: (a) improved quality and access to basic social services including emergency response and preparedness; (b) Rehabilitation and development of sustainable livelihoods and (c) better governance, peace building and respect for and protection of

³⁴ (USAID: authorized budget for Darfur from 2006-2009: USD 2.610,000; Swiss government authorized budget to provide technical assistance in support of the implementation of recommendations advanced by the Group of Experts on Darfur from 2008 to 2010: USD 430,000).

human rights. The first UNDAF 2002-2006 was extended for two additional years until 2008 to enable the UN family and national counterparts to prepare a strategic response to the emerging priorities created by the signing of the CPA and on-going peace processes. The 2009-2012 UNDAF listed four domains of cooperation: (a) peace-building; (b) governance and rule of law; (c) livelihoods and productive sectors and (d) basic services.

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