



SUDAN

Shadow report

Report submitted to the Human Rights Committee in the context of
the review of the fifth periodic report of Sudan

Alkarama Foundation – 10 September 2018

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1. INTRODUCTION

Alkarama is submitting this shadow report in the context of the fifth periodic review of Sudan by the Human Rights Committee, which will take place in October 2018. In this report, Alkarama evaluates the implementation of the International Covenant on Civil and Political Rights (ICCPR), which Sudan ratified in 1986, highlighting its main concerns and addressing recommendations to the State Party. This report is based on first-hand testimonies gathered by Alkarama, and provided by victims of human rights abuses, as well as their families and lawyers. The report also draws from an analysis of the domestic legal framework, and information and cases collected among civil society.

2. RESPECT OF GENERAL OBLIGATIONS (ARTICLE 2)

In these sections, we will highlight Sudan's failure to comply with its obligation to bring domestic laws into line with the Covenant, as well as the immunity from prosecution granted to state agents, in violation of articles 2 (2) and 2 (3) of the ICCPR.

2.1 Inconsistencies between domestic laws and the Covenant

The root cause of the violations committed by state agents analysed in this report resides in Sudan's failure to give effect to the Covenant in its domestic legislation. This is true especially in relation to the National Security Act of 2010 (NSA), the provisions of which allow the National Intelligence and Security Services (NISS) to systematically violate the rights and freedoms of Sudanese citizens, and provide NISS members with immunity from prosecution (below section 2.2). The lack of conformity of Sudanese laws with the provisions of the Covenant violates article 2 (2) of the ICCPR, and it constitutes a direct obstacle to the enjoyment of the fundamental rights and freedoms enshrined in the ICCPR.

2.2 Immunity for state agents (Issue no. 9)

Article 52 of the NSA, article 45 of the Police Act of 2008, and articles 34 and 42 of the Armed Forces Act of 2007 (AFA) provide immunity from prosecution to, respectively, members of the NISS, police and the armed forces. Such immunity can be lifted only at the discretion of the heads of the respective forces, who routinely refuse without any judicial review available to

monitor and challenge their decisions.¹ To date, no measures to repeal these provisions have been taken into account by the authorities, as demonstrated by the fact that Sudan did not accept any of the recommendations to amend the NSA and repeal the immunity provisions made by member states during the last cycle of the Universal Periodic Review (UPR) in 2016.²

These laws constitute a direct obstacle for victims of violations to enjoy their right to access to justice, as well as to receive adequate, effective, and prompt reparation, in violation of article 2 (2) and 2 (3) of the ICCPR.

In light of the complete lack of independent and effective investigation of and accountability for the many violations routinely perpetrated by the NISS (below sections 3, 4, 5),³ these provisions pave the way to a climate of total impunity for perpetrators of human rights violations in the country.

RECOMMENDATIONS:

1. Amend the NSA, Police Act and AFA to repeal the articles granting state agents immunity from prosecution;
2. Ensure that all allegations of human rights violations perpetrated by state agents are promptly, thoroughly and effectively investigated by independent and impartial bodies, and those responsible are prosecuted and punished with sentences proportionate to the gravity of the violations;
3. Ensure that all victims are allowed equal access to justice and receive adequate, effective and prompt reparation.

3. RIGHT TO LIFE (ARTICLE 6)

In this section, we will focus on the issues of the imposition of the death penalty for acts not amounting to “the most serious crimes”, and the excessive use of force by security agents in the dispersal of peaceful protests.

3.1 Death penalty (Issue no. 6)

The death penalty is still imposed under Sudanese law,⁴ and no concrete steps have been taken towards its abolition. Although the authorities affirmed that the “death penalty in the

¹ See for example: African Commission on Human and People's Rights (ACHPR), *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, Communication 379/09, Decision on Merits, 14 March 2014, par. 25.

² Recommendations No. 140.26 (Spain); No. 140.27 (United Kingdom of Great Britain and Northern Ireland); No. 140.28 (Australia); No. 140.29 (Canada); No. 140.30 (Denmark); No. 142.15 (Norway); No. 142.18 (Ireland); No. 142.19 (Uruguay).

