28 November 2008

Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan

Arbitrary arrest and detention committed by national security, military and police

Issued by the Office of the High Commissioner for Human Rights

Map No. 3707 Rev. 10 UNITED NATIONS
April 2007

Department of Peacekeeping Operations
Cartographic Section

EXECUTIVE SUMMARY

The Tenth Periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan focuses on arbitrary arrest and detention; in particular, situations in which members of the security and intelligence services, the military or the police arbitrarily arrest or detain individuals.

Three categories can be distinguished, in which arrest or detention is considered as arbitrary and therefore prohibited by international law:

> **(1) An arrest or detention which has no valid legal basis. An example would be an arrest based on an invented criminal charge that does not exist in the Penal Code.**
>
> **(2) An arrest or detention which is intended to deny the exercise of fundamental rights guaranteed by international or constitutional law such as the right to freely express an opinion.**
>
> **(3) An arrest or detention where essential procedural guarantees are not observed so as to give the deprivation of liberty an arbitrary character.**

The information contained in this report is based on the work of United Nations human rights officers deployed in Southern Sudan, Abyei, Blue Nile State, Southern Kordofan, and Khartoum in accordance with Security Council Resolution 1590 and with the consent of the Government authorities. The report does not provide a comprehensive assessment of arbitrary arrest and detention in all parts of Sudan. In particular, this report does not address the situation in Darfur, which has been the focus of previous reports of the High Commissioner for Human Rights.

In all of the above-mentioned areas, arbitrary arrest and detention is widespread and often linked to other serious human rights violations.

In Khartoum and other parts of Northern Sudan, the National Intelligence and Security Services (NISS) systematically use arbitrary arrest and detention against political dissidents. According to allegations received by United Nations human rights officers, NISS detention can typically be accompanied by additional serious human rights violations such as *incommunicado* detention, ill-treatment, torture or detention in unofficial places of detention. The human rights concerns related to the NISS are longstanding and institutionalized problems that could be addressed through institutional reform. The 2005 Comprehensive Peace Agreement (CPA) between the Government and the Sudan People's Liberation Movement/Army (SPLM/A) explicitly states in this regard that the National Security Service's mandate "shall be advisory and focused on information gathering and analysis."

The Sudan has suffered from decades of armed conflict, creating particular challenges for the government authorities, in particular in Southern Sudan and other areas affected by the armed conflict. Arbitrary detention of civilians by the military (Sudan Armed Forces [SAF] and SPLA), in violation of international and Sudanese law is a serious concern linked to practices that emerged during the armed conflict period. The political leadership has to firmly instruct

commanders and units not to detain civilians and to see that those who violate these instructions are sanctioned.

In many cases, the police forces in the Three Areas subject to special CPA arrangements (Abyei, Blue Nile State, Southern Kordofan) and Southern Sudan make excessive use of their powers of arrest and detention, frequently failing to promptly submit detention cases to the justice system for review. In addition, the Sudanese police services sometimes try to exert pressure on criminal suspects by arresting their relatives or affiliates. In the absence of an effective civil justice system in Southern Sudan, the police sometimes handle compensation claims and abuse their arrest powers to force payments on behalf of the injured party.

Structural problems contribute to the gravity of the situation. Effective oversight of the detention process does not exist in large parts of Southern Sudan due to a lack of judges, prosecutors and legal assistance. Appointed judges and prosecutors are often absent from their duty stations or fail to fulfil their oversight functions with the necessary rigor and proactive approach. In Northern Sudan, the prosecutorial oversight mechanisms envisaged by law are often not implemented, in particular with regard to arrests carried out by the NISS and the military. Impunity is a concern as even blatantly unlawful arrests rarely result in criminal or disciplinary sanctions against the officials involved.

Executive interference further undermines the administration of justice. Human rights monitoring mechanisms that could expose those involved to public scrutiny are still fledgling or nonexistent. An independent National Human Rights Commission remains to be established. It is encouraging that the Southern Sudan Human Rights Commission (SSHRC) has been set up and has taken up its work. However, the SSHRC still lacks an enabling law providing it with a defined mandate, powers and independence.

Children, women and persons with psychosocial disabilities often end up in arbitrary detention since there are hardly any specialized institutions to accommodate their protection needs. Refugees and asylum seekers in Khartoum face an ever growing risk of arrest and detention on charges of illegal entry into Sudan.

