

A joint report by a coalition of regional and national human rights Non-Governmental Organizations (NGOs) on the Universal Periodic Review (UPR) of Sudan

I. Introduction

1. This report offers the collective analysis of regional NGOs¹ from the Arab region on the human rights situation in the Sudan. The report focuses on the main trends and patterns of human rights and humanitarian law violations in the Sudan during the past four years. Including gross violations that undermine the rights to citizenship and equality, and threaten the long and short term stability of the country. This report focuses on the violations arising from the conflicts in both South Sudan and Darfur. It also gives an overview and analysis of the many methods employed by the Government of Sudan (hereinafter GoS) to silence the voices of the victims of rights violations through a holistic and strategic plan to limit the freedom of press, restrict the movement and work of national and international Human Rights Defenders (hereinafter HRD), and by undermining efforts by international community and global civil society to provide protection to victims of war crimes, and crimes against humanity.

II. The Human Rights Situation in the Sudan and the collapse of the central state

2. The continuing armed conflict and/or tribal tensions and disputes in the southern, western and central regions of Sudan have greatly contributed in the ongoing deterioration of the human rights situation in the country. Due in part to this type of conflict extrajudicial killings are ongoing, and thousands are subject to forced eviction and displacement on a monthly basis. The Sudan's Comprehensive Peace Agreement (hereinafter CPA) and the Darfur Peace Agreement (hereinafter DPA) have, thus far, failed to bring peace to the country. The GoS' unwillingness to respect several stipulations of both peace treaties has left Sudanese civilians in both the western and the southern parts of the country vulnerable to gross and systematic violations committed by all parties to the conflict. While the GoS is not directly responsible for all violent incidents, it has none-the-less failed to take sufficient steps to protect the civilian population in the country according to its obligations under the Interim National Constitution as well as International Law.

3. The conflict and/or humanitarian situation in Darfur and Southern Sudan continues to deteriorate as a result of persistent impunity for war crimes and gross human rights violations within Sudan. Not only is the Sudanese government failing to respect and protect the rights of its citizens and offer adequate protection to the civilian population, it is, itself, a flagrant perpetrator of war crimes and crimes against humanity. Armed confrontations between the Sudanese government armed forces, their affiliated militias and armed rebel groups, as well as inter-tribal fighting, continues to result in gross and widespread human rights violations, including the killing and/or displacement of millions of civilians.

4. Since 2003 the conflict has become progressively more complicated with rebel groups and pro-government militias alike fragmenting into small armed factions.

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In fact, the Head of the Joint African Union-United Nations Hybrid Operation in Darfur (UNAMID) described the conflict as one of "all against all"² – a situation that endangers the future of a durable peace. Official retaliatory measures, including the expulsion of humanitarian organizations from Darfur by the Sudanese government in reaction to international efforts to put an end to impunity in Darfur and address the root causes of the conflict, demonstrates a complete disregard for the basic rights enshrined in both international human rights and humanitarian law. The current situation described above, despite a growing belief that the situation is improving, has ensured that the basic security of civilians in Darfur and in South Sudan may now be more threatened than ever before.

5. **Darfur... a “No Peace Zone”:** The deteriorating humanitarian situation in Darfur as a result of the armed conflict between the Sudanese government and rebel groups continues to pose a serious threat to millions of unarmed civilians. In what UN Secretary-General Ban Ki-moon described as "a devastating humanitarian situation," the situation in Darfur continues to be characterized by ongoing hostilities and widespread human rights abuses. Even after the signing of the DPA, hostilities continued to claim the lives of civilians, and the displacement of the population. Between the months of July and October 2008, some **90,000** people in Darfur were forcibly displaced.³ In addition between October 5 and 17 of the same year, government forces and its supporting militias raided more than **12** villages in Southern Darfur leaving **44** civilians dead and leading to an influx of the number of IDPs.

6. Despite increased attention and condemnation of the atrocities committed against civilians in Darfur, the human rights situation in the westernmost region of Sudan remains dire. The Sudanese armed forces continue to conduct indiscriminate attacks against civilian population and infrastructure in violation of basic laws of war and UN resolution 1591. Soon after announcing a unilateral, unconditional ceasefire on November 12, 2008, government forces carried out bombing raids on villages in North and West Darfur, most notably Kurbia in North Darfur. On January 15, 2009 and in what was described as the "worst violence in a year,"⁴ fighting erupted in Muhajiriya between the government supported militias and rebel groups. As reported on February 4, 2009, the fighting has claimed the lives of at least **30** people and uprooted some **30,000** more.⁵ In March 2010 the GoS attacks on Jebbel Marra lead to the forced displacement of an additional **40,000** civilians.

