



Sudan Law Reform Advocacy Briefing

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Welcome to the third issue of the Sudan Law Reform Advocacy Briefing.¹ This Briefing is published quarterly to highlight and reflect on law reform developments and issues critical to the promotion and protection of human rights in Sudan. Its aim is to inform and engage those working on, and interested in, law reform and human rights in Sudan. The present issue focuses on the right to demonstrate peacefully and violations in this context. The applicable laws and responses by Sudanese authorities to protests have been a matter of long-standing and acute concern.

This issue of the Sudan Law Reform Advocacy Briefing also contains a list of reports recently published by international and regional organisations, NGOs and others.

Yours,

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¹ The Advocacy Briefings are available online at: <http://www.pclrs.org/english/updates>.

I. Protecting the right to peaceful protest in Sudan

1. Introduction

Sudanese authorities reacted drastically to recent demonstrations that erupted in September 2013 across Sudan. The responses of Sudanese authorities raise familiar concerns: the excessive use of force, resulting in a large number of casualties; subsequent arrests, detention and torture; and the prosecution of individuals for organising/taking part in demonstrations. Since 1989, when a coup brought the then National Islamic Front (now National Congress Party) to power, the repression of dissent and protest has been an integral part of the exercise of power, facilitated if not sanctioned by a panoply of laws. These laws include those that on the one hand restrict freedom of assembly and on the other provide the police and security services with extremely broad powers to use force. These laws can be, and have been construed so as to criminalise the exercise of freedom of expression and assembly. In addition, in the case of alleged violations, Sudanese officials enjoy immunities and victims do not have access to effective remedies.

As recognised in international human rights law and jurisprudence, freedom of expression and assembly are central to a democratic society and play a key role in ensuring the protection of all human rights. Sudan's Bill of Rights makes international human rights treaties an integral part of the Interim National Constitution and stipulates that "[l]egislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights."² Sudan has also committed itself to law reform as part of its action plan to implement the recommendations of its 2011 Universal Periodic Review.³

This Advocacy Briefing sets out the reforms needed to ensure the conformity of Sudanese law applicable in the context of protests and demonstrations with binding international human rights standards, with a particular focus on the right to freedom of assembly, the prohibition of torture and ill-treatment and the right to life.

2. Protest and human rights in Sudan

As one of the first steps after taking power in June 1989, the Government of Sudan issued presidential decree no.2, which declared a state of emergency. In addition to dissolving all political parties and unions and taking other measures, the Decree prohibits "express[ing] any political dissent, in any form, to the regime of the National Salvation Revolution" and

² Article 27(4) of the Bill of Rights, Interim National Constitution of Sudan, 2005.

³ See *Report of the Independent Expert on the situation of human rights in the Sudan*, Mashood A. Baderin, UN Doc. A/HRC/24/31, 18 September 2013, para.18.

“hold[ing] a gathering or meeting for a political purpose, in a public or private place, without a special permission.”⁴ Further,

[p]ersons who would violate any regulations of this decree or would show resistance to them will be punished by a prison term not less than one year and no more than ten years, they can be also fined. If the violation or the resistance is in conspiracy with, or is in criminal association with others, the perpetrator can be sentenced to die. In case the violation or resistance involves the use of force or arms or military equipment, the perpetrator will be sentenced to die and his properties will be seized.⁵

For the prosecution of such offences, the then Revolutionary Council was mandated to set up special courts. As held by the African Commission on Human and Peoples’ Rights in the case of *Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan*, the Decree was incompatible with Sudan’s human rights obligations on several grounds:

Section 7 of The Process and Transitional Powers Act, 1989 [Decree No.2] prohibits effecting without special permission, any assembly for a political purpose in a public or private place. This general prohibition on the right to associate in all places is disproportionate to the measures required by the government to maintain public order, security and safety. In addition, there is evidence from the Complainants, which is not contested by the government, that the powers were abused.⁶

As stated above, the [African] Charter contains no derogation clause, which can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law.⁷

Notwithstanding its apparent incompatibility with international human rights standards, domestically the Decree legally sanctioned the crackdown on civil society. This took the form of using live ammunition against unarmed protesters, mass arrests and prosecutions before special courts, which resulted in several cases in which the death penalty was imposed in the period from late 1989 to 1991.⁸

There have been recurring concerns over respect for the rights of peaceful protesters throughout the last two decades. More recently, in the lead up to national elections and the referendum concerning the independence of South Sudan, police and security forces were reported to have repeatedly used excessive force, including tear gas and batons, to break up

⁴ The Second Constitutional Decree: The Procedural Law and the Transitional Powers of 1989 (30 June 1989), English text in Amin M. Medani, *Crimes against International Humanitarian Law in Sudan: 1989-2000* (Egyptian Book House, 2001) 255-258.