The problems identified in this report are serious, but not intractable even bearing in mind that resources are limited as Sudan emerges from decades of conflict. Positive examples of judges, prosecutors, parliamentarians and police officers, who have taken effective action against arbitrary arrest and detention, show that public officials who are committed to upholding the law and the Constitution can make a difference. Reforming institutions is as important as changing individual attitudes. The CPA, the Interim National Constitution and the Interim Constitution of Southern Sudan offer a comprehensive blue print for institutional reform, large parts of which remain to be implemented. The report's table of recommendations is designed to assist the Government of National Unity and Government of Southern Sudan in their efforts to address the concerns identified in this report.

ملخص:

يركز التقرير على التوقيف والاعتقال التعسفيين، ولاسيما حالات توقيف أواعتقال الأفراد التي يباشرها بشكل تعسفي أفراد الأمن والاستخبارات، والجيش أو الشرطة. ويعد التوقيف أو الاعتقال قد تم بشكل تعسفي ومن ثم محرماً بموجب القانون الدولي وفقاً للتصنيفات الثلاثة التالية:

1. التوقيف أو الاعتقال اللذان ليس لهما سند قانوني ساري المفعول، على سبيل المثال التوقيف المبني على تهمة جنائية ملفقة ليس لها سند قانوني.
2. التوقيف أو الاعتقال اللذان يهدفان إلى إنكار حقوق أساسية يكفلها القانون الدولي أو الدستور مثل الحق في حرية التعبير عن الرأي.
3. التوقيف أو الاعتقال اللذان لم يراع فيهما الضمانات الإجرائية الضرورية مما يعطى الحرمان من الحرية صفة التعسف.

تستند المعلومات الواردة في هذا التقرير على عمل موظفي حقوق الانسان التابعين للامم المتحدة الذين تم نشرهم في جنوب السودان وأبيي و ولايات النيل الازرق و جنوب كردفان و الخرطوم وذلك وفقا لقرار مجلس الامن رقم 1590 و بموافقة السلطات الحكومية . ولا يوفر التقرير تقييماً شاملاً عن التوقيف والاعتقال التعسفيين في كافة أنحاء السودان.وعلى وجه الخصوص فإن هذا التقرير لا يغطي الاوضاع في دارفور و التي كانت محور تركيز التقارير السابقة للمفوضة السامية لحقوق الانسان.

وينتشر التوقيف والاعتقال التعسفيان انتشاراً كبيراً في كافة المناطق سالفة البيان عاليه، كما يرتبطان عادةً بانتهاكات خطيرة لحقوق الإنسان.

ويستخدم جهاز المخابرات و الأمن الوطني في الخرطوم وفي أجزاء أخرى من شمال السودان التوقيف والاعتقال التعسفيين بصورة منتظمة ضد المعارضين السياسيين. ووفقاً لإدعاءات تلقاها موظفي حقوق الانسان التابعين للامم المتحدة، يمكن أن يقترن الاعتقال بواسطة جهاز المخابرات و الأمن الوطني بانتهاكات خطيرة أخرى لحقوق الإنسان مثل الاعتقال بمعزل عن العالم الخارجي وسوء المعاملة والتعذيب أو الاعتقال في أماكن غير رسمية. وتعد المشكلات المرتبطة بجهاز المخابرات و الأمن الوطني مصدر اً لقلق حقوق الإنسان، سيما وأنها مشكلات ليست بجديدة ومشكلات مؤسساتية يمكن علاجها عن طريق الإصلاح المؤسسي. وينص اتفاق السلام الشامل الموقع بين حكومة السودان والحركة/الجيش الشعبي لتحرير السودان في هذا الخصوص صراحةً على أن يكون تفويض جهاز الأمن القومي "استشاري ويركز على جمع المعلومات وتحليلها".