³ See, for example: *Human Rights Watch, Sudan: No Justice for Protester Killings*, September 22, 2016, <https://www.hrw.org/news/2016/09/22/sudan-no-justice-protester-killings> (last access 24 August).

⁴ Criminal Code, articles 27-28.

Sudan is reserved for the most serious crimes",⁵ under the 1991 Criminal Code, capital punishment can be imposed for several offences, including acts such as "undermining the constitutional order", and espionage,⁶ apostasy,⁷ adultery and sodomy.⁸ Not only do these acts not amount to "the most serious crimes", but some include the exercise of fundamental rights and freedoms protected under the ICCPR.

By retaining capital punishment in its legal framework and failing to review the Criminal Code to apply the death penalty only to "the most serious crimes", Sudan is violating article 6 (2) of the ICCPR.

3.2 Excessive use of force to disperse peaceful protests (Issue no. 7)

Throughout the reporting period, the Sudanese authorities continued to regularly use excessive force to disperse peaceful demonstrations across the country.⁹ The most recent of such episodes occurred during the crackdown on anti-austerity protests in early 2018.¹⁰ To break up peaceful protests, security forces regularly use live ammunition, rubber bullets, and tear gas, as well as sticks and batons to beat the demonstrators,¹¹ methods that frequently resulted in the death and injury of protesters.

The responsibility to manage public assemblies in the country is shared between the police, the NISS, and the armed forces.¹² Article 129A of the 1991 Criminal Procedure Act (CPA) grants officers the power to order the use of lethal force to disperse "unlawful assemblies" where either firearms or "instruments likely to cause death or serious injury" are being used, whenever it is necessary and "for the purpose of arresting offenders or preventing the occurrence of any offence." This provision is not in line with the international standards enshrined in the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which states that lethal force must only be used as a measure of last resort to defend against a real

⁵ Human Rights Committee, *Fifth periodic report submitted by the Sudan under article 40 of the Covenant, due in 2017*, CCPR/C/SDN/5, 11 October 2017, par. 50.

⁶ Criminal Code, articles 50, 52-53.

⁷ *Ibidem*, article 126.

⁸ *Ibidem*, articles 146 and 148. For a complete overview of the offences punishable with capital punishment see: ACJPS, *Widening the Scope: The Expanding Use of Capital Punishment in Law and Practice in Sudan*, December 2010, p. 11-13.

⁹ See, for example: Human Rights Watch (HRW), *Open letter from 39 NGOs and individuals concerning excessive use of force by Sudanese authorities*, 3 May 2016, <https://www.hrw.org/news/2016/05/03/open-letter-39-ngos-and-individuals-concerning-excessive-use-force-sudanese> (last access 27 August 2018); African Centre for Justice and Peace Studies (ACJPS), *Excessive use of force directed at students by Sudanese forces in White Nile and Khartoum Bahri*, 19 May 2017, <http://www.acjps.org/excessive-use-of-force-directed-at-students-by-sudanese-forces-in-white-nile-and-khartoum-bahri/> (last access 27 August 2018); *Deadly force used to disperse protest against Sudanese President at Darfur IDP camp*, 28 September 2017, <http://www.acjps.org/deadly-force-used-to-disperse-protest-against-sudanese-president-at-darfur-idp-camp/> (last access 27 August 2018).

¹⁰ See, for example: Alkarama, *Open letter concerning the crackdown on peaceful protests and the wave of arbitrary arrests and continued incommunicado detentions by Sudanese government forces*, 14 February 2018, <https://www.alkarama.org/en/documents/open-letter-concerning-crackdown-peaceful-protests-and-wave-arbitrary-arrests-and> (last access 27 August 2018).

¹¹ Above note 9; HRW, *Sudan: Stop Abuse of Peaceful Demonstrators*, 29 January 2018, <https://www.hrw.org/news/2018/01/29/sudan-stop-abuse-peaceful-demonstrators> (last access 27 August 2018).

