

## SUDAN

### CCPR A/46/40 (1991)

492. The Committee considered the initial report of the Sudan (CCPR/C/45/Add.3) at its 1065<sup>th</sup> and 1067<sup>th</sup> meetings, held on 8 and 10 July 1991 (see CCPR/C/SR.1065 and SR. 1067).

493. The report was introduced by the representative of the State party, who drew attention to several developments that had occurred since the submission of the report on 3 January 1991. First, Constitutional Decree No. 4, which laid the foundations of a federal system of government in the Sudan and established rules concerning state budgets and revenues, had been promulgated. Secondly, a conference on justice and legal reform, attended by professionals and experts in the field of law and the administration of justice, had been held. The conference produced a number of significant recommendations relating, in particular, to the judiciary, the Ministry of Justice and the Attorney-General's Office, penitentiary institutions, military justice, legal reform and legal education and training, and the drafters of those recommendations were determined to seek their speedy implementation. Thirdly, approximately 300 political detainees had been released on 29 April 1991, with only a few individuals facing specific charges remaining in prison. Finally, the representative noted that a number of steps had been taken towards the establishment of a political system of participatory democracy. In that regard, the perceived unworkability of both multi-party democracy and the single party model, as well as the country's enormous linguistic, ethnic and cultural mix, called for the establishment of a system without political parties to secure popular and truly democratic participation in the decision-making process.

494. Members of the Committee expressed their understanding for the serious difficulties facing the Sudanese Government and their appreciation for the frankness and sincerity of the report. However, it was noted that the report was brief and incomplete and had not been prepared in accordance with the Committee's reporting guidelines.

495. With reference to article 2 of the Covenant, members of the Committee wished to know what the status of the Covenant was under the constitutional decrees and, in view of the absence of provisions giving effect to the rights enshrined in the Covenant, how respect for those rights was ensured; whether the constitutional decrees applied to acts committed before their adoption; whether the Covenant could be invoked before the courts; how the Revolutionary Command Council for National Salvation had been established and to what extent it enjoyed the confidence of the people; whether the Penal Code, which was based on Shariah, was not discriminatory in certain respects and if it applied also to the non-Muslim population; and, in general, to what extent that code could be reconciled with the provisions of the Covenant. Members of the Committee also wished to receive more information on the envisaged system of participatory democracy, particularly on the extent to which the terms of articles 19, 21, 22 and 25 of the Covenant would be reflected in that system, as well as on the historical, political and economical factors underlying the current problems in Sudan.

496. In connection with article 4 of the Covenant, members of the Committee asked what had been the impact of the de jure or de facto state of emergency on trade union freedoms as provided for in

article 22 of the Covenant and in ILO instruments; whether the Government had notified the Secretary-General of its promulgation of the state of emergency; and whether there was any prospect of the state of emergency being lifted.

497. As regards article 6 of the Covenant, members of the Committee wished to receive information on the number and nature of crimes for which the death penalty could be imposed, as well as on the number of cases in which the death penalty had been imposed and carried out.

498. In connection with articles 7 and 8 of the Covenant, members of the Committee wished to know what the Government's position was regarding the use of torture to compel prisoners to testify and whether the new Penal Code provided for public flogging, crucifixion and amputation and, if so, whether such punishments were applied in practice. Members also requested clarification concerning extrajudicial executions, acts of torture in general and the resurgence of forms of slavery in several parts of the country.

499. In relation to article 9 and 10 of the Covenant, members of the Committee asked how the powers of the Revolutionary Command Council for National Salvation to order the arrest of individuals merely suspected of endangering political or economic stability could be reconciled with the provisions of those articles and whether the political prisoners still under detention were to be tried before special or ordinary courts.

500. With reference to article 14, members of the Committee requested additional information on the functioning and procedures of the special courts and the public order courts in the Khartoum marketplace. They also wished to know what measures had been taken to ensure the independence of the judiciary; what qualifications were required for appointment as a judge of a special court; and how appeals to the Revolutionary Command Council for National Salvation against an arrest could operate, given that the President of the Council was himself ultimately responsible for ordering such arrests.

501. In connection with article 18 of the Covenant, members of the Committee wished to know whether the crime of apostasy, defined as advocating abandonment of Islam by a Muslim, was considered by the Sudan to be compatible with that article.