وعانى السودان منذ عقود من الصراع المسلح الذي خلق تحديات بعينها أمام السلطات الحكومية. خاصة في جنوب السودان ومناطق أخرى تأثرت بالنزاع المسلح. ويعد توقيف الجيش (القوات المسلحة السودانية والجيش الشعبي لتحرير السودان) للمدنيين تعسفياً في انتهاك للقانون الدولي والقانون السوداني أحد الشواغل المهمة المرتبطة بممارسات ظهرت إبان الصراع المسلح. ويتعين على القيادة السياسية إصدار تعليمات صارمة لقادة الوحدات بعدم توقيف المدنيين وبضرورة معاقبة من يخالفون هذه التعليمات.

وفي حالات كثيرة، تستخدم قوات الشرطة في المناطق الثلاث وفي جنوب السودان سلطاتها في التوقيف والاعتقال بصورة مفرطة بينما كثيراً ما تعجز هذه القوات عن إحالة حالات الاعتقال إلى النظام العدلي سريعاً للنظر فيها. علاوة على ذلك، تحاول الشرطة السودانية في بعض الأحيان ممارسة ضغط على المشتبه فيهم جنائياً وذلك بتوقيف ذويهم أوأقربائهم. وفي غياب نظام عدلي مدني فعال في جنوب السودان، تتولى الشرطة في بعض الأحيان أمر المطالبات بالتعويض مسيئة بذلك لسلطات التوقيف التي تمتع بها وذلك للإجبار على دفع مبالغ لصالح الطرف المتضرر.

وتفاقم المشكلات الهيكلية من خطورة الوضع. ولا يوجد مراقبة أو إشراف فعال لإجراءات الاعتقال في مناطق كبيرة بجنوب السودان نظراً لعدم توافر القضاة ووكلاء النيابة ولانعدام المساعدة القانونية. ويتغيب القضاة المعينون ووكلاء النيابة عادةً عن مواقع عملهم أو يعجزون عن القيام بمهام الإشراف والمراقبة بصورة صارمة وباتباع منهج يأخذ بزمام المبادرة. وفي شمال السودان، وسائل التفتيش والرقابة الممنوحة للنيابة العامة، والمنصوص عليها قانوناً غالباً ما لا يتم تطبيقها ، وخاصة حينما يتعلق الأمر بالتوقيفات التي يباشرها جهاز المخابرات و الأمن الوطني والجيش. ويعد الإفلات من العقوبة مصدر للإنزعاج سيما وأنه من النادر ما يترتب على التوقيف غير القانوني عقوبات جنائية أو تأديبية ضد المسئولين المتورطين فيه.

كما يضعف التدخل السياسي من إدارة العدالة. ولاتزال آليات مراقبة حقوق الإنسان التي قد تكشف المتورطين في عمليات التفتيش والتحقيق ضعيفة أو غير موجودة. ولايزال إنشاء مفوضية وطنية مستقلة لحقوق الإنسان أمراً لا مفر منه. ومن المشجع أنه تم إنشاء مفوضية حقوق الإنسان لجنوب السودان وهي تباشر أعمالها بصورة بطيئة. بيد أن هذه المفوضية تفتقر لقانون فاعل يحدد صلاحياتها وسلطاتها وينص على استقلاليتها.

وعادةً ما ينتهي مصير الأطفال في نزاع مع القانون والنساء المعرضات للعنف والأشخاص الذين يعانون من إعاقة نفسية إلى الاعتقال التعسفي نظراً لعدم توفر مؤسسات مختصة تستوعب احتياجاتهم للحماية. ويواجه اللاجئون وطالبو اللجوء بالخرطوم خطراً متزايداً بتوقيفهم وحبسهم لاتهامهم بدخول البلاد بصورة غير قانونية.

وتعد المشكلات التي اشتمل عليها هذا التقرير خطيرة لكن ليس من المتعذر تعقبها مع الوضع فى الاعتبار محدودية الموارد بسبب الصراعات التى استمرت لعقود من الزمان والتى تجاوزها السودان الان. وقد أظهرت الأمثلة الإيجابية لقضاة ووكلاء نيابة وبرلمانيين وضباط شرطة ممن كانت لهم مواقف إيجابية ضد التوقيف والاعتقال التعسفيين أن المسئولين الرسميين الملتزمين بتطبيق القانون والدستور يمكن أن يحدثوا تغييراً. ولا يقل اهمية تغيير تصرف الافراد عن الاصلاح المؤسسى. ويوفر اتفاق السلام الشامل والدستور القومي الانتقالي والدستور الانتقالي لجنوب السودان صيغة شاملة للإصلاح المؤسسى الذي لا يزال جزءاً كبيراً منه في انتظار التطبيق. إن الهدف من إفراد جدول التوصيات الوارد بالتقرير هو مساعدة كلٍ من حكومتي الوحدة الوطنية وجنوب السودان في جهودهما لمعالجة المسائل المحددة في هذا التقرير.

