


AFRICAN UNION		UNION AFRICAINE
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Consideration of Reports Submitted by States Parties under the Terms of Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations and Recommendations on the Third Periodic Report of the Republic of Sudan (2003-2008)

I- Introduction

1. The Republic of Sudan (Sudan) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified it on 18 February 1986.
2. Sudan presented its Initial Report to the African Commission on Human and Peoples' Rights (the African Commission) during its 21st Ordinary Session held from 15 to 24 April 1997, in Nouakchott, Mauritania. Sudan's Second Periodic Report was presented at the 33rd Ordinary Session of the African Commission held from 15 to 29 May 2003 in Niamey, Niger.
3. The present Concluding Observations follow the presentation and examination of the Third Periodic Report of Sudan, covering the period from 2003 to 2008. The Delegation was led by Mr Abdel Hameed A. Mohamed, who presented the Report.
4. The present Concluding Observations give an account of the positive aspects, and concerns identified from the Report. The comments, remarks and observations during the examination of the Report enhanced the recommendations formulated after the dialogue.

II- Positive Aspects

The African Commission:

5. Welcomes the presentation of the Report by the Government of Sudan in accordance with Article 62 of the African Charter and the fact that both the format and presentation of the Report are in conformity with the African Commission's Guidelines on State Reporting.
6. Appreciates the quality of the Report and the constructive dialogue it had with its delegation which allowed for a fuller assessment of the State Party's compliance with its obligations under the African Charter and welcomes the positive reactions to the suggestions and recommendations made during the discussion.
7. Notes that though the Government of Sudan had not submitted its 3rd Periodic Report within the time stipulated under Article 62 of the African Charter, it must be commended for preparing and submitting it given the difficult political circumstances the country finds itself in.
8. Appreciates the update given to it by the Government of Sudan regarding the various treaties the latter has signed to achieve peace in Sudan. It commends the Government of Sudan for signing the Comprehensive Peace Agreement (CPA) with the Sudan People's Liberation Movement (SPLM) on 9 January 2005, in Nairobi, Kenya, which included the right to self determination for Southern Sudan. The African Commission notes that the 2005 CPA established a new Government of National Unity (GNU) and the Interim Government of Southern Sudan.
9. Notes and welcomes the signing of the Darfur Peace Agreement (DPA) in Abuja under the auspices of the African Union (AU) on 5 May 2006 between the Sudanese Government and the Sudan Liberation Army led by Minni Arkou Minawi (SLA/MM).
10. Commends the Government of Sudan for adopting the 2005 Interim Constitution, which provides for extensive protection of rights in Sudan.
11. Commends the Government of Sudan for ensuring that the Interim Constitution contains explicit provisions protecting the rights of women and guarantees that the minimum marriage age for females is 18.
12. Welcomes the fact that the 2005 Interim Constitution not only bans torture, slavery and other forms of inhuman treatment, but also criminalises all forms of servitude.

13. The African Commission commends the Government of Sudan for ratifying numerous regional and international human rights instruments which have become part of Sudanese National Laws as provided for in the Interim Constitution.
14. Commends the Government of Sudan for setting up an independent Human Rights Commission.
15. Welcomes the effort being made by the Government of Sudan to put an end to extra-judicial killings and impunity by ensuring that perpetrators are arrested, charged, speedily brought to justice and punished where they are found guilty. It also welcomes efforts by the Government of Sudan to punish members of the security forces that mistreat detainees or prisoners.
16. Welcomes the Government's efforts and measures taken to address the poor conditions of detainees by the setting up of Community Police Training Centres, special detention units for children and the Special Bureau for Detainee Affairs and a Medical Unit.
17. Appreciates the openness of the Government of Sudan in acknowledging that despite efforts to eradicate harmful cultural practice, Female Genital Mutilation (FGM) still persists. It notes that the Government of Sudan is working towards its eradication.
18. Notes the effort being made by the Government of Sudan in its fight for eradicating violence against women. It notes the high percentage of women in Government, universities and other public offices.
19. Welcomes the Government's efforts to address the problem of street children and programmes that excludes children from joining the multiplicity of armed groups. It particularly welcomes the disarmament, demobilisation and reintegration programme that aims to bring them back to their families and integrate them into society. It also commends the Government of Sudan for enacting a Children's Act and for setting up the National Commission of Children responsible for providing material comfort for needy children especially those who have been internally displaced.

III- Factors Restricting the Enjoyment of the Rights Guaranteed in the African Charter

20. The African Commission acknowledges the account in the Periodic Report that war has been largely responsible for the lack of enjoyment of human rights, and for the vast array of human rights problems taking place in Sudan. In 2008, Sudan continues to cope with the countrywide effects of conflicts, displacement and insecurity.
21. The African Commission also notes that the May 2006 Darfur Peace Agreement (DPA) is too limited in scope and with too few signatories and may actually impede Sudan's peacemaking efforts.

