



SUDAN

Human Rights Committee Consideration of the fifth Periodic Report of Sudan

Submission

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I Introduction

Submitting Party

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation, merely funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.¹
2. Lawyers for Lawyers promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers of the United Nations (Basic Principles).² We support lawyers across the world who are threatened or suppressed as a result of discharging their professional functions and we promote the proper role of lawyers.³
3. On 3 May 2018, the Human Rights Committee ("the Committee") adopted a List of Issues in relation to the fifth period report of Sudan,⁴ in response to which Sudan has not yet submitted a reply.
4. During its 124th session, from 8 October to 2 November 2018, the Committee will consider the fifth report submitted by Sudan under article 40 of the Covenant ("the State Report")⁵ and adopt concluding observations that will assist Sudan in the implementation of the Covenant. In the context of this review, Lawyers for Lawyers wishes to provide comments on the questions raised in the List of Issues⁶, and address issues that are not raised in the List of Issues with a view to getting them appropriately addressed during the dialogue with the State.

II Executive Summary

Issues

5. This submission outlines Lawyers for Lawyers' key areas of concern about the failure of the Sudanese government to comply with its international human rights commitments to guarantee effective access to justice and the legal services provided by independent legal professionals. The Basic Principles require States to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR.

¹For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

² Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('Basic Principles').

³ For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

⁴ List of issues in relation to the fifth periodic report of the Sudan, CCPR/C/SDN/Q/5, 3 May 2018.

⁵ Fifth periodic report submitted by the Sudan under article 40 of the Covenant, due in 2017, CCPR/C/SDN/5, 7 September 2017.

⁶ List of issues in relation to the fifth periodic report of the Sudan, CCPR/C/SDN/Q/5, 3 May 2018.

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6. According to our information, the Sudanese authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subjected to threats, intimidation and improper interference. Some lawyers are even subjected to arbitrary arrests, criminal proceedings and detentions without a due process, in connection to their legitimate professional activities. As a result, lawyers are not in an equal position to represent their clients.

Recommendations

- I. **Sudan should immediately take all necessary measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.**
- II. **Sudan should take all necessary measures to prevent that lawyers suffer or be threatened with arbitrary arrests, detentions and prosecutions, or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.**

III Substantive Part - The implementation of article 14 of the Covenant by Sudan

A. Effective Mechanisms for the Protection of Human Rights

7. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the ICCPR.
8. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.⁷ In particular, the Committee has stated that *'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure*

⁷ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, especially article 12.

or undue interference from any quarter'.⁸ Lawyers should also be able to *'meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications*'.⁹

9. The right to a fair trial also entails the principle of equality of arms. In view of the Committee, this means that *'the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant*'.¹⁰
10. In its task of promoting and ensuring the proper role of lawyers, the government of Sudan should respect and take into account the Basic Principles within the framework of its national legislation and practice.¹¹ Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.¹²
11. Professional associations of lawyers also have a vital role to play in upholding professional standards and ethics and protecting their members from persecution and improper restrictions and infringements.¹³ Professional associations of lawyers should exercise its functions without external interference and cooperate with the government of the Sudan to ensure – amongst others – that lawyers are able, without improper interference, to counsel and assist their clients.¹⁴
12. In its concluding observations of 19 August 2014, the Committee expressed concerns at *"allegations indicating that State officials have subjected opponents and perceived opponents of the Government, human rights defenders and other activists to harassment, intimidation, arbitrary arrest and detention, and torture and ill-treatment."*¹⁵
13. In its List of Issues, the Committee requested the Sudanese authorities to comment *'on reports of the prolonged and arbitrary detention, without charge or trial, of individuals, particularly human rights defenders, students, political and youth activists, lawyers and doctors who are perceived to be critical of the Government*'.¹⁶

⁸ Idem, para. 34.

⁹ Idem, para. 34.

¹⁰ Idem, para. 13

¹¹ Basic Principles, Preamble, paragraph 11.

¹² Basic Principles, Preamble, paragraph 9.

¹³ Basic Principles, Preamble, paragraph 10.

¹⁴ Basic Principles, Principles 24 and 25.

¹⁵ Concluding observations 2014 on the fourth periodic report of the Sudan, CCPR/C/SDN/CO/4, 19 August 2014, par. 22.