⁵ Article 7 *ibid.*

⁶ *Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan*, Communications 48/90-50/91-52/91-89/93, para.82.

⁷ *Ibid.*, para.79.

⁸ See Human Rights Watch/Africa, *Behind the Red Line: Political Repression in Sudan* (1996), 184-188

peaceful demonstrations in late 2009 and throughout 2010.⁹ A wave of student and youth protests in January 2011 was reportedly equally met with excessive use of force, and followed by subsequent arrests, detention and torture of activists.¹⁰ Following the independence of South Sudan in July 2011, the worsening economic situation and austerity measures prompted repeated protests in various parts of the country, such as in June and July 2012, which largely followed the pattern described above.¹¹ On 23 and 24 September 2013, protests erupted in Wad Madani, Khartoum, Kassala, Port Sudan, Gadarif, Sinaar, Al Obeid and Nyala in response to the Government of Sudan's decision to lift fuel subsidies. Reportedly, the protests were largely peaceful but some of the protesters apparently set fire to several National Congress Party (NCP) offices and petrol stations in Khartoum and Wad Madani. The police and security forces reportedly responded to these protests by using tear gas and rubber batons as well as by firing live ammunition, which resulted in an estimated 200 persons killed in Khartoum, Wad Madani and Nyala combined. Several hundred persons were arrested and detained following the demonstrations and charged with various offences. The authorities also closed down several newspaper offices.¹² The violent response to the protest triggered calls from UN bodies and civil society, requesting the Government of Sudan to respect rights and conduct an inquiry.¹³ In response, on 29 September 2013 and again on 4 November 2013, the Government of Sudan pledged to establish a commission of inquiry.¹⁴ If such a commission were to be established, and it were to investigate these alleged violations in line with Sudan's obligations under international human rights law and best practices, this would be a positive step. It would help to ensure that perpetrators of violations would be held to account and that victims could obtain redress; it could also identify what legislative and institutional reforms would be required to ensure respect for human rights in the context of protests and demonstrations.

⁹ Amnesty international, 'Sudan must end violent crackdown on protesters', Press Release, 7 December 2009, available at <http://www.amnesty.org/en/news-and-updates/news/sudan-must-end-violent-crackdown-protestors-20091207>.

¹⁰ See case of *Safia Ishaq Mohammed Issa v Sudan*, Complaint filed by REDRESS on 16 February 2013,

<http://www.redress.org/downloads/complaintsafia-ishaq-mohammed-issa-v-sudan18february2013nosig.pdf>

¹¹ See Sudan Law Reform Updates for the relevant periods, available at <http://www.pclrs.org/english/news-and-events> and African Centre on Justice and Peace Studies (ACJPS) 'Excessive force, mass arbitrary detention, ill treatment and torture used to crackdown on popular protests Sudan', 27 July 2012, available at <http://www.acjps.org/?p=1042>

¹² See for a summary of events, Amnesty International, 'Sudan: Security forces fatally shoot dozens of protesters as demonstrations grow', 26 September 2013, available at <http://www.amnesty.org/en/news/sudan-security-forces-fatally-shoot-dozens-protesters-demonstrations-grow-2013-09-26> and ACJPS, 'Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan', Press Release, 4 October 2013, available at <http://www.acjps.org/?p=1663>. See also press release by Reporters without Borders, 'All-out censorship in response to protests', available at: http://en.rsf.org/sudan-all-out-censorship-in-response-to-30-09-2013_45248.html

¹³ 'UN Expert deeply concerned at mass arrests and heavy media censorship during protests in the Sudan', Press Release, 3 October 2013.