CONTENTS OF REPORT

LIST OF ACRONYMS USED IN THIS REPORT

ACHR:	Advisory Council on Human Rights
African Charter:	African Charter on Human and Peoples' Rights
AJMC:	Area Joint Military Committee
CID:	Criminal Investigation Department
CJMC:	Ceasefire Joint Military Committee
COR:	Sudan Commissioner of Refugees
CPA:	Comprehensive Peace Agreement
GoNU:	Government of National Unity
GoSS:	Government of Southern Sudan
ICCPR:	International Covenant on Civil and Political Rights
JIU:	Joint Integrated Unit
JoSS:	Judiciary of Southern Sudan
MoLACD:	Ministry of Legal Affairs and Constitutional Development
NCP:	National Congress Party
NISS:	National Intelligence and Security Services
OHCHR:	Office of the UN High Commissioner for Human Rights
SAF:	Sudan Armed Forces
SCP:	Sudan Congress Party
SPLA:	Sudan People's Liberation Army
SPLM:	Sudan People's Liberation Movement
SSHRC:	Southern Sudan Human Rights Commission
SSPS:	Southern Sudan Police Service
UNHCR:	United Nations High Commissioner for Refugees
UNMIS:	United Nations Mission in Sudan
UNPOL:	United Nations Police

A. INTRODUCTION

The Comprehensive Peace Agreement (CPA) between the Government of the Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), which entered into force over three years ago, aims at more than just ending an armed conflict between two parties. Founded on the values of justice, democracy, good governance, respect for fundamental rights and freedoms of the individual, mutual understanding and tolerance of diversity, it aims to transform the relationship between individuals, communities and state authority and align them with universally recognized human rights.

This report looks at one of the human rights explicitly guaranteed by the CPA: the right not to be subjected to arbitrary arrest or detention.[1] This right is a fundamental human right, not least since arbitrary arrest and detention is very often a precursor to further serious human rights violations. In the worst-case scenario, arbitrarily arrested persons may find themselves subjected to *incommunicado* detention, torture and ill-treatment and may ultimately be forced into confession that may form the basis of an unfair trial. On other occasions, arbitrary arrest and detention serves as a blunt yet effective instrument to deny the exercise of other fundamental rights. A group of persons may be arbitrarily arrested during the course of a public demonstration, for example, to prevent them from exercising their human rights to assemble and freely express their opinion.

B. SCOPE AND METHODOLOGY OF REPORT

The focus of this report are cases of arbitrary arrest and detention committed by executive authorities; that is to say, situations in which members of the security and intelligence services, the military or the police arbitrarily arrest or detain individuals. Highlighting progress achieved since the signing of the CPA as well as remaining challenges, the report will also attempt to analyze underlying structural challenges that aggravate the problems of arbitrary arrest and detention in Sudan. A set of recommendations has been included in this report. The recommendations are meant to assist the Government of National Unity (GoNU) and the Government of Southern Sudan (GoSS) in their efforts to address concerns identified in this report. The recommendations also seek to identify areas of close cooperation between the Government, the United Nations and donors. The High Commissioner for Human Rights encourages the United Nations Mission in Sudan (UNMIS) and specialized United Nations agencies working in Sudan to follow up with the Government authorities on the report's recommendations.

The information contained in this tenth periodic report of the High Commissioner for Human Rights is primarily based on the work of United Nations human rights officers deployed in Sudan in implementation of Security Council Resolution 1590. This resolution calls for an adequate United Nations human rights presence, capacity, and expertise to carry out human rights promotion, civilian protection, and monitoring activities with the aim to assist the CPA parties "in the protection of the human rights of *all* people of Sudan". [2] In accordance with Security Council Resolution 1590, United Nations human rights officers are currently deployed in Southern Sudan, the

[1] CPA, Chapter II (Power Sharing), para. 1.6.2.2.
[2] Cf. Security Council Resolution 1590 (2005), para. 4 (a) (viii) & (ix).