¹² NSA, article 50 (1) (c); AFA, article 6(2). Furthermore, under articles 125 and 126 of the 1991 Criminal Procedure Act, the army can disperse by force any "unlawful assembly" or "assembly likely to cause rioting or a breach of public peace", with or without a prior official request from the Superior Prosecutor Attorney.

and imminent threat of death or injury, and in compliance with the criteria of necessity, proportionality and precaution.

In light of these facts, the use of lethal force to disperse protests – both as prescribed by domestic laws and as practised by the security agencies – violates the right to life under article 6 (1) of the ICCPR, and the right to peaceful assembly under article 22 of the ICCPR (below section 5.2).

Furthermore, due to the immunity laws previously analysed (above section 2), to date, there has been no accountability for the death and harm caused by the use of excessive force, and no reparation has been provided to the victims.¹³

RECOMMENDATIONS:

1. Abolish the death penalty and accede to the Second Optional Protocol to the ICCPR;
2. If retained, ensure that the death penalty is imposed only for the most serious crimes and only following judicial procedures in line with fair trial rights and guarantees;
3. Amend domestic laws and practices to ensure that state agents' methods to disperse peaceful protests are in line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
4. Ensure that the harm caused by the excessive use of force to disperse protests is thoroughly and effectively investigated, that those responsible are brought to justice, and that an effective remedy is provided to the victims.

3. PROHIBITION OF TORTURE AND ILL-TREATMENT (ARTICLE 7)

During the reporting period, torture and ill-treatment continued to be a systematic and widespread practice in the country, especially at the hands of the NISS.¹⁴ Moreover, the NISS routinely hold individuals in *incommunicado*, as well as secret and unacknowledged detention, the latter amounting to enforced disappearance (below section 4), which not only is a form of torture in itself but also creates an environment conducive to further torture and ill-

¹³ See, for example: HRW, "We Stood, They Opened Fire", 21 April 2014, <https://www.hrw.org/report/2014/04/21/we-stood-they-opened-fire/killings-and-arrests-sudans-security-forces-during> (last access 27 August 2018); Sudan: No Justice for Protester Killings, 22 September 2016, <https://www.hrw.org/news/2016/09/22/sudan-no-justice-protester-killings> (last access 27 August 2018); Amnesty International, 'Uninvestigated, unpunished' human rights violations against Darfuri students in Sudan, 2017, <https://www.amnesty.org/download/Documents/AFR5448482017ENGLISH.PDF> (last access 27 August 2018).

¹⁴ See for example: Alkarama, Sudan: renewed arbitrary arrests, enforced disappearances and torture of students, 23 May 2016, <https://www.alkarama.org/en/articles/sudan-renewed-arbitrary-arrests-enforced-disappearances-and-torture-students>; Sudan: detention and torture of a political opponent affiliated to the National Umma Party, 22 January 2016, <https://www.alkarama.org/en/articles/sudan-detention-and-torture-political-opponent-affiliated-national-umma-party> (last access 3 September 2018).

treatment.¹⁵ It must be stressed that even when they commit abuses amounting to torture or ill-treatment in the exercise of their functions, members of the NISS, police and armed forces remain shielded from prosecution (above section 2).

Whilst the authorities declared that “evidence extracted under torture is inadmissible in courts” under article 20 (2) of the Evidentiary Act,¹⁶ other provisions of the Act still allow for the admission of evidence extracted under torture.¹⁷ Under article 10 (2), “the court may, when it consider it suitable for justice” grant “conviction on the basis of” otherwise inadmissible evidence when “corroborated by another evidence.” This may allow for the admission of self-incriminating statements obtained under coercion if the court considers that other evidence – e.g. an NISS member's testimony – “corroborates” the content of the statement. Therefore, we believe that it contradicts the absolute character of the exclusionary rule under the Evidentiary Act.