502. In connection with article 19 of the Covenant, members of the Committee requested information on the scope of the expression "showing of any political opposition" in paragraph 8 (a) of the report; whether foreign newspapers were allowed, whether the activities of foreign journalists were in any way restricted; whether a prior license was required to publish newspapers; and whether there were any plans for the privatization of broadcasting and television.

503. With reference to articles 21 and 22 of the Covenant, members of the Committee requested information regarding trade union freedoms in the Sudan, particularly concerning the alleged arrests of trade unionists and academics who had taken part in a peaceful demonstration.

504. Regarding article 25 of the Covenant, members of the Committee asked if the one-party system could meet the requirement of that article. They also noted that the number of political parties in a given political system was less important than the extent to which citizens took part in public

affairs and were eligible to compete for all officers of the State, including the highest. Noting that government employees could be dismissed by the Revolutionary Command Council for National Salvation and lose their benefits, members also asked how tenure and pension rights were protected.

505. With reference to article 27 of the Covenant, members of the Committee requested information on the composition of Sudanese society and on how the Government intended to arrange for the coexistence of different groups within a federal system.

506. Responding to questions raised and comments made by members of the Committee, the representative stated that his Government was willing to recognize shortcomings and take the necessary measures to respect the obligations contained in international instruments. However, human rights was a field in which there was a risk of partiality or double standards, particularly with regard to the treatment of a number of third world countries. Countries should be allowed freely to choose their legal system based on their convictions, traditions and customs. In the light of the renewed and increased emphasis being given in recent years by Islamic countries to the application of the Shariah, it would be desirable to submit the rights contained in international human rights instruments, which were adopted at an earlier stage, to a review.

507. Concerning the new Penal Code, the representative noted that the Code contained 132 crimes, of which eight could be classified as political crimes and nine were related to State security. The three southern states in the Sudan with a predominantly non-Muslim population were exempted from the application of Islamic law in penal matters. All laws adopted prior to the suspension in 1989 of the provisional Constitution of 1985 would remain in force until other laws had been adopted. The Covenant, by virtue of its ratification, formed an integral part of domestic legislation and could be invoked before all tribunals in the Sudan. The envisaged system of participatory democracy would have a pyramidal structure, with villages or town-districts at the bases, and providing also for participation by professional organizations.

508. With reference to article 4 of the Covenant, the representative stated that the state of emergency would not be lifted as long as the parties to the conflict in the south of the Sudan had not decided on a peaceful settlement. At present there were two points of contention: the choice of the nation's political structure (multi-party, federalism or participatory democracy) and the convening of a conference charged with drawing up a new constitution.

509. In reply to questions raised in connection with article 6 of the Covenant, the representative said that three civilians had been executed for illegal trafficking in drugs and currencies. The latter crime was considered to be extremely serious in the light of the current economic situation in the Sudan. The Revolutionary Command Council for National Salvation was charged with approving or overturning death sentences. There was no practice of extrajudicial execution in the Sudan.

510. As regards article 7 of the Covenant, the representative explained that many of the punishments prescribed by Islamic law were not considered as cruel or degrading because they had been imposed by God and derived from His will.

511. Concerning article 9 of the Covenant, the representative said that the approximately 300 political detainees who had been released were not required to report to the police on daily basis and

that there were no political prisoners in the Sudan at present.

512. With reference to article 10 of the Covenant, the representative said that in December 1990, a multinational mission had visited Sudanese prisons and had concluded that prison conditions were not inhumane and that torture was not practised.

513. In connection with article 14 of the Covenant, the representative said that the special courts were normally composed of three members of the military or other persons of integrity and competence and had jurisdiction over crimes related to drug trafficking and economic crimes. Their decisions could be appealed before the Chairman of the Supreme Court.

514. With reference to article 18 of the Covenant, the representative, noting that the crime of apostasy was punishable by death, explained that Islam should not only be seen as a religion but as a complete set of precepts for private and public life. Persons committing apostasy therefore were a danger to the fabric of society and could be compared to traitors in countries with a different legislation. Islamic movements in a number of countries had sought to eliminate from their legislation all provisions contrary to Islamic law.

515. Referring to questions regarding articles 21 and 22 of the Covenant, the representative said that no academics had been dismissed by the Government.

516. Replying to questions concerning article 25 of the Covenant, the representative explained that government officials could be dismissed with or without benefits on the basis of a decision by the Revolutionary Command Council for National Salvation. In most cases they were granted benefits.