Three Areas subject to special CPA arrangements (Southern Kordofan, Blue Nile State and Abyei) and Khartoum.[3] Accordingly, this report concentrates on these areas and does not provide a full assessment of the situation in other parts of the Sudan. In particular, the report does not cover the situation in Darfur, which has been the focus of previous reports of the High Commissioner for Human Rights.[4]

United Nations human rights officers maintain regular contact with the Government's Advisory Council on Human Rights (ACHR) in Khartoum and authorities at the state and regional level. However, the identification of concerns and possible corrective responses which have been addressed to the responsible national authorities are often not acted upon. The United Nations and the ACHR have discussed on many occasions the creation of a Human Rights Forum that would bring together government authorities, the United Nations and donors on a regular basis. If established, this would be a positive step on the part of the Government to encourage a transparent dialogue on human rights concerns and effect concrete changes.

The work of United Nations human rights officers in Southern Sudan has been facilitated by a cooperative stance on the part of the Government of South Sudan (GoSS). Government officials have been open to a dialogue on issues of concern. United Nations human rights officers have generally enjoyed free access to civilian prisons and police jails. They have usually been able to conduct private interviews with individual detainees, although there have been isolated instances where individual officials have denied such requests. Access to military detention facilities has been more difficult. Requests to meet with persons detained at SPLA barracks in Torit and Nimule, for instance, have been denied by SPLA commanders. Discussions were underway to improve access to SPLA detention facilities, when this report was finalized.

Since October 2006, United Nations human rights officers have not been granted independent access to prisons in Khartoum despite repeated requests and support from the ACHR.[5] United Nations human rights officers have also been denied access to the Federal Prison in Roseris (Blue Nile State). In Southern Kordofan, United Nations human rights officers were able to carry out two prison visits, during which they were able to speak with some detainees.

---

[3] At the time this report was finalized, United Nations human rights officers deployed in accordance with Security Council Resolution 1590 were serving in Juba, Malakal, Rumbek, Wau, Abyei, Ed Damazin, Kadugli and Khartoum.

[4] The High Commissioner for Human Rights has repeatedly reported on cases of arbitrary arrest and detention documented by United Nations human rights officers in the Darfur Region, in particular arbitrary arrest and detention in the framework of the Emergency and Public Safety Protection Act of 1997. See e.g. *Second Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan* (27 January 2006); *Third Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan* (April 2006); *Fourth Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan* (25 July 2006), all available from: http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SDPeriodicReports.aspx

[5] On 28 February 2008, United Nations human rights officers were permitted to join the United Nations Special Rapporteur on the situation of human rights in the Sudan on her visit to Kober Prison in Khartoum. During a visit of two hours, the Special Rapporteur and the team were given access to 48 people whom the Special Rapporteur had requested to see. The same day, the representative of the High Commissioner for Human Rights in Khartoum submitted the names of three human rights officers who were to conduct a follow-up visit to Kober Prison on 4 March. No positive response to this request had been received by August 2008.

Some of the many individual cases, which have been documented by United Nations human rights officers over the course of the last three years, have been included in this report to illustrate general trends and issues. Every case contained in this report has been thoroughly documented[6] by United Nations human rights officers and was brought to the attention of the competent authorities prior to the finalization of this report. Where information was received about action taken by the authorities to remedy the documented human rights violation, compensate the victims or sanction the perpetrators, this has been reflected in the report.

This report was shared with the Minister of Justice and Prosecutor-General, the Advisory Council on Human Rights of the Government of National Unity (GoNU), the Southern Sudan Minister of Legal Affairs and Constitutional Development, the Advisor to the President of Southern Sudan on Gender and Human Rights and the Southern Sudan Human Rights Commissions. Government authorities were invited to submit comments and factual clarifications.

In a meeting on 5 August 2008 with the representative of the High Commissioner for Human Rights in Khartoum, the ACHR stated that the report did not provide enough detail on individual cases, including names of victims, to allow the Government to identify and investigate cases reflected. The ACHR also felt that the report unfairly attempted to target one country and failed to reflect positive developments in the overall implementation of the CPA. The Office of the High Commissioner for Human Rights (OHCHR) has received letters from the ACHR on some issues of concern reflected in this report, including the arrest and detention of opponents of the Kajbar Hydropower Dam Project and the detention of refugees in Khartoum. Relevant information and views contained in these letters have been reflected in the report.