Additionally, although the State affirms that it has adopted a precise definition of torture in its domestic law,¹⁸ in practice the Criminal Code does not define torture separately. The State refers to article 115 (2) of the Criminal Code,¹⁹ which does not comply with the international standards used to define torture.²⁰ First of all, the provision fails to separately define torture, since it merely lists torture as one of the criminalised acts without explicitly defining the nature of this act. It restricts the possible purposes of torture to an abuse committed against a person in relation to a criminal case for obtaining information. Furthermore, it provides for only three months in prison and/or the payment of a fine as a punishment, and it fails to mention the practice of ill-treatment. Other provisions related to acts of torture that can be found in Sudanese laws equally fail to comply with article 7 of the ICCPR.²¹

Furthermore, the Criminal Code continues to allow flogging as a form of corporal punishment against both adults and minors²² – not considering it as a form of torture – for a broad list of acts, including “rioting” or “breaching the public peace”,²³ incriminations that are commonly

¹⁵ See for example: Alkarama, *Sudan: enforced disappearance and torture of political activist*, 30 September 2015, <https://www.alkarama.org/en/articles/sudan-enforced-disappearance-and-torture-political-activist> (last access 3 September 2018).

¹⁶ Above note 5, paras. 53 and 92.

¹⁷ Evidentiary Act, Article 10 (1) “With adherence to provisions of confession and the inadmissible evidence, the evidence will not be inadmissible just because it was obtained through incorrect procedure provided that the court is confident that it is independent and acceptable.” Article 10 (2) “the court may, when it consider it suitable for justice, to refrain from granting conviction on the basis of the evidence mentioned in part (1) unless it is corroborated by another evidence.”

¹⁸ Above note 5, para. 53.

¹⁹ Criminal Code, article 115 (2) “Any person of public authority who induces or threatens or tortures any witness or accused or opponent in order to give or abstain from giving information in any case shall be punished with imprisonment for a term not exceeding three months or with fine or with both.”

²⁰ We notably refer to article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), see The United Nations Voluntary Fund for Victims of Torture, Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies, p. 3.

²¹ 2005 Interim National Constitution, article 33; NSA, Articles 50 and 51; CPA, articles 4 and 83.

²² Criminal Code, articles 35 and 47 (b).

²³ *Ibidem*, articles 68 and 69.

used to prosecute individuals for acts falling under their right to peaceful assembly (below section 5).

RECOMMENDATIONS:

1. Accede to the UNCAT and Include in the national legislation a separate definition of torture in line with article 1 of the UNCAT;
2. Put in place adequate mechanisms to prevent the practice of torture and ill-treatment by state agents, especially members of the NISS;
3. Bring all relevant domestic legislation into line with article 7 of the ICCPR and the relevant international standards;
4. Amend the Evidentiary Act to ensure that no evidence extracted under torture is admitted in court;
5. Repeal every provision prescribing flogging as a corporal punishment from the Criminal Code;
6. Investigate all complaints of torture and ill-treatment, bring the perpetrators to justice and ensure effective remedies for victims.

4. RIGHT TO LIBERTY AND SECURITY AND TO A FAIR TRIAL (ARTICLES 9 & 14)

In these sections, we will focus on the violations of the right to liberty and security carried out by the NISS, the lack of guarantees enshrined in Sudanese laws, and the violations of the right to a fair trial under the 2013 amendment to the AFA and the 2001 Anti-Terrorism Act (ATA).

4.1 Enforced disappearance and arbitrary detention by the NISS (Issue no. 8)

Under article 50, the NSA provides the NISS with extensive powers to arrest and detain “any suspected person” for up to four months and a half in order to conduct its investigations (below section 4.2). Furthermore, in January 2015, an amendment to the 2005 Interim National Constitution (INC) passed by the Sudanese Parliament extended this already wide mandate, and effectively transformed the NISS into a security agency with powers usually conferred to the army and the police.²⁴

²⁴ Article 151 of the INC was amended in its subarticles (2) and (3) in the following way: (2) The National Security Organ shall be a national disciplined force, whose mission is to care for the internal and external National Security, and monitor the events, relating to the same, and analyze the purport and danger thereof; and adopt the measures of protection therefrom; (3) The National Security Organ shall strive to combat all political, military, economic and social threats and terrorism, in co-ordination with the other disciplined forces.” See: the Interim National Constitution of the Republic of the Sudan (Amendment), 2015.