7. Exact details of incidents of continuous violence against civilian population in Darfur are well documented in several UN and INGO reports, and they are not the purpose of this report. Nevertheless, it is worth mentioning that the GoS has been

² *Darfur today is a conflict of all against all*, Security Council (SC/9644), April 27, 2009, available at <http://www.un.org/News/Press/docs/2009/sc9644.doc.htm>.

³ *Rhetoric vs. Reality: The Situation in Darfur*, SaveDarfur, Human Rights First, Human Rights Watch, at 2, available at <http://www.humanrightsfirst.org/pdf/081201-HRF-rhetoric-vs-reality.pdf>.

⁴ Integrated Regional Information Networks (IRIN), *Sudan: Darfur suffers "worst violence in a year"*, 28 January 2009. Online. UNHCR Refworld, available at <http://www.unhcr.org/refworld/docid/4981788ca.html>, (accessed 11 February 2009).

⁵ Integrated Regional Information Networks (IRIN), *Sudan: Conditions getting worse for Darfur civilians*, 4 February 2009, UNHCR Refworld, available at <http://www.unhcr.org/refworld/docid/498ab63e17.html>, (accessed 11 February 2009).

redundant to accept the calls and suggestions of several national, regional and international actors to find a just solution for the conflict, which is the reason why the numbers of victims in Darfur is on the rise. We firmly believe that any peace deal that fails to incorporate a holistic approach to the right to truth, justice, compensation and reparation will fail to bring a just end to this now seven years conflict.

8. In this regard, the Qatar sponsored peace talks in Doha have failed once again to reach a final agreement between the GoS and the different warring factions in Darfur. While the Justice and Equality Movement were included in the talks, the Sudanese Liberation Army/ Abdul Wahid faction failed to engage in the discussion to reach a final compromise for peace. In the meantime, the GoS has also failed to honor its cease-fire agreement(s) with the various warring rebel groups. Additionally, the absence of consultations and the exclusive process in which the DPA was conducted has led to its failure, and to the failure of all subsequent procedures that took the DPA as the base for negotiations. A study of the assessment and needs of the victims should have been carried out by the drafting actors before determining the content of the DPA.

9. Additionally, the tension between the concept of restorative and retributive justice has been highlighted during this past years' negotiations on Darfur. While the DPA has created a coherent set of compensation mechanisms, that is commonly regarded as a means of restoring or compensating for the harm done to victims and the society as a whole through an inclusive process. However, retributive justice, i.e. holding perpetrators of human rights violations accountable before an independent judiciary by the state, or competent international courts, and the enforcement of appropriate penalties, has been widely neglected during the negotiation process. The Sudanese victims' demands for justice and accountability, and their recommendations regarding land restitution and land management seem to be indispensable to addressing the root causes of the conflict in Darfur, securing the sustainable peace in the Darfur region, and providing sufficient incentives to the rebel groups and Arab nomads to maintain peace and stability in the region. This necessary process has been set aside by both the DPA and the subsequent Qatar arrangements.

10. Southern Sudan... An Unfinished Civil War? : Between January and November 2008, the various disputes in South Sudan led to the forced displacement of some **187,000**. In 2009, the conflict claimed the lives of approximately **1200** people during tribal violence. In February alone, more than **30** civilians were killed during a clash in Malakal between the Sudanese People Liberation Army (SPLA) and the Sudanese Armed Forces.

11. Furthermore, the year 2010 witnessed further deterioration in the human rights and humanitarian situation in the southern region of Sudan. More than 700 were killed and **150,000** were internally displaced. The GoS has failed to take appropriate measures, as required by international law, to protect and provide for the well-being of civilians who have been displaced or victims of violence.

12. The Sudanese government has been unwilling to honor its obligations under the CPA. The latter requires series of necessary democratic legal reforms that the government of Sudan should imperatively undertake to guarantee an effective right to victims' reparation. Months away from the upcoming referendum that will determine the fate of the unity of the country, the Sudanese government maintains approximately 60 different laws that are in direct contradictions with the Sudanese interim Constitution of 2005. Some of these laws grant to security services and state officials personal immunity, and add obstacles on the ability of the already weakened judiciary to prosecute perpetrators of gross human rights violations by, for example, excluding the penal concept of command responsibility from its legal structure. The GoS' failure to resolve key issues with the government of South Sudan including agreement on the composition of the Abyei referendum's electoral commission, the requirements of voter eligibility, and border demarcation, greatly undermines the possibility of a lasting peace.