¹⁴ See statement by Information minister Ahmed Balal, available (in Arabic) at: http://arabic.china.org.cn/china-arab/txt/2013-09/29/content_30174880.htm and statement of the governor of Khartoum state, available (in Arabic) at <http://suna-sd.net/suna/showNews/5X-RgaMOecWW6Fh-r4q2na09MKV9zQ2dV4XwxgNLuiQ/1>. See also Khartoum state police statement at: <http://akhirilahza.info/akhir/index.php/joomla-overview.html?start=255>. See in this regard also Human Rights Watch, 'Dozens held without charge, African Commission should investigate alleged torture and ill-treatment, 27 November 2013, available at <http://www.hrw.org/news/2013/11/27/sudan-dozens-held-without-charge-0>.

3. Sudan's international obligations pertaining to demonstrations

3.1. Freedom of assembly

3.1.1. International Standard and the Bill of Rights

The rights to freedom of expression, assembly and association are key political and civil rights. According to the United Nations (UN) Human Rights Committee

Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. [footnotes omitted].¹⁵

The right to freedom of assembly is recognised in article 21 of the International Covenant on Civil and Political Rights (ICCPR) and article 11 of the African Charter on Human and Peoples' Rights (ACHPR) to which Sudan is a state party. It is also an integral part of Sudan's Bill of Rights by virtue of article 27(3) of the Interim National Constitution.¹⁶ Article 40 (1) of the Bill of Rights stipulates:

The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his/her interests.

Freedom of assembly protects the right to organise and take part in peaceful assemblies. An assembly is defined as "an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in" (footnotes omitted).¹⁷ Importantly, "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour".¹⁸

Guaranteeing freedom of peaceful assembly is the rule, and restrictions are only allowed in exceptional circumstances. The right to peaceful assembly may only be subject to restrictions that are

imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.¹⁹

According to the UN Human Rights Committee, any laws imposing restrictions

¹⁵ UN Human Rights Committee, General Comment 34, *Article 19: Freedom of opinion and expression*, UN Doc.CCPR/C/GC/34, 12 September 2011, para.2.

¹⁶ Article 27(3): "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill."

¹⁷ See *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai UN Doc. A/HRC/20/27, 21 May 2012, para.21.

¹⁸ European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00 (2004), cited *ibid*.

¹⁹ Article 21 ICCPR.

must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression [which applies equally to freedom of assembly] on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (footnotes omitted).²⁰

The state must demonstrate that a legitimate ground, such as a threat to national security or public order, justifies interfering with freedom of assembly in the specific situation and that laws such as on treason or sedition are not used to stifle the exercise of the right.²¹ Any interference must be necessary, i.e, it must be the least restrictive measure needed to achieve the legitimate ground sought, such as protecting public order. Further, it must not be out of proportion, for example, banning a demonstration outright where a small group of persons acts disorderly instead of taking measures against the individuals concerned.

3.1.2. Sudanese law and practice

- *Criminal Procedure Act*

In 2009, amendments to article 127 of Sudan's Criminal Procedure Act of 1991 vested the Wali (Governor) of the state or the Mutamad (provincial ruler) with further powers to issue an order that prevents or restricts any meeting or public assembly that may disturb public order. The then UN Special Rapporteur on Human Rights in the Sudan, Sima Samar, considered that these amendments were "not in conformance with the guarantees of freedom of assembly and association enshrined in the CPA, INC and ICCPR."²² In addition, article 124 of the Criminal Procedure Act gives a police officer or prosecutor the power to order the dispersal of any unlawful assembly or assemblies that is likely to result in a riot or disturbance of public peace.

These provisions are problematic because, prior to any demonstration, local officials are given broad powers to prevent or restrict any assembly on "public order" grounds, a notion that is not clearly defined under Sudanese laws. The applicable law therefore provides the competent authorities with considerable discretionary powers that are not subject to adequate judicial review. Equally, with regard to the powers of dispersal, the offences of "rioting" or "disturbance of public peace" (see below) are broad and vaguely worded and hence open to abuse, particularly considering that it is sufficient that an assembly "is likely to commit" such an offence.

It is important to note that in practice the authorities frequently presume that any announcement of an assembly, rally or meeting by opponent is likely to disturb the public

²⁰ General Comment 34, above note 15 , para.25.