The Southern Sudan Minister of Legal Affairs on Constitutional Development welcomed the report. In two meetings (23 and 31 July 2008), the Minister and senior staff of the Ministry discussed the report in detail with the representative of the High Commissioner for Human Rights. They pointed out areas of disagreement and provided a number of constructive comments on different points, which have been reflected in the final version of the report. Comments welcoming the report were also received from the Southern Sudan Human Rights Commission and the Office of the Adviser to the President of Southern Sudan on Gender and Human Rights.

C. APPLICABLE LEGAL FRAMEWORK

1. International Law

The International Covenant on Civil and Political Rights (ICCPR), one of the major human rights treaties signed and ratified by the Sudan, details the State obligations flowing from the right not to be subjected to arbitrary arrest or detention. (The right not to be subjected to arbitrary arrest or detention is also guaranteed by the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.[7]). Article 9 of the ICCPR states:

[6] The documentation and verification process of an individual case can include, but is not limited to, interviews with key interlocutors (for example, victims and their families, witnesses, and local authorities), field visits to actual places of arrest and detention, and formal meetings and the exchange of written correspondence with local security and judicial officials.

[7] Universal Declaration, art. 9. African Charter, art.6 . Sudan ratified the African Charter in 1986.

> 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
>
> 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
>
> 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
>
> 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

These rights are further bolstered by the fair trial guarantees provided for in Article 14 of ICCPR, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the right to be presumed innocent until proven guilty, the right not to be compelled to testify against oneself or confess guilt and the right to be tried without undue delay. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in 1988, elaborates further rights for detainees such as the right to consult with legal counsel and the right to receive family visits.[8]

The right not to be subjected to arbitrary arrest and detention relates to any deprivation of liberty, regardless of whether it takes place in connection with a criminal charge or has other purposes. Three categories have been distinguished by the UN Working Group on Arbitrary Detention in which a deprivation of liberty is considered arbitrary and therefore prohibited by international law

> (1) An arrest or detention which has no valid legal basis. An example would be an arrest based on an invented criminal charge that does not exist in the Penal Code.
>
> (2) An arrest or detention which is intended to deny the exercise of fundamental rights guaranteed by international law or the constitution.
>
> (3) An arrest or detention where essential procedural guarantees are not observed so as to give the deprivation of liberty an arbitrary character. For instance, an arrest that may have been initially legal can turn into arbitrary detention, if the arrested person is not brought promptly before a judge who can review the legality of the detention. [9]

---

[8] See also United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by General Assembly Resolution 45/113 of 14 December 1990; Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[9] See *OHCHR Fact Sheet No. 26: The Working Group on Arbitrary Detention*, available from: http://www.unhchr.ch/html/menu6/2/fs26.htm.
The Human Rights Committee has highlighted that the notion of arbitrariness "must not be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law." See Communication No. 458/1991, *A.W.*

2. Sudanese Constitutional Law

The right not to be subjected to arbitrary arrest and detention is also reconfirmed by the 2005 Interim National Constitution of the Republic of Sudan and the 2005 Interim Constitution of Southern Sudan, which contain identical provisions:

> Every person has the right to liberty and security of the person, no person shall be subjected to arrest, detention, deprivation or restriction of his/her liberty except for reasons and in accordance with procedures prescribed by law.[10]

Moreover, both Constitutions provide that all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by Sudan form an integral part of the constitutional Bill of Rights.[11] Therefore, the more detailed guarantees relating to arrest and detention that are contained in Article 9 (2)-(5) of ICCPR are an integral part of the Interim Constitution. Ordinary Sudanese statutes such as the 1999 National Security Forces Act should also be interpreted with due regard to the ICCPR.[12]

3. Sudanese Statutory Law

A number of ordinary national statutes provide the authorities with arrest and detention powers. These include the 1991 Criminal Procedures Act, the 1999 National Security Forces Act, the 2007 Armed Forces Act and the 2008 Police Forces Act. In addition, the Emergency and Public Safety Protection Act of 1997 grants the State Governors exceptionally broad powers of arrest and detention without judicial oversight, which are so sweeping that they effectively allow for arbitrary arrest and detention.[13] The Act has not been applied outside the Darfur region since July 2005.