13. Furthermore, tribal conflict and insecurity persists throughout South Sudan. Several incidents of violence have erupted during the past four years claiming the life of hundreds, and leading to the forced displacement of thousands of civilians. This conflict is partly due to a flawed peace process. The CPA, like the DPA failed to secure the right to truth, justice and reparation as prescribed in the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law"⁶.

14. **Humanitarian Crisis:** Reports from Darfur have documented an increase in the number of targeted assassinations of community leaders within the camps of Internally Displaced People (hereinafter IDPs). as well as the destruction of property and forced displacement of IDPs, in some camps in South and West Darfur. In addition, scores of IDPs are reportedly suffering from arbitrary arrest and incommunicado detention by National Intelligence and Security Service forces (hereinafter NISS).⁷ In August 2008, government forces raided Kalma IDP camp in Southern Darfur, killing **39** IDP and injuring **51**, most of whom are women and children.

15. While the GoS continues to fail to protect and accommodate for the thousands of displaced individuals and war victims, it have also shown a consistent tendency to impose undue restrictions on and persistently harass international NGOs (INGOs) who provide essential humanitarian services. In the year 2009 alone, following the International Criminal Court's (ICC) decision to issue an arrest warrant against President Omar Al-Bashir for war crimes and crimes against humanity on March 4, 2009, Sudan's Humanitarian Aid Commission revoked the registrations and expelled **13** INGOs. Authorities have further dissolved **3** national

⁶ General Assembly resolution 60/147 of 16 December 2005

⁷ Human Rights and Advocacy Network for Democracy (HAND), *Disturbance in Darfur's IDP Camps*, August 13, 2010

NGOs operating in north Sudan for allegedly collaborating with the ICC investigations. It is crucial to note that these organizations provided humanitarian aid to **4.7 million** people in Darfur, and millions more in other areas of Northern Sudan.⁸ Consequently, by the end of the month of March 2009, the GoS has removed some **6,500** staff, or **40%** of the humanitarian workforce operating in the region. As a result, the World Health Organization warned that what is considered to have been the largest humanitarian operation in the world "will be irrevocably damaged" by the expulsion, leaving more than **800,000** people without aid and some **650,000** people without full access to the necessary range of health services. Moreover, intimidation and expulsion of INGO officials have continued after the presidential elections in Sudan. Furthermore, by the first month of 2010, an additional **26** INGOs had their registration revoked under the pretext of failure to conduct their activities. As recently as July 2010, the GoS decided to expel two senior officials in the IOM, after allegedly cooperating with the ICC. During the past four years, the GoS has expelled and declared as *personae non grata* UN officials, including the head of UNMIS and some of its employees, as well as ICRC staff members, and other INGO international staff members.

16. Furthermore, the humanitarian situation in IDP camps, particularly in Darfur, have witnessed an alarming deterioration in the past couple of years due to the expulsion of INGOs and aid organizations by the GoS, and denial of access to camps to those organizations still operating in affected areas, including the *Kalma* Camp in Southern Darfur, housing approximately 100.000 refugees.⁹ Reports confirm an increase in the number of targeted assassinations of IDP leaders, a rise in the cases of forced displacement of IDPs in certain camps in South and West Darfur, and in cases of arbitrary arrests and incommunicado detentions by the NISS.

17. The summary expulsion of humanitarian and aid organizations from Sudan as a political reprisal against international efforts to ensure accountability for war crimes, including the International Criminal Court proceedings, constitutes an act of collective punishment against civilian population that may amount to an additional war crimes under international humanitarian law.

18. It is important to note that such intimidation, particularly from the side of the NISS has increased around the period of general elections in the country. The Amnesty International report "Agents of Fear: the National Security Service in Sudan" states that "NISS agents have systematically used intimidation and various forms of ill-treatment, including torture, against supporters of the political opposition, students, human rights defenders, civil society activists, staff of national and international NGOs, and anyone seen as posing a threat to the government."¹⁰

⁸ World Health Organization (WHO), *Joint Statement on the Humanitarian Situation in Darfur*, March 6, 2009, available at http://www.who.int/hac/crises/sdn/releases/joint_statement_6march2009/en/index.html.