#### Concluding observations

517. In concluding the consideration of the initial report of the Sudan, members of the Committee expressed appreciation for the frankness and directness with which the delegation had replied to their questions. In connection with the priority given to Islamic law in the Sudan, members were of the view that Islam was a progressive religion that did not pose an obstacle to the implementation of the Covenant in Islamic countries. They pointed out that in many States in the Islamic world had participated in the drafting of the Covenant and that if certain of its provisions had been deemed irreconcilable with Islamic law, States could have entered reservations. Furthermore, although a State might defend its culture and national religion, in doing so, it could not deviate from the fundamental common values elaborated in the Covenant, which were aimed at the development of the individual and which were applicable to the entire international community. Such values, moreover, should be reflected in domestic legislation. At the same time, members considered that it would be possible for the Sudanese authorities and the Committee together to find a way to reconcile the Sudan's freedom to live within a social system of its own choosing with the Committee's duty to ensure respect for human rights.

518. Members also pointed out that the Committee was composed of independent experts and never applied double standards in considering reports from States parties. Its task was to assist all States parties in implementing the provisions of the Covenant and to promote the universal application of that instrument. With regard to the issue of a multi-party system, members noted that in the absence

of political opposition, Governments were likely to exercise their powers in a non-democratic fashion and expressed the hope that the Sudan would soon practise democracy.

519. Additionally, in the view of members of the Committee, certain punishments under Sudan law constituted cruel or degrading treatment; domestic provisions regarding the crime of apostasy were not compatible with articles 6 and 18 of the Covenant; and Constitutional Decree No. 2 had been drafted too vaguely with respect to the Government's power to limit political activities.

520. The representative of the State party reiterated that the Government attached great significance to the application of Islamic law in the country. The Government had agreed, in principle, to the establishment of the national human rights council and intended to request assistance from the Centre for Human Rights in that regard. The discussions with the Committee had been useful and the observations and suggestions made by members would be appropriately reflected in the second periodic report.

521. In concluding the consideration of the initial report of the Sudan, the Chairman also thanked the representative of the State party for his candor and cooperation. Regarding the question of the compatibility of the Covenant with Islamic law, he reaffirmed that, although the Committee sought, in interpreting the provisions of the Covenant, to take into account various cultural factors, it was obliged to apply the principles of the Covenant without any distinctions among States parties. He hoped that the second periodic report of Sudan would show evidence of progress in implementing the international standards set forth in the Covenant.

## CCPR A/53/40 (1998)

112. The Committee considered the second periodic report of the Sudan (CCPR/C/75/Add.2) at its 1628<sup>th</sup> and 1629<sup>th</sup> meetings, on 28 October 1997, and at its 1642<sup>nd</sup> meeting, on 5 November 1997, adopted the following observations.

### 1. Introduction

113. The Committee welcomes the report submitted by the Government of the Sudan. It notes that the dialogue with the high-level delegation of the State party was frank, constructive and open, and it is also grateful for the further documents submitted by the Government on 3 November 1997. This permitted the Committee to have a clearer idea of the situation in the Sudan. While the second periodic report and its annexes contain substantially more information than the previous report, it is nonetheless regretted that the State party did not provide answers to all of the Committee's written list of questions, and that a number of questions asked orally also remained unanswered. The Committee acknowledges receipt of the reports by (a) the independent judicial commission which investigated events in Juba in 1992; and (b) reports by the Advisory Council on Human Rights into allegations of slavery in southern Kordofan and of disappearances.

### 2. Factors and difficulties affecting the implementation of the Covenant

114. It is noted that the armed conflict originating in the southern part of the Sudan is an obstacle to the full implementation of the Covenant.

115. The lack of reconciliation between different racial, religious, cultural and legal traditions in the north and the south of the Sudan appears to be a factor affecting the implementation of the Covenant.

### 3. Positive factors

116. In view of the fact that many violations of human rights have been caused in recent years in the context of the internal conflict in the Sudan, the Committee welcomes all initiatives directed towards a peaceful resolution of the conflict, including the Fourteenth Constitutional Decree which provides for measures to implement the Peace Agreement of April 1997; steps taken to give effect to this Decree; and continuing negotiations in Nairobi to resolve the conflict.