In Southern Sudan, the legal situation is complex. In June 2003, the then Chairman of the SPLM/A Dr. John Garang de Mabior issued provisional orders to turn into law a series of statutes known as the "New Sudan Laws." These include a New Sudan Penal Code and a New Sudan Code of Criminal Procedure. Southern Sudan's Ministry of Legal Affairs and Constitutional Development of Southern Sudan (MoLACD) has issued instructions to the law enforcement and justice authorities to follow the New Sudan Laws, provided that they deal with issues falling in the constitutional competence of the GoSS.[14] In observed criminal justice practice, Southern Sudanese courts and authorities do not follow a coherent approach. Some use the New Sudan Laws as their legal point of reference, while others base their procedures on the 1991 Criminal Procedure Act. The Southern Sudan Legislative Assembly had passed

---

Mukong v. Cameroon (Views adopted on 21 July 1994), UN Doc. CCPR/C/51/D/458/1991 (1994), para. 9.8.

[10] Interim National Constitution, art. 29, Interim Constitution of Southern Sudan, art. 16.

[11] Interim National Constitution, art. 27 (3); Interim Constitution of Southern Sudan, art. 13 (3).

[12] Article 3, Interim National Constitution and Article 3, Interim Constitution of Southern Sudan provide that the Constitutions (including their Bills of Rights) shall be "the supreme law of the land."

[13] See *Second Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan* (27 January 2006), available from: http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SDPeriodicReports.aspx

[14] MoLACD, Circular to the Rule of Law Institutions, GOSS/MOLACD/G112/006, issued on 15 July 2006. In a judicial circular dated 12 July 2007, the Chief Justice and President of the Supreme Court of Southern Sudan issued similar instructions, calling on courts and judges to apply the New Sudan Laws in relation to all cases that have arisen in Southern Sudan since the CPA entered into force.

legislation enacting new Penal and Criminal Procedure Codes, which still had to be signed into law at the time this report was finalized.

D. HUMAN RIGHTS CONCERNS

1. ARBITRARY ARREST AND DETENTION INVOLVING THE NISS

Sudan maintains National Security and Intelligence Services (NISS), which form a distinct entity and are not part of the police or the armed forces. Charged with maintaining the internal and external security of Sudan, the work of the NISS extends at present beyond information gathering and includes enforcement action that would otherwise be taken by the police. United Nations human rights officers have documented numerous cases – mainly in the Khartoum area, but also in other parts of Northern Sudan – in which the NISS arbitrarily arrested and detained political dissidents and human rights defenders: In all of these cases essential procedural safeguards guaranteed by applicable international law, including detainees' rights to be promptly brought before a judge and to consult with legal counsel, were not met. Many of the cases also involved allegations of additional serious human rights violations such as *incommunicado* detention, ill-treatment and torture.

Observed patterns of NISS arrest and detention

Over the past three years, United Nations human rights officers have closely monitored the practice of detention by the NISS and conducted interviews with many released NISS detainees. According to the information received by United Nations human rights officers, NISS agents – who operate in plain clothes and often use cars not marked as belonging to the security forces - often carry out arrests without identifying themselves, or informing the target person about the reason for the arrest. Arrested persons will usually not be allowed to contact their families or a lawyer. In some cases, NISS agents act on their own, in others jointly with police where persons are initially arrested by the police and then reportedly handed over to the NISS for interrogation. The NISS have occasionally also appeared to use ongoing police investigations into criminal cases as apparent pretext to detain political dissidents and human rights defenders with no connection to the case.

NISS detainees may be held for periods ranging from a few hours to several months. Information collected by United Nations human rights officers on the context of NISS arrests and the questioning that takes place in detention indicates that detainees are often arrested and held in an apparent effort to intimidate, punish or temporarily silence them, or to extract information. They are typically held without charge by the NISS until such time as they are either released or transferred to remand custody under the authority of police. In some cases, detainees are allegedly forced to make "confessions" in NISS detention which may subsequently be used against them in criminal trials.[15]

The NISS maintain several official detention facilities in the Khartoum area. These include sections of Kober Prison (Bahri district of Khartoum) and Dabak Prison

[15] According to criminal justice practice, the safeguards of the Criminal Procedure Act will only apply once an NISS detainee has been charged and transferred to police custody. Judges usually consider that NISS detentions are not subject to the pre-trial safeguards of the Criminal Procedure Act. Moreover, they will typically not take into account periods spent in NISS detention as time served.