¹⁶ List of issues in relation to the fifth periodic report of the Sudan, CCPR/C/SDN/Q/5, 3 May 2018, par. 19

14. Reports gathered by Lawyers for Lawyers indicate that the government of Sudan does not always uphold the necessary guarantees and human rights for the proper functioning of the legal profession in practice. As a consequence, lawyers encounter difficulties in carrying out their profession freely and independently, immediately impacting the rights to effective legal representation and freedom of expression as enshrined in Article 14.

B No effective guarantees for the functioning of lawyers

15. The position of lawyers in Sudan continues to be highly alarming and threatening. Lawyers who are critical of the government are hindered in their work and subject to threats, intimidation, arbitrary arrests and detentions by the governmental authorities, particularly by the National Intelligence and Security Service ("the NISS"). Lawyers for Lawyers received reports of several lawyers being arrested and detained in relation to peaceful demonstrations.¹⁷ The situation has forced several prominent human rights lawyers to take safety measures, such as Mr. Abdelrahman El Gasim¹⁸ who has been forced to flee the country and continue its work by living in exile.

16. Sudanese lawyers have qualified the 2010 National Securities Act ("the Act") – which is (very) briefly reported in paragraph 19 of the State Party Report – as the legal tool of the government for the ongoing arbitrary arrests, detentions and torture of - amongst others – lawyers, committed by the NISS. The Act also provides a justification for the excessive powers of the NISS.

17. Chapter III of the Act states the powers and competences of the NISS. Article 50 of the Act ('Powers of the Members, Director and Council') grants the NISS the power to arrest and detain civilians up to four and a half months without any legal process.

18. Article 50 of the Act reads as follows: "*Powers of the Members, Director and Council – 1. Pursuant to the provisions of Articles 29 and 37 of the Interim National Constitution, 2005, Each and every member shall, by virtue of an order issued by the Director, and for the purpose of executing the competences set forth in this Act, have the following powers:*

- a. Any of the powers provided for in Article (25)*
- b. Search after obtaining an order issued by the Director in writing*
- c. Powers of the policemen as provided in the Police Forces Act and the Criminal Procedures Act*
- d. Exercise any lawful powers necessary for execution of the provisions of this Act*

¹⁷ See for example the news coverage of Front Line Defenders with regard to the most recent 'crackdown' of peaceful protests and the following arrests of several lawyers:
<https://www.frontlinedefenders.org/en/statement-report/sudan-continuing-crackdown-and-detention-human-rights-defenders>.

¹⁸ Recently honored for his work with the International Human Rights Award of the American Bar Association:
https://www.americanbar.org/news/abanews/aba-news-archives/2018/06/sudanese_lawyer_abde.html,

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- e. Arrest or detain any suspected person for a period not exceeding thirty days provided that his/her relatives are immediately informed
 - f. After elapse of the thirty days mentioned in Para (e) above, and if there are reasons that require more investigation, enquiry and maintaining the detained person in custody, NSS member shall refer the issue to the Director and make the recommendations he deems appropriate
 - g. The Director may renew the detention period for not more than fifteen days with the purpose of completing investigation and enquiry
 - h. *If it comes to the knowledge of the Director that maintaining any person in custody is necessary for completion of investigation and enquiry in case of an accusation related to a factor threatening the security and safety of the people; intimidating society by way of armed robbery, racial, religious sedition or terrorism; disrupting peace; exercising political violence; or plotting against the country, he shall refer the issue to the Council which may extend the detention period for not more than three months*
 - i. *Without prejudice to paragraphs (f), (g) and (h), NSS authorities shall inform the competent prosecutor and hand over suspect and all documents and appendices thereof in order to complete the procedures. In case of absence of initial evidence, NSS shall release the suspect.*
2. *For the purposes of this Article, NSS shall take into account provisions of Article (33) of the Interim National Constitution, 2005.*
 3. *The Director may issue standing orders to organize exercise of the powers set forth in Para (1) above.* [underscore added]

19. The Act therefore makes it possible for the Sudanese governmental authorities to arrest and detain without any due process any lawyer who is, according to the unsubstantiated allegations of the NISS, for example a 'threat for the national security' (see article 24 (1) of the Act, 'NSS Competences') for several months. The Act further provides the NISS immunity from prosecution and disciplinary action. According to our information, the Act is still used to silence lawyers critical of the government.