117. The Committee welcomes the progressive steps which have been taken to reduce the impact of the declared state of emergency; the existence of committees which are formulating a new Constitution; and steps which are being taken to establish a formal system of pluralistic democracy.

118. In the light of the significant displacement of persons as a result of the internal conflict, the Committee notes the efforts made to resettle such persons and to assist them to return to their places of origin.

#### 4. Subjects of concern and the Committee's recommendations

119. The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with article 6 of the Covenant. Moreover, some forms of execution fail to comply with the prohibition against cruel, inhuman or degrading treatment or punishment, especially for women, contained in article 7 of the Covenant. Therefore:

The death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes. Any imposition of the death penalty should comply with the requirements of article 7. In its next report, the State party is asked to furnish information on the number of executions which have taken place, the type of offence for which the death penalty has been imposed, and the manner in which the execution has been carried out.

120. Flogging, amputation and stoning, which are recognized as penalties for criminal offences, are not compatible with the Covenant. In that regard, the Committee notes that:

By ratifying the Covenant, the State party has undertaken to comply with all its articles; penalties which are inconsistent with articles 7 and 10 must be abolished.

121. The Committee is concerned about the high maternal mortality rate in the Sudan, which may be the consequence of early marriage, clandestine abortions and female genital mutilation. The Committee is deeply concerned about the practice of female genital mutilation in the Sudan, particularly because it is practised on female minors, who may suffer the consequences throughout their lives. This practice constitutes cruel, inhuman and degrading treatment and violates articles 7 and 24 of the Covenant. Therefore:

The State party should forbid, as a matter of law, the practice of female genital mutilation, making it a discrete criminal offence. Social and educational campaigns should be pursued to eliminate the practice.

122. The Committee notes that under customary arrangements a woman's consent to marriage is mediated by a guardian, and that recourse has to be made to the courts to override any prohibition within the family on a woman's choice of a husband. Such restrictions, whether by practice or legislation, are incompatible with articles 3, 16, 23 and 26 of the Covenant. Therefore:

The State party should repeal all legal provisions hindering women's free choice of spouse, as well as all other rules differentiating between men's and women's rights to marry and within marriage. The Committee is also concerned about the absence of a legal provision on a minimum age for marriage, and strongly recommends that such a provision be adopted forthwith.

123. The Committee is troubled by the number of reports of extrajudicial executions, torture, slavery, disappearances, abductions and other human rights violations from United Nations and non-governmental organizations sources, and by the delegation's assertions that such human rights

violations are relatively infrequent. In this connection, the Committee's concern extends to reports of abduction by security forces of children, particularly in the South. It welcomes the State party's declaration that it will investigate any reports of human rights abuses by police, security forces, the Popular Defense Forces or others under its responsibility. The Committee therefore recommends that:

- (a) Permanent and independent mechanisms be set up to investigate alleged abuses of power by police, security forces and the Popular Defence Forces;
- (b) The methodology of such investigations and their outcome should be made public;
- (c) Such investigations should lead to the release of any person improperly detained, with proper compensation, and to disciplinary or criminal proceedings against those found responsible;
- (d) The Government of the Sudan should continue to cooperate with United Nations bodies and non-governmental organizations on these matters;
- (e) Complete information, including statistics, about such investigations and their outcome should be included in the State party's next periodic report.

124. With respect to liberty and security of the person, the Committee is particularly concerned that the vague and legally undefined concept of "national security", as applied in the Sudan, is inconsistent with the provisions of article 9 of the Covenant and can be used as a basis for arrest and detention of persons without a more specific charge, creating an atmosphere of fear and oppression for anyone critical of the Government. Moreover, the Committee is of the view that the procedures for pre-trial detention described in paragraph 88 of the report allow the National Security Council, chaired by the President of the Republic, the power to detain persons for excessively long periods of time. Therefore:

The Committee recommends that the concept of "national security" be clearly defined by law and that police and security officers be required to state in writing why a person has been arrested. Such information should be available to the public and should be reviewable by the courts. The provisions of the National Security Act 1994, as amended, allowing detention by the National Security Council, should be repealed.