²¹ See *ibid.*, para.30, in respect of freedom of expression.

²² See *Report of the UN Special Rapporteur on the situation of human rights in the Sudan*, Sima Samar, UN Doc. A/HRC/11/14, June 2009, para.24.

peace. In some instances, the director of the Khartoum state police or the minister of interior or the governor has declared pre-emptively that an assembly would be unlawful. This is what happened in relation to the 2009, 2012 and September 2013 protests mentioned above. Police and national security forces used force to disperse these assemblies, using the powers bestowed on them under article 129A of the Criminal Procedure Act of 1991, which had been amended in 2002. Effectively, since 1989, peaceful demonstrations perceived to be opposed to the government have not been allowed to proceed, notwithstanding the rights to freedom of assembly granted under the 1998 Constitution and the 2005 Interim National Constitution.

- *Criminal Act*

Demonstrators and protesters are frequently charged with one or several of three offences under Sudan's Criminal Act of 1991, namely rioting, disturbance of peace and public nuisance.

Under the heading "Offences relating to Public Tranquility", article 67 of the Criminal Act of 1991 defines rioting as:

There shall be deemed to commit the offence of rioting whoever participates in any assembly of five persons, or more whenever such assembly shows, or uses force, intimidation or violence and whenever the prevailing intention therein is achieving any of the following objects:

- (a) Resisting the execution of the provisions of any law or legal process;
- (b) Committing the offence of criminal mischief, criminal trespass or any other offence;
- (c) Exercising any existing, or alleged right in a manner which is likely to disturb public peace;
- (d) Compelling any person to do what he is not bound by law to do, or to refrain from doing what he is authorised by law to do.

The penalty for rioting is imprisonment for up to six months, a fine, or whipping (up to twenty lashes) and imprisonment for up to one year or a fine if the offender carries a weapon or an instrument that may cause hurt.²³

Article 69 of the Criminal Act of 1991 defines disturbance of public peace as:

Whoever causes a breach of public peace, or does any act with intent, or which is likely to cause a breach of public peace, or tranquility, in a public place, shall be punished, with imprisonment, for a term, not exceeding three months, or with fine, or whipping, not exceeding twenty lashes.

Article 77 of the Criminal Act of 1991 defines public nuisance as:

²³ Article 68 of the Criminal Act of 1991.

(1) ... any act which is likely to cause public injury, or danger, or annoyance to the public, or to those persons, who occupy, or reside, in a neighbouring place, or to persons exercising any of the public rights.

(2) The court may, whenever it deems fit, issue an order to the offender, for stopping, and not repeating the nuisance, and may punish him, with imprisonment, for a term, not exceeding three months or with fine, or with both.

The definitions of these offences is problematic. "Rioting" (article 67) covers vaguely worded acts such as "intimidation" and refers to "disturb[ing] public peace". The "disturbance of public peace" (article 69) is not defined, and the law even covers "acts with intent ... to cause a breach of public peace". "Public nuisance" is also broadly defined, including causing "annoyance to the public". These vaguely worded provisions criminalise a potentially wide range of acts and have not been clearly defined in Sudanese jurisprudence in conformity with principles of legality and the right to freedom of assembly. In addition, the offences of "rioting" and "disturbance of public peace" are subject to the penalty of whipping, a form of corporal punishment incompatible with applicable international standards.²⁴ The offences in question therefore give the authorities considerable latitude to prosecute demonstrators.

According to articles 125 and 126 of the Criminal Procedure Act of 1991, the police, the National Security and Intelligence Services (NISS) and the armed forces are authorised to disperse assemblies and arrest demonstrators for vague offences such as rioting and breach of public peace. In practice, the mere taking part in a demonstration, or being found near the location, is frequently considered sufficient evidence of having committed these offences. Those charged are routinely subjected to summary trials pursuant to articles 176 and 177 of the Criminal Procedure Act. In respect of the demonstrations of September 2013 mentioned above, on 3 October 2013, 35 protesters were charged with public nuisance and disturbing public peace.²⁵ In Sennar state, Blue Nile, the Sennar criminal court summarily tried 27 protesters and sentenced each of them to whipping - twenty lashes - and a fine of 100SDG.²⁶