IV- Areas of Concern

While recognising the efforts of Sudan to promote and protect human rights and to create awareness on the principles and provisions of the African Charter, the African Commission is concerned that:

22. Since gaining independence on 1 January 1956, Sudan has been faced with many political, social and ethnic challenges characterized by serious violations of human rights.
23. The conflicts in Darfur and the East, combined with the continuing effects of the former war in Southern Sudan have impacted negatively on the enjoyment of human rights in Sudan.
24. Government-aligned militia (janjaweed), Darfur rebel groups, and tribal factions continue to commit serious abuses of human rights.
25. Tensions and violence have persisted in the South over the implementation of the CPA. It is concerned that conflict on the Country's Western border with Chad is, in part, a spill-over of the conflict in Darfur and, in part, attributable to Chadian rebel forces based in Darfur who are opposed to the rule of Chadian President Idriss Derby.
26. In October 2007, lack of progress on issues such as North-South border demarcation and disagreements about North-South sharing of oil revenues threatened to erode the CPA as the SPLM threatened a permanent withdrawal from the Government of National Unity.
27. Credible reports still indicate that serious human rights violations like indiscriminate bombing of villages and schools, extrajudicial and other unlawful killings by government forces and other government-aligned groups still take place.

28. UN Resolution 1591 is not being adhered to by all sides involved in the conflict.¹
29. Torture, beatings, rape, and other cruel, inhuman treatment or punishment by security forces still persist.
30. Sexual violence against women in Darfur still takes place.
31. Women still cannot travel abroad without the permission of their husbands or male guardians.
32. Child labour and recruitment of child soldiers, particularly in Darfur still take place.
33. Trafficking in persons, discrimination and violence against ethnic minorities, forced labour by security forces by both aligned and non-aligned militias in Southern Sudan and Darfur is still prevalent.
34. Despite efforts by the Government of Sudan to address the issue of prison conditions, harsh prison conditions, arbitrary arrest and detention, including incommunicado detention of suspected government opponents, are still taking place.
35. Though the Constitution guarantees judicial independence – lawyers wishing to practice are required to maintain membership in the government-controlled Bar Association.
36. Television and newspaper reporters are often arrested, imprisoned, beaten and tortured for doing their jobs.
37. Though Sudan signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is yet to ratify it. The African Commission is also not clear how far the Robben Island Guidelines is being used to train police and prison officials.

¹ Resolution 1591 censured the Government of Sudan and rebels in Darfur for having failed to comply with several previous UNSC resolutions, for ceasefire violations, and for human rights abuses. The resolution also called on all parties to resume the Abuja talks and to support a peaceful settlement to the conflict in Darfur. It also forms a Monitoring Committee charged with enforcing a travel ban and asset freeze of those determined to impede the peace process, or violate human rights. Additionally, the resolution demanded that the Government of Sudan cease conducting offensive military flights in and over the Darfur region.

38. Article 33 of the National Security Act seems to give immunity from persecution for some members of the Sudanese Security Service.
39. Sudan currently bears the burden of more than 1 million refugees most of whom come from Ethiopia, Eritrea, Chad and Congo. Most of these refugees took refuge in the Sudan from the 1960s and that many of these refugees have still not been integrated into Sudanese society to be full citizens.
40. The plight of millions of Internally Displaced Persons (IDPs) who have been displaced as a result of war and other man made crises seem to be under-played in the Report.
41. The Government of Sudan continues to use the death penalty and that in 2008, eight people were executed.
42. Sudan has not yet signed and ratified the Rome Statute of the International Criminal Court.

V- Recommendations

The African Commission recommends that the Government of Sudan should:

43. Establish a National Commission of Enquiry / Truth and Reconciliation Commission as part of the reconciliation and healing process, and as part of the process of addressing the multiple conflicts currently going on in the country.
44. Give an update on how it is implementing the UN Resolution 1591.
45. Open up constructive dialogue, with the full involvement of the AU, with all factions of the various conflicts in Sudan in a bid to find a comprehensive solution to the problems in the country.
46. Approve a visit by the African Commission to discuss with the Sudanese Authorities issues relating to the general promotion and protection of human rights.
47. Continue cooperation with the combined AU and UN "hybrid" force (UNAMID) in order to enhance the security of the civilian population for the eventual return of IDPs to their communities and for the protection of humanitarian agencies' personnel and materials.

48. Ensure that refugees within its territory continue to receive its support, and in cooperation with UNHCR, where appropriate explore measures such as voluntary repatriation, integration or resettlement as durable solutions for long standing refugees' problems.
49. Create a separate Ministry of Children's Affairs to address the pressing issues children face in Sudan.
50. Ratify as a matter of urgency the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
51. Ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and take measures to eradicate discriminatory practices against women, especially by ensuring that the law which criminalizes adultery does not operate in such a manner that it discriminates against women.
52. Criminalise all forms of violence against women, especially the practice of FGM.
53. Ensure that Sudan criminalises torture.
54. Enact legislation banning the use of corporal punishment and all other inhuman and degrading treatment.
55. Put a moratorium on the death penalty.
56. Undertake measures to train members of the judiciary at all levels, state prosecutors, and members of the bar, police and prison officials on human rights law.
57. Repeal Article 33 of the National Security Act that seems to give immunity from prosecution for some members of the Sudanese Security.
58. Publicise and disseminate information about the African Charter, Robben Island Guidelines, and use it as one of the human rights instruments for its training for police and prison officials. The African Commission offers its services to hold training sessions in Sudan for police and prison officials on the use of the Guidelines and other international human rights instruments relating to the prevention and prohibition of torture and conditions of detention.

59. Enact legislation ensuring the complete independence of the Bar Association.
60. Relook at existing laws governing press freedoms with a view to ensuring that the relevant media structures and institutions are empowered to function freely and independently.
61. Inform the African Commission, in its next Periodic Report, of the steps it has taken to address the areas of concern, as well as how it has implemented the recommendations in this Concluding Observations.

Adopted at the 45th Ordinary Session of the African Commission on Human Peoples' Rights held from 13 to 27 May 2009, Banjul, The Gambia