On the basis of these laws, the NISS systematically arrest individuals deemed to be opposing the authorities, particularly targeting journalists, human rights defenders, students, peaceful protesters, political activists and members of the opposition.²⁵ Persons arrested by the NISS are usually held in *incommunicado*, as well as secret and unacknowledged detention – a practice that amounts to enforced disappearance – without any charge, judicial review or trial for prolonged periods of time, during which they are systematically subjected to torture and ill-treatment (above section 3).²⁶

4.2 Lack of legal guarantees for persons deprived of their liberty (Issue no. 8)

These violations of the rights to liberty and security and to a fair trial stem from a lack of protection under Sudanese law for persons deprived of their liberty, in breach of articles 9 and 14 of the ICCPR.

The CPA allows for a custody period that can last for up to two weeks before a person is charged,²⁷ and does not prescribe the obligation to bring an arrested person before a judicial authority within 48 hours.²⁸ Moreover, it does not explicitly set a time limit as to when a detained person is allowed to contact his lawyer and family, and conditions this contact to the approval of the prosecution.²⁹

Articles 50 and 51 of the NSA do not mention the obligation to provide a judicial warrant in order to arrest an individual, nor do they mention the obligation to inform detained individuals of the charges against them and to provide them with legal assistance. The fact that the NSA allows the NISS to detain individuals for the whole period of “investigation and enquiry” without providing any legal assistance is of particular concern, as it puts the individuals at risk of torture and ill-treatment, and paves the way for fair trial violations. Additionally, article 51 allows the NISS to keep a person under its custody without access to a judicial authority for four months and a half, in violation of the principle of *habeas corpus*. The NSA adds further constraints to fundamental guarantees, notably by conditioning access to the outside world to the approval of the detaining officers if it “does not prejudice the progress of interrogation, enquiry and investigation”.³⁰

²⁵ Above note 10.

²⁶ See, for example: Alkarama, *Sudan: Two politicians missing for six years following abductions by state intelligence services*, 19 October 2017, <https://www.alkarama.org/en/articles/sudan-two-politicians-missing-six-years-following-abductions-state-intelligence-services>; Sudan: 39 NGOs Raise Concern Over Unlawful Detention of Rights Defender on Hunger Strike, 14 February 2017, <https://www.alkarama.org/en/articles/sudan-39-ngos-raise-concern-over-unlawful-detention-rights-defender-hunger-strike> (last access 3 September 2018).

²⁷ CPA, Article 79.

²⁸ CPA, articles 4, 75, 77, 79, 80, 81, 83.

²⁹ CPA, articles 4, 83 and 135. Moreover, an arrested person has the right to contact his family only “upon the approval of the Prosecution Attorneys Bureau, or the court”, CPA, article 83 (5).

³⁰ NSA, article 51 (2).

4.2 Violations of the right to a fair trial

One of the main concerns related to fair trial rules is an amendment introduced in 2013 to the AFA that extended the jurisdiction of military tribunals to the trial of civilians for a series of vaguely and broadly defined acts such as “spreading false news” or those aimed at “undermining the constitutional system”.³¹ These incriminations are regularly used to prosecute individuals who oppose the government through peaceful criticism and political activism, in violation of the right to a fair trial enshrined in article 14 of the ICCPR.

Furthermore, under the ATA – which vaguely defines a “terrorist crime” and punishes it with the death penalty³² – a special system of “anti-terrorism courts” was introduced.³³ The anti-terrorism courts’ procedural rules were established by the president of the Supreme Court and the minister of justice, in violation of the principle of separation of powers.³⁴ They allow trials *in absentia* and leave open the possibility for the anti-terrorism courts to convict the accused on the basis of self-incriminating confessions without excluding those obtained under coercion.

RECOMMENDATIONS:

1. Amend the CPA and the NSA to comply with all the international standards protecting persons deprived of their liberty;
2. Repeal the amendment to the AFA to prohibit the jurisdiction of military courts to try civilians;
3. Bring the ATA into line with the relevant international standards notably the definition of terrorism and the anti-terrorism courts’ procedural rules.