Sentences imposed, such as whipping, are executed on the spot,²⁷ and can only be appealed following enforcement. For example, Rania Mamoun and others were arrested during the September 2013 protests in Wad Madani–Jazeera state, and charged with committing the offence of disturbing the public peace. On 5 December 2013, the Wad Madani criminal court relied solely on the testimony of police officers, the prosecutor, and witnesses from

²⁴ See REDRESS and Sudanese Human Rights Monitor, *No more cracking of the whip: Time to end corporal punishment in Sudan*, March 2012, available at: <http://www.redress.org/downloads/publications/Corporal%20Punishment%20-%20English.pdf>.

²⁵ See Abdelmoneim Abu Edris Ali, 'Trial underway for Sudan protest lawyers', *Daily Start*, 3 October 2013, available at <http://www.dailystar.com.lb/News/Middle-East/2013/Oct-03/233446-children-women-rally-for-sudan-protest-detainees-afp.ashx#axzz2mzncB4ij>.

²⁶ Information provided by lawyer interviewed by REDRESS in November 2013.

²⁷ *Ibid.*, 15.

the police station, and sentenced Rania Mamoun to a fine of 500 Sudanese pounds or one month imprisonment in the alternative. In the similar case of Samar Merghani, on 28 November 2013, the Bahri criminal court sentenced her to a fine of 5,000 Sudanese pounds. In both cases, the defence lawyer in the circumstances of the summary trial procedure was unable to call on witnesses for the defence.²⁸

3.2. Use of force: Prohibition of torture and ill-treatment and right to life

3.2.1. International standards and the Bill of Rights

The state's monopoly on the use of force goes hand in hand with safeguards against its abuse. The use of force by law enforcement officials is therefore governed by the principles of necessity and proportionality. International instruments such as the Code of Conduct for Law Enforcement Officials (Code of Conduct),²⁹ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles),³⁰ provide guidance in this respect. Article 3 of the Code of Conduct sets out the principle that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." In respect of the dispersal of "assemblies that are unlawful but non-violent", principle 13 of the Basic Principles provides that:

Law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

Moreover, in respect of violent assemblies, article 14 of the Basic Principles stipulates that:

Law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.³¹

The use of force that is not necessary and proportionate under international law may amount to a violation of the prohibition of torture and ill-treatment and, where it results in death, of the right to life.

- *Prohibition of torture and ill-treatment*

The prohibition of torture and ill-treatment is recognised in a series of treaties to which Sudan is a party, including article 5 of the ACHPR and articles 7 and 10 of the ICCPR. It is also stipulated in article 33 of the Sudanese Bill of Rights: "No person shall be subjected to

²⁸ Information provided to REDRESS in December 2013 by defence lawyer.

²⁹ Code of Conduct for Law Enforcement Officials adopted by GA res 34/169 (1979) 17 December 1979.

³⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

³¹ Principle 9 of the Basic Principles provides that: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

torture or to cruel, inhuman or degrading treatment". The UN Special Rapporteur on Torture summarised concerns and standards applicable in respect of protests as follows:

The Special Rapporteur has received many allegations of excessive violence, during apprehension of a suspect and during demonstrations or public turmoil, including in pre-election and election periods. In many of those cases, people have been peacefully exercising their right to assembly when police or security officers violently dispersed the demonstration by beatings, the use of pepper and tear gas, sound bombs, water cannons, rubber bullets or firearms indiscriminately used on the masses. This all too often has led to persons being injured or killed. Of particular concern are reports of police brutality against vulnerable, disadvantaged groups and minorities. The Special Rapporteur has therefore repeatedly stated that the use of force must be exercised with restraint and only once nonviolent means have been exhausted. Law enforcement bodies shall refrain from the use of firearms, except in self-defence or defence of others from an imminent threat of death or serious injury. In this regard, strict rules on the use of force for police and security forces should be applied. Furthermore ways to improve the recording and monitoring of arrests and the control of demonstrations should be explored.³²

Regional and international human rights treaty bodies repeatedly found that a state is responsible for having breached the prohibition of ill-treatment where its forces have used force that was unnecessary or disproportionate.³³ Where this is the case, the authorities are required to investigate any breaches, hold the perpetrators to account and provide reparation to the victims of violations.³⁴ In addition, the state needs to take measures to protect the right to be free from torture and ill-treatment, including by means of legislative and institutional reforms where necessary.³⁵