Arbitrary detentions of lawyers

20. The List of Issues contains questions with regard to the prolonged and arbitrary detentions, without charge or trial, of individuals, including but not limited to lawyers, who are perceived to be critical of the government and the measures taken to assure that persons who are arrested and detained are brought before a judge within 48 hours and afforded remedies because of unlawful/arbitrary arrest.
21. There have been several cases of lawyers that have been arrested and suddenly released, including but not limited to Mr. Salih Mahmoud Osman and Ms. Hanan Hassan Khalifa.

Salih Mahmoud Osman

Mr. Osman is an eminent and internationally well-known Sudanese lawyer and human rights advocate and has dedicated himself to, amongst others, bring justice to and raise international awareness for the victims of the civil war in Darfur. In 2007, Mr. Osman has been awarded with the Sakharov prize of the European Parliament for its fight against oppression, intolerance and injustice in the Sudan and the conflict areas.

Mr. Osman was arrested and detained in 2004, allegedly because of his free legal services provided to - amongst others - detainees facing capital punishment and hundreds of victims of human rights abuses in Darfur.¹⁹

On 1 February 2018, Mr. Osman was again arrested by governmental forces in his office in Khartoum and detained without any official charges within the NISS premises. His detention followed after he had encouraged Sudanese citizens to invoke their fundamental rights such as freedom of expression and freedom of assembly against the several measures taken by the administration of President Omar Al-Bashir. In local media, Mr. Osman had, in his function as a lawyer and human rights defender, called upon the Sudanese citizens to make use of their human rights by amongst others taking part in several nationwide peaceful demonstrations related to measures taken by the Sudanese government to increase prices of basic commodities in January 2018.

Mr. Osman has been detained without any form of due process for several months. The arrest and detention were also addressed during the European Parliament sessions in Strasbourg on 12-15 March 2018. The European Parliament adopted a human rights resolution addressing the recent human rights violations and called for the release of amongst others Mr. Osman.²⁰

Mr. Osman was, following a presidential decree of Omar al-Bashir to release several detainees, released from prison on 20 April 2018. However, the threat of further arrests and incommunicado detention has not vanished.

Ms. Hanan Hassan Khalifa

Ms. Hanan Hassan Khalifa is a human rights lawyer known for advocating for amongst others the rights and freedoms of detainees. On 31 January 2018, Ms. Khalifa was on her way to meet detainees who she was legally representing in a prison in North-Khartoum. Police/NISS officials arrested Ms. Khalifa at a checkpoint, which was located in the main street in order to target participants heading to join an organized protest against the aforementioned governmental measures.²¹ Ms. Khalifa was detained by the NISS in the Omdurman women's prison until 18 February 2018. Her release followed a press conference of the NISS in which the imminent release of several detainees by order of

¹⁹ See the news coverage by the World Observatory for Defence Rights and attacks against lawyers:
<https://www.idhae.org/idhae-uk-page4.1.saleh.htm>.

²⁰ EU Parliament, Joint Motion for a Resolution on the arrest of human rights defenders in Sudan, notably the case of Sakharov Prize Laureate Salih Mahmoud Osman, 14 March 2018, RC\1148504EN.docx (available on:
<http://www.europarl.europa.eu>).

²¹ See several news coverages:
<https://www.frontlinedefenders.org/en/case/crackdown-sudan-continues>.
<https://www.fidh.org/en/issues/human-rights-defenders/sudan-incommunicado-detention-of-8-human-rights-defenders-lawyer-and>.

President Omar Al-Bashir was addressed and in which it was stated that other detainees will only be released on the condition that the organized protests would come to an end.²²

22. These examples demonstrate a trend of continuing human rights violations committed by the government and the constant hinder human rights lawyers have to face in Sudan. Currently, we have received no indications that victims of unlawful arrests and detainees have obtained remedies for the acts of the government.

IV Concluding Recommendations

23. Lawyers for Lawyers proposes the following recommendations

- I. Sudan should immediately take all necessary measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 (a) and 18 of the Basic Principles on the Role of Lawyers.**

- II. Sudan should take all necessary measures to prevent that lawyers suffer or be threatened with arbitrary arrests, detentions and prosecutions, or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 (c) of the Basic Principles on the Role of Lawyers.**

²² See several news coverages:

<https://www.fidh.org/en/issues/human-rights-defenders/sudan-release-of-ms-rawa-jaafar-bakhit-ms-nahid-jabrallah-ms-amel>.

<https://www.hrw.org/news/2018/02/22/sudan-prisoner-release-left-many-activists-behind>.