5. FUNDAMENTAL FREEDOMS (ARTICLES 19, 21, 22)

In these last sections, we will analyse violations of the right to freedom of expression by the NISS and the National Council for Press and Publications (NCP), as well of the right to peaceful assembly and association.

5.1 Freedom of expression (Issue no. 12)

Alkarama has documented cases of arrests by the NISS of journalists, human rights defenders and political activists, who were detained *incommunicado* for prolonged periods of time under

³¹ HRW, *Sudan: New Law Allows Military Trials of Civilians*, 9 July 2013, <https://www.hrw.org/news/2013/07/09/sudan-new-law-allows-military-trials-civilians> (last access 30 August 2018).

³² ATA, article 5: “Any person who instigates, initiates or facilitates the commission of an act for the purpose of a terrorist act against the State, its social security, its nationals, property, facilities or public or private establishment shall be punished with death or life imprisonment.”

³³ Article 13 (1).

³⁴ Office of the Chief Justice, Decree 82 for the year 2008, Rules of procedures for Anti-terrorism courts.

the pretext of safeguarding national security (above section 4).³⁵ Under the NSA, the NISS have the power to censor any information not aligned with the authorities' views and regularly use them as a form of reprisals against journalists. Measures used by the NISS include the harassment, intimidation, summoning and interrogation of journalists,³⁶ the confiscation of entire newspaper issues without providing any reason,³⁷ imposing travel bans on journalists, and the "blacklisting" of journalists to prevent them from publishing their work.³⁸

The NCPP, which operates under the supervision of the president of Sudan,³⁹ routinely suspends newspapers, bans journalists, and revokes their press licences and cards.⁴⁰ Furthermore, in order to work in the country, any journalist, newspaper and press agency must register with the NCPP.⁴¹

These activities of the NISS and the NCPP are a direct consequence of the country's restrictive legislation,⁴² which allows for violations of freedom of expression by imposing restrictions which do not meet the requirements of necessity and proportionality, in violation of article 19 of the ICCPR.

Additionally, in June 2018, the Law on Combating Cybercrimes passed by the Sudan National Assembly, and a bill amending the Press Act approved by the government raised several concerns over the authorities' increased clampdown on freedom of expression, especially in relation to online activities.⁴³

5.2 Freedoms of peaceful assembly and association (Issue no. 12)

Following a decree issued by the president on 10 April 2018 to release "all political detainees in the country", many individuals detained for having participated in peaceful protests were

³⁵ See for example: Alkarama, *Open letter concerning the crackdown on peaceful protests and the wave of arbitrary arrests and continued incommunicado detentions by Sudanese government forces*, <https://www.alkarama.org/en/articles/open-letter-concerning-crackdown-peaceful-protests-and-wave-arbitrary-arrests-and>, 14 February 2018 (last access 28 August 2018).

³⁶ See, for example: Reporters without Borders, *Sudanese intelligence agency's offensive against journalists*, 24 August 2017, <https://rsf.org/en/news/sudanese-intelligence-agencys-offensive-against-journalists> (last access 28 August 2018); Alkarama, *Sudan: Harassment, threats and revocation of press licence against journalist Ahmed Abakar*, 3 August 2018, <https://www.alkarama.org/en/articles/sudan-harassment-threats-and-revocation-press-licence-against-journalist-ahmed-abakar> (last access 28 August 2018).

³⁷ See, for example: Committee to Protect Journalists, *Sudan targets newspapers, journalists with confiscations and draconian legislation*, 6 December 2017, <https://cpj.org/2017/12/sudan-targets-newspapers-journalists-with-confisca.php> (last access 28 August 2018).

³⁸ ACJPS, *Violations against free press and freedom of expression in Sudan, May/June 2018*, <http://www.acjps.org/violations-against-free-press-and-freedom-of-expression-in-sudan-mayjune-2018/> (last access 28 August 2018).

³⁹ 2009 Press and Press Printed Materials Act (Press Act), article 6 (4).