- *Right to Life*

The right to life is protected, inter alia, in article 4 ACHPR and article 6 ICCPR as well as article 28 of the Sudanese Bill of Right. As set out by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions:

The guiding principle in respect of the lethal use of force or firearms is defence of one's own life or that of others. The only circumstances warranting the use of including during demonstrations, is the imminent threat of death or serious injury, and such use shall be subject to the requirements of necessity and proportionality. In principle shooting indiscriminately into a crowd is not allowed and may only be targeted at the person or persons constituting the threat of death or serious injury. The use of firearms cannot be justified merely because a particular gathering is illegal

³² Report by the UN Special Rapporteur on Torture, UN Doc. A/HRC/13/39, 9 February 2010, para.61.

³³ See *Ali Günes v. Turkey*, App. No. 9829/07, European Court of Human Rights, Judgment of 10 April 2012, paras.37-43.

³⁴ *Ibid.*, para.45.

³⁵ See UN Human Rights Committee, *General Comment 31, The Nature of the General Legal Obligation imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras.15, 18, and UN Committee against Torture, *General Comment 2, Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 24 January 2008, para.7.

and has to be dispersed, or to protect property. This is often not reflected in domestic laws. In terms of the Code and the Basic Principles, the norm in respect of the intentional use of lethal force is the same under all circumstances, whether in self-defence, arrest, quelling a riot or any other circumstances, namely, protection of life (footnotes omitted).³⁶

In case of an alleged breach, the authorities must carry out a prompt, effective and impartial investigation with a view to establishing the facts and holding the perpetrators accountable, in addition to providing reparation to the victims of a violation of the right to life.³⁷

3.2.2. Sudanese law and practice

Demonstrations are commonly policed by the riot police. However, the NISS and the army may also, and do at times exercise policing powers in the context of demonstrations, as during the recent protests of September 2013 in Khartoum.³⁸

Article 125 of the Criminal Procedure Act of 1991 vests the officer in charge with the power to use the “least necessary force” where an assembly fails to disperse (see article 124 of the Criminal Procedure Act). Article 15 (j) of the Police Act of 2008 clarifies that the police forces have the power to “use appropriate force in accordance the rules of the Criminal Procedure Act”. The officer in charge may only use fire arms “upon the permission of the Prosecution Attorney”. However, article 129A, introduced by way of amendment of the Criminal Procedure Act of 1991 in 2002, considerably extends the power of the officer in charge to order the use of firearms “in the absence of the Prosecution Attorney or the Judge” and “for the purpose of arresting offenders, or preventing the occurrence of any offence”. The only limit on such use of force is that it “shall not warrant intentional causing of death”.³⁹

Pursuant to article 126 of the Criminal Procedure Act of 1991, the Superior Prosecution Attorney or superior officer in charge may call on the armed forces to use military force if deemed necessary for the dispersal of an assembly. Article 6 (2) of the People’s Armed Forces Act of 2007 stipulates that the armed forces “help law enforcement organs, upon need, in the time of peace and emergencies, in accordance with the provisions of the law; and shall have for the sake of that, such powers and legal protection, as may be granted to such forces.”

The NISS may use force pursuant to article 50 (1)(c) of the National Security Act of 2010, which vests it with the “[p]owers of the policemen as provided for in the Police Forces Act and the Criminal Procedures Act”.

³⁶ *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, UN Doc. A/HRC/17/28, 23 May 2011, paras.60-62.

³⁷ See generally UN Human Rights Committee, General Comment 31, above note 36 , paras.15-18.

³⁸ See ACJPS, ‘Over 170 dead, including 15 children, and 800 detained as demonstrations spread throughout Sudan’, Press Release, 4 October 2013, available at <http://www.acjps.org/?p=1663>.

³⁹ Article 125(4) of the Criminal Procedure Act of 1991.