125. The Committee is concerned that visas for foreign travel may be arbitrarily refused, in contravention of article 12 of the Covenant, that immigration officers may arbitrarily require women to show that a male relative consents to their leaving the Sudan, and that lists of names drawn up by various executive agencies without meeting any defined legal criteria are apparently used to restrict the freedom of movement of persons, including to leave the country. Therefore:

Any limitations on the freedom of movement must be established by law and be compatible with the provisions of the Covenant. The grounds for restricting a person's freedom of movement, including to leave the country, must comply with the Covenant and should be communicated to the individual promptly after such action is taken and should furthermore be open to prompt judicial review in all cases, including that of national security.



126. The Committee is concerned at reports of inadequate prison conditions and "ghost house" detention centres. It notes that the delegation of the State party admitted that prisons in the Sudan do not conform to international standards and that improvement is necessary. Therefore:

The Government of the Sudan should bring all places of detention under the control of the Prison Service, take the necessary measures to bring prison conditions into line with article 10 of the Covenant and with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and cooperate with the international community and non-governmental organizations in this regard as appropriate.

127. The Committee is of the view that a system of prompt trial for petty offences may be compatible with the provisions of the Covenant, but continues to be concerned at the system of trial in the Public Order Courts. Therefore:

Training should be given to judges on appropriate penalties and on procedural safeguards which must be observed. Lashes should be excluded as a punishment, and an appellate procedure should be introduced to review convictions and sentences.

128. The Committee notes the explanation that prosecution of security personnel under the National Security Act 1994, as amended, is restricted when such persons act in the course of their duties. It is also concerned that permission must be obtained for any such prosecution. Therefore:

Members of the police and security forces should be subject to prosecution and civil suits for abuse of power without any legal restriction; the provisions of the National Security Act 1994, as amended, are inconsistent with that concept and should be repealed. Moreover, statistics on complaints filed, prosecutions, convictions and sentences of members of the police and security forces for abuse of power should be included in the next report. Statistics on the number of requests for compensation and the amount of compensation actually awarded to victims of human rights violations should also be included.

129. The Committee is concerned at the system of licensing the press and other media, and the requirement to register the names and addresses of editors, journalists and printers. The Committee questions the independence of the National Press and Publication Council. Therefore:

Current laws and decrees should be revised so as to remove all disproportionate limitations on the media, which have the effect of jeopardizing freedom of expression itself.

130. The Committee considers that unnecessary restrictions should be removed from freedom of expression and association. The right of peaceful assembly should be respected by law enforcement officers.

131. The Committee is concerned that there is no recognition in law of the right to use local languages in official communications or administrative or court proceedings, and that religious minorities can be adversely affected by a range of discretionary administrative actions which can include the destruction of schools and educational facilities under town planning regulations. Therefore:

Emphasis should be given to the need of ethnic and religious minorities, wherever they reside in the Sudan, to pursue and develop their traditions, culture and language, as required by article 27 of the Covenant.

132. The Committee is concerned that in appearance as well as in fact the judiciary is not truly independent, that many judges have not been selected primarily on the basis of their legal qualifications, that judges can be subject to pressure through a supervisory authority dominated by the Government, and that very few non-Muslims or women occupy judicial positions at all levels. Therefore:

Measures should be taken to improve the independence and technical competence of the judiciary, including the appointment of qualified judges from among women and members of minorities. Training in human rights law should be given to all judges, law enforcement officers and members of the legal profession.

133. The Committee expresses concern at official enforcement of strict dress requirements for women in public places, under the guise of public order and morality, and at inhuman punishment imposed for breaches of such requirements. Restrictions on the liberty of women under the Personal Status of Muslims Act, 1992 are matters of concern under articles 3, 9 and 12 of the Covenant. Therefore:

It is incumbent on the State party to ensure that all its laws, including those dealing with personal status, are compatible with the Covenant.

134. The Committee regrets the documented cases of official action which interferes with the rights of non-Muslim religious denominations and groups to practice their religion and to carry out peaceful educational activities. Therefore:

A mechanism should be established to protect minority religious groups from discrimination and action seeking to impede their freedom to teach and practice their religious beliefs.

135. The Committee takes note that the Government of the Sudan appears to consider that participation by citizens in the conduct of public affairs is met by a system of direct democracy. In that regard:

The Committee emphasizes that the enjoyment of the rights protected by article 25 of the Covenant requires full recognition of freedom of expression and the right to impart and receive ideas of all kinds, including those in opposition to the Government.

136. The Committee draws the attention of the Government of the Sudan to the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of the Sudan.