⁹ Amnesty International., *Life without a Future for Sudan's displaced people*, 8 February 2008, available at <http://www.amnesty.org.au/refugees/comments/8974/>

¹⁰Amnesty International, *Agents of Fear: the National Security Service in Sudan*, 19 June 2010, available at <http://www.amnesty.org/en/news-and-updates/report/sudanese-security-service-carries-out-brutal-campaign-against-opponents-2010>

III. Chronic and pervasive rights violation in the Sudan

19. **Silencing the victims... Limitations on freedom of expression:** Press freedoms have also been severely curtailed by the GoS. Press censorship is regularly carried out by national security and intelligence personnel. During the past four years, security personnel have banned entire stories or interfered editorially to remove key sections of news stories. In 2009 Security forces forced editors, managers, and their deputies to take an oath not to publish any material banned by the security censor elsewhere, including in online forums. During the same year, the executive controlled Constitution Court, rejected appeals filed by a group of journalists asking for an end to the regime of security censorship.

20. In addition, websites have been regularly banned. In July 2008, authorities banned "YouTube" for containing video clips revealing the beating and torture inflicted upon children under the framework of detentions of some rebel groups.

21. While the amount of security control exercised on the different media outlets may vary from one month to another, the constant repression of media outlets lead to a *de facto* and a *de jure* censorship and a general climate of fear throughout the country.

22. **Forcing Victims to Pay the Price.... Restrictions on the Movements of HRD:** Furthermore, Sudanese human Rights defenders continue to face severe harassment, intimidation and assault. Indeed, the majority of Sudanese human rights defenders have been forced to flee Sudan due to the crackdown imposed by the GoS. Sudanese authorities continue to harass and intimidate those whom they accuse of "spying" or "conspiring" with the ICC, including displaced peoples, human rights defenders and innocent civilians in Darfur. Moreover, during the period of the presidential elections, the NISS increased its crackdown on dissenting voices.¹¹ Forms of intimidation vary from torture and detention to restrictions on their freedom of movement.

23. The Voluntary Work Law of 2006 gives vast powers to the government to interfere in the activities of NGOs, including their managerial hierarchy and means of obtaining funding. Accordingly, amongst the dozens of human rights organizations that have faced different forms of restriction were the Sudan Organization Against Torture (SOAT), Al-Amal Center for Treatment and Rehabilitation of Victims of Violence, "Khartoum Center for Human Rights, and the Sudanese Development Organization" (SUDO). Government intimidation includes physical intimidation, detention or physical abuse, or through closure, or threats of closure, of an NGO. Reprisals and threats of reprisals against HRDs working with international human rights mechanisms and the International Criminal Court have occurred in a widespread and systematic level. Several rights defenders were held incommunicado, tortured and physically abused. Those who haven't been detained and are still suspected of providing information for

¹¹ Amnesty International, Human rights defenders at risk in Sudan, 2 August 2010, available at <http://www.amnesty.org/en/library/info/AFR54/012/2010/en>

different international mechanisms, receive daily threats and often have security personnel following them. These attacks have forced several human rights defenders into *de facto* exile or to apply self-censorship.

24. The already small margin of freedoms and liberties in the country is gradually shrinking. The GoS still attempts to impose solutions by force and intimidation. This approach is a main cause of the prolonged conflict and death of hundreds of thousands of innocent civilians in the five different regions of the Country, and the desolation of state infrastructure.

25. Forged elections and an uncertain future: The way leading to the most recent general parliamentary and presidential elections was paved with obstacles. While the CPA obliged the GoS to enact a new Elections Law by mid 2005, the law was not passed before 2008. The law stipulates that 60% of parliamentary members shall be directly elected by the electorates in the different local constituencies and the remaining 40% shall be elected from amongst party-list proportional representation, with 25% of the seats allocated to women, which was considered as a radical positive development in the country. However, opposing actors in the country heavily criticized the law as the latter doesn't satisfy their demands for holding a mixed electoral system based on equality between geographical constituencies and proportional representation systems. Additionally, the holding of the elections was supposed to be linked to a holistic reform of existing repressive laws that contradict with international human rights and humanitarian law. The GoS was also required to conduct a credible and independent census a year or two prior to the elections that would server as a primary source of information to decide the number and re-allocate/distribute the different constituencies as well as to demarcate the new administrative boundaries. The results of the census in highly polarized and contentious areas like the Nuba Mountains and Darfur were unreliable and insufficient. The general insecurity situation, inter-tribal fighting and violence, the contested boundary lines between counties and logistical difficulties have affected both the results of the census and of the general elections as well.