The regulation of the use of force by the Sudanese police recognises principles such as necessity and sets limits on a shoot to kill policy. However, the use of force in Sudanese law is linked to the grounds for dispersal. These grounds are broad, including breach of public peace. Therefore, they considerably lower the threshold for the use of force beyond international standards as reflected in the UN principles set out above, according to which it should be a measure of last resort. Sudanese law also does not specifically refer, nor fully reflect, the principle of proportionality. The lack of specificity and safeguards in law must be considered as a factor that has contributed to the recourse to the excessive use of force in a series of demonstrations. The fact that several agencies have concurrent powers to use force is also problematic. These agencies may act, and have acted in parallel, which may hamper coordination and enhances the risk of excessive use of force. In response to the September 2013 demonstrations, the Government of Sudan reportedly deployed military vehicles and joint forces of the central reserve forces and the NISS to residential neighbourhoods and blocked access to hospitals.⁴⁰ Witnesses stated that armed men in plain clothes, whom they believed were pro-government militia, joined in the use of armed force against demonstrators, although the government denied its involvement in the resulting deaths.⁴¹ The Khartoum state governor claimed that the police opened fire to defend their stations.⁴²

3.3. Accountability and remedies in case of breach

Law enforcement officials are subject to the Criminal Act of 1991 and may therefore be charged with various offences in cases where they exceed their powers. They may, however, not be charged with murder but only semi-intentional homicide⁴³ under article 130 of the Criminal Act of 1991 where, even if a public official or someone charged with a public service acts intentionally, he or she “exceeds, in good-faith the limits of the power authorized thereto, believing that his act which has caused the death, is necessary for the performance of his duty.” Moreover, pursuant to article 11 of the Criminal Act of 1991 (performance of duty and exercise of right): “No act shall be deemed an offence if done by a person who is bound, or authorized to do it by law, or by a legal order issued from a competent authority, or who believes in good faith that he is bound, or authorized so to do.”

In practice, immunities are the main obstacle to accountability of law enforcement officials. Police officers, as well as members of the NISS and the armed forces are granted conditional immunity for any act done in the course of their duties, which can only be lifted by the

⁴⁰ See ACJPS Press Release, above note 39.

⁴¹ See Jehanne Henry, ‘Dispatches: Sudan denies killing of protesters’, Human Rights Watch, 3 October 2013, available at: <http://www.hrw.org/news/2013/10/03/dispatches-sudan-denies-killing-protesters>

⁴² See ‘Sudan defends crackdown amid more protests’, Al Jazeera, 1 October 2013, available at: <http://www.aljazeera.com/news/africa/2013/10/sudan-defends-crackdown-amid-more-protests-20131015534486705.html>

⁴³ Article 130 (1) of the Criminal Act of 1991: “Homicide is deemed (1) to be semi-intentional when the offender causes it by a criminal act on the human body without intending to cause death, and death is not a probable consequence of such act.”

respective head of the forces. These immunity provisions largely equate with impunity, and there are no known cases in which a law enforcement official has been charged for the excessive use of force in the context of demonstrations.⁴⁴

In response to criticism of the excessive use of force in response to the demonstrations of July/August 2012 and September 2013, and the killing of several students in two separate incidents in late 2012, the Government of Sudan announced the formation of committees of inquiry.⁴⁵ However, to date, the outcome of these investigations is unknown; no findings have been published and none of the perpetrators has been charged or held accountable.

4. The need for reforms

Sudanese law privileges security and public order over freedom of assembly. Official bodies and law enforcement officials are vested with considerable powers to ban or disperse assembly on loosely defined grounds. Judicial oversight is weak and demonstrators themselves are frequently subject to summary trials and punishments. The use of force is inadequately regulated, leaving considerable operational latitude to those empowered to use it while providing limited safeguards and accountability in case of abuse. In practice, the numerous incidents in which the authorities were alleged to have used excessive force have not resulted in any accountability or review of law and practice; indeed, calls for such steps have often met with further repressive measures. In short, the current system fails to effectively guarantee international standards that are binding on Sudan and form an integral part of its legal order by virtue of the Bill of Rights. A full review of law and practice with a view to ensuring its conformity with international human rights standards is therefore overdue, together with effective steps taken to hold perpetrators of violations to account and to provide justice and reparation for the victims of any such acts.