⁴⁰ See for example: Dabanga, *Sudan's Press Council suspends El Tayyar*, 28 September 2017, <https://www.dabangasudan.org/en/all-news/article/sudan-s-press-council-suspends-el-tayyar> (last access 28 August 2018); Alkarama, above note 36.

⁴¹ Press Act, article 8.

⁴² NSA, articles 24-25; Press Act, articles 8 (n) and 35 (1). The law doesn't provide any right to appeal against the decision to revoke press licences or ban journalists.

⁴³ See: Social Media Exchange (SMEX), *Do new Sudanese laws regulate digital space or limit freedom of expression?*, 23 July 2018, <https://smex.org/do-new-sudanese-laws-regulate-digital-space-or-limit-freedom-of-expression/> (last access 28 August 2018); 7Dnews, *Sudan journalists protest restrictive press bill*, 17 July 2018, <https://7dnews.com/article/sudan-journalists-protest-restrictive-press-bill> (last access 29 August 2018).

released. However, many others remain in detention,⁴⁴ and more steps must be taken for the authorities to fulfil the victims' right to an effective remedy.

Despite being guaranteed under article 40 of the INC, the exercise of the right to freedom of peaceful assembly is criminalised under the Criminal Code through vaguely defined offences such as "rioting" and a "breach to public peace",⁴⁵ crimes that are punished with up to six months in prison or a fine or flogging (above section 3). Additionally, on 20 January 2016, the parliament amended the Criminal Code, increasing the punishment for "rioting" from six months to five years in prison.⁴⁶

Moreover, before a demonstration can take place, the organiser must notify the Ministry of Interior and receive written consent, a requirement that cannot be found in Sudanese laws but was prescribed by a circular from the Ministry of Interior.⁴⁷ Article 127 of the CPA grants "any Governor or Commissioner" the power to prohibit or restrict an assembly likely to cause a "breach of the public peace", without providing the right to appeal against the decision.

Lastly, the criminalisation of peaceful assembly and the extensive powers given to the NISS, the army and the police to arrest individuals suspected of participating in peaceful demonstrations⁴⁸ puts individuals – and particularly human rights defenders, political activists and members of the opposition – at risk of arbitrary deprivation of liberty and torture by state agents (above sections 3, 4).⁴⁹

RECOMMENDATIONS:

1. Amend the Criminal Code to repeal the provisions criminalising and punishing the exercise of the right to peaceful assembly;
2. Ensure that any restriction to the organisation of a peaceful assembly is prescribed by law and meets the criteria of necessity and proportionality;
3. Release all peaceful protesters and provide them with appropriate and effective remedy;
4. Reform the domestic legal and policy frameworks to end the NISS' abuses against peaceful protesters.

⁴⁴ ACJPS, *Sudan should charge or release remaining 248 individuals in prolonged detention*, 16 April 2018, <http://www.acjps.org/sudan-should-charge-or-release-remaining-248-individuals-in-prolonged-detention/> (last access 3 September 2018).

⁴⁵ Criminal Code, articles 67-69.

⁴⁶ New Vision, *Sudan MPs approve harsher penalties for rioting*, 20 January 2016, https://www.newvision.co.ug/new_vision/news/1415312/sudan-mps-approve-harsher-penalties-rioting (last access 29 August 2018).

⁴⁷ The International Center for Not-for-Profit Law (ICNL), *Civic Freedom Monitor: Sudan – Barriers to assembly*, <http://www.icnl.org/research/monitor/sudan.html> (last access 3 September 2018).

⁴⁸ CPA, article 125 (3); NSA, article 50.

⁴⁹ See: European Parliament, *The arrest of human rights defenders in Sudan, notably the case of Sakharov Prize laureate Salih Mahmoud Osman (2018/2631(RSP))*, 15 March 2018, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0080+0+DOC+XML+V0//EN&language=EN>; Alkarama, *Sudan: Secretly detained political activist among hundreds arrested during January anti-austerity protests*, 10 April 2018, <https://www.alkarama.org/en/articles/sudan-secretly-detained-political-activist-among-hundreds-arrested-during-january-anti> (last access 3 September 2018).