26. The Sudanese Presidential and Parliamentary elections themselves witnessed numerous irregularities and incidents of voter disenfranchisement. Domestic and international observers have noted that the balloting process fell short of international standards for free and fair elections. These included the “repression and arrests of activists and opposition members;” the “intimidation of election observers;” “allegations of fraud” in North Sudan; “beatings, arbitrary arrests, and intimidation of opposition candidates and party members and election observers;” “beatings, intimidation and arbitrary arrests of domestic observers;” “reported widespread fraudulent activities” in South Sudan; limited voting in Darfur due to “violence and the threat of violence by security officials or other armed persons;” “incidents of intimidation of observers” and voters; and, the dire humanitarian situation including widespread displacement.¹² Nevertheless, while international observation missions including the African Union, the Carter Centre, the

¹²Human Right Watch, Sudan: Flawed Elections Underscore Need for Justice: Sudan's President Should be in the Hague Facing Charge Against Him, Available at <http://www.hrw.org/node/89975>

European Union, the Intergovernmental Authority on Development and states such as the United States maintain that the balloting process did not meet international standards, this has been framed largely as a result of technical shortcomings.¹³

27. Significant international actors appear to have adopted the view that staging elections in Sudan at any cost is essential to maintaining the Comprehensive Peace Agreement (CPA).¹⁴ While, at first glance, such considerations could appear legitimate, the violations that took place years before as well as during the election period are too grave to be ignored for expedience or attributed to technical shortcomings.

IV. Absence of mechanisms for Peace and Accountability

28. **Silencing the victims.... Limitations on international accountability:** In response to the UN Security Council referral of the situation in Darfur to the ICC, the GoS have constituted a Special Tribunal to investigate into the crimes that have been committed in the western region. The proceedings of this Special Courts have failed to uphold international standards or hold perpetrators of war crimes and rights violations accountable. The Sudanese judicial system in general lack basic requirements to ensure its independence, a condition that has prevailed since the 1989 coup d'état; where many qualified judges were purged for political reasons. As a result, both the ICC and the Security Council have assured several times that the complimentarity standards have been respected by the Court when it indicted three top Sudanese officials including the incumbent president of Sudan and two other rebel leaders for war crimes, crimes against humanity and acts of genocides that were allegedly committed in Darfur

29. The failure of the Sudanese government to prosecute war criminals in Darfur is also coupled with its failure to ensure a national judicial oversight over the persistent violations of individual rights throughout the country. Widespread acts of torture and inhumane treatment, including rape and other forms of sexual and gender based violence, and violations to the right to life, privacy, religion and discrimination are rarely brought in front of national courts. The judicial system remains weak and in certain cases unable and/or unwilling to prosecute government officials due to the unprecedented control that the government has asserted over the judicial apparatus.

30. Furthermore, the GoS has refused to implement recommendations of various UN bodies, including the many recommendations compiled by the former Expert Group on Sudan at the UN Human Rights Council.

¹³ See for example, The Carter Center, Preliminary Statement of the Election Observation Mission, April 17, 2010

¹⁴ US State Department, Sudan Troika Joint Statement on the Sudanese Elections, April 19, 2010

31. Recommendations:

Thus, we remind the international community of its obligation to call on the Government of Sudan to ensure the following:

1. Stop all human rights violations that are systematically carried out by the NISS, including arbitrary arrests, extra judicial killings and torture, against dissenting opinions and civilians (particularly of Darfuri origins); and Ensure adequate reparation of the victims.
2. Reaffirm the right of the people of Southern Sudan to self determination and guarantee the recognition and respect of their choice, whether towards unity or independence.
3. Ensure the upholding of all international human rights standards in preparations to and during the course of the referendum. These preparations must include sufficient measures to protect civilians from potential violence, especially in volatile areas.
4. Guarantee that the National congress party of Sudan (NCP) and the Sudan people's liberation movement (SPLM), the two parties to the CPA commit to the respect of all human rights, particularly pertaining to the rights of movement, residence and property, regardless of the outcome of the referenda.
5. Refrain from committing systematic human rights violations against civilians in Darfur and work towards resolving the conflict in Darfur, delivering justice for the victims, and ending the humanitarian crisis in the IDP camps.
6. Put an end to reprisals against Sudanese human rights defenders and civil society in Sudan, particularly for the reasons of participating with intentional actors and mechanisms.
7. Discontinue all constraints put forth for international organizations obscuring them from fulfilling their duties in the country's conflict zones.