5. Recommendations

Based on the foregoing considerations, the Government of Sudan should:

⁴⁴ See REDRESS and SHRM, 'Reforming Sudan's Laws on Immunities', *Sudan Law Reform Advocacy Briefing*, October 2013, available at <http://www.pclrs.org/downloads/sudan-advocacy-briefing--october-2013.pdf>

⁴⁵ See "'Why do you insist on lying about NCP killing protesters?'" journalist confronts Sudanese officials', *Sudan Tribune*, 30 September 2013, available at <http://www.sudantribune.com/spip.php?article48254>; ACJPS, 'Call for immediate independent investigation into student deaths and excessive use of force by Sudanese authorities', 10 December 2012, available at <http://www.acjps.org/?p=1127>. See for the statement of the Minister of Justice and the General Prosecutor on the investigation into the killing of twelve protesters in Nyala (in Arabic) in July 2012, *Al Sahafa*, 9 May 2013, available at: <http://www.alsahafasd.net/details.php?type=a&scope=a&version=1155&catid=20>.

1. Undertake a thorough review of its laws governing assemblies and the use of force, and their practical application, and collaborate with the UN Independent Expert on Sudan in doing so;
2. Reform applicable laws, particularly articles 67-69 and 77 of the Criminal Act of 1991 with a view to ensuring that demonstrators are not subject to unwarranted or disproportionate criminal sanctions;
3. Abolish corporal punishment, which has been frequently imposed as a punishment in summary trials against demonstrators;
4. Reform articles 124-129A of the Criminal Procedure Act of 1991 with a view to ensuring that peaceful assemblies are not subject to bans or dispersals and that any use of force is subject to the strict application of the principles of necessity and proportionality;
5. Clarify, by law, the competence of agencies to police assemblies and use force in that context;
6. Repeal provisions granting immunities to police officers, members of the NISS and members of the Sudanese armed forces respectively;
7. Set up an independent commission of inquiry, with a clearly defined mandate and timeline in conformity with international best practices, to investigate violations of international human rights standards and/or Sudanese law alleged or reported to have been committed by public officials and others acting in an official capacity in the context of demonstrations since 2005;
8. Take steps to hold accountable any officials or others serving in an official capacity responsible for violations committed in the course of demonstrations and to provide adequate reparation to the victims of such violations;
9. Ensure that, as part of the constitutional review process, freedom of assembly is recognised as a fundamental right and guaranteed in conformity with the ICCPR and other binding international standards.

II. Selected Documents (October to December 2013)

United Nations

27 November 2013

Report of the UN Secretary General on the situation in Abyei (S/2013/706)
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/706

25 November 2013

UN Security Council Resolution 2126 (Sudan/South Sudan)
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2126\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2126(2013))

8 November 2013

Report on South Sudan (S/2013/651)
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/651

14 October 2013

Report on the African Union-United Nations Hybrid Operation in Darfur (S/2013/607)
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/607

3 October 2013

The UN Independent Expert on the situation of Human Rights in Sudan, Mashood A. Baderin Press statement, 'UN Expert deeply concerned at mass arrests and heavy media censorship during protests in the Sudan'
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13824&LangID=E>

Others

13 December 2013

Enough, 'Humanitarian Needs Assessment in Sudan's Blue Nile State'
<http://www.enoughproject.org/reports/humanitarian-needs-assessment-sudans-blue-nile-state>

26 November 2013

International Crisis Group, 'Sudan: Preserving peace in the East'
[http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/sudan/209-sudan-preserving-peace-in-the-east.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/sudan/209-sudan-preserving-peace-in-the-east.pdf)

27 November 2013

Human Rights Watch, 'Sudan: Dozens Held without Charge'
<http://www.hrw.org/news/2013/11/27/sudan-dozens-held-without-charge>

1 November 2013

Human Rights Watch, 'Investigate Sudan Killings: Fact-finding mission into death, detention of protesters' (includes link to letter to the African Commission on Human and Peoples' Rights to order Sudan to form a fact-finding mission to investigate the deaths and detention of hundreds of demonstrators)
<http://www.hrw.org/news/2013/10/31/african-commission-investigate-sudan-killings>

2 October 2013

Amnesty International, 'Sudan: escalates mass arrest of activists amid protest crackdown'
<http://www.amnesty.org/en/region/sudan?page=1>