(60km north of Khartoum) which are separately administered by the NISS. Although the Prosecutor's Office is legally responsible to inspect all places of detention on a daily basis,[16] it appears, according to information received by United Nations human rights officers that this is not done for NISS detention facilities.

Numerous testimonies by released detainees indicate that the NISS maintain unofficial places of detention in the Khartoum area. Detainees are reportedly transferred to these unofficial detention places, which are located in residential houses or office buildings, for periods of up to several weeks. The location of unofficial places of detention is kept secret and not disclosed to detainees, their families or the general public. Detainees are generally blindfolded during their transfer to the facility to leave them unaware about their whereabouts and increase the psychological pressure on them.

The United Nations Special Rapporteur on Torture has taken the view that interrogation should take place only at official places of detention, that the maintenance of secret places of detention should be abolished under law and that it should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.[17]

Incommunicado detention without judicial review: Examining the National Security Forces Act

A particular concern relating to NISS arrests and detention is the pattern of *incommunicado* detention which is in violation of international human rights law but currently permissible under the National Security Forces Act. According to applicable international law, anyone who is arrested shall be informed of the charges against them (Article 9(2) ICCPR), and anyone arrested or detained on a criminal charge has the right to be promptly brought before a judge or judicial official (Article 9(3) ICCPR), with "promptly" meaning a delay of a few days at most.[18] In addition, any detainee is entitled to initiate *habeas corpus* proceedings before a court, so that the court may decide without delay about the lawfulness of the detention and order the release if it is not lawful (Article 9(4) ICCPR).

Sudanese courts regularly refuse to order the release of persons in prolonged NISS detention making reference to the National Security Forces Act to justify their decision.[19] A person can be detained *incommunicado* for up to nine months without ever seeing a judge, lawyer or family member under the National Security Forces Act, which is therefore in breach of international law. Only after six months of detention, can a detainee petition a judge to challenge the legality of the detention.

According to Article 30 of the National Security Forces Act, NISS agents may arrest and detain a person without arrest warrant for up to three days, for interrogation and

[16] 1991 Criminal Procedure Act, art. 81.
[17] *Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38* U.N. Doc. E/CN.4/2003/68 (2003), para. 26 (e).
[18] Human Rights Committee, *General Comment No. 8: Right to liberty and security of persons* (Art. 9) (1982), para. 2.
[19] On 8 July 2007, for instance, the Sudanese Constitutional Court dismissed a petition challenging the legality of the detention of several persons detained in relation to protests against the Kajbar and Merowe hydroelectric dams (see below). The Constitutional Court found that the detention complied with the National Security Forces Act, while failing to review the constitutionality of the National Security Forces Act itself.

inquiry. No judge or prosecutor has to be informed about the arrest. The Director-General of the NISS can extend the detention by up to 30 days at his own discretion. If he considers the detainee suspect of an offence against the state he can extend the detention for an additional 30 days. The extension does not require judicial permission; the Director-General only has to notify the competent prosecutor.

Despite international concern,[20] amendments to the National Security Forces Act were introduced in 2001 that further extended the NISS Director-General's discretionary powers. If the Director-General finds "circumstances which lead to panic in society and threaten the peace and security of citizens, namely, armed robbery, or religious or racial discord', he can order the detention of the suspect for up to six months. No judicial or prosecutorial review of the Director's decision is foreseen; the competent prosecutor has to be merely notified after the first three months of detention. After six months of detention, the National Security Council, a body composed of senior government officials, can extend the detention period again by up to three months.

After six months of detention, the detainee obtains the legal right to petition a magistrate for his or her release. In practice, however, detainees often do not exercise this right because they are not made aware of it and do not have access to lawyers.

A detainee may also be prohibited from contacting family members during the entire period of NISS detention, if that would prejudice the progress of interrogation, inquiry and investigation in the opinion of the NISS. In practice, families who find out where their relative is detained are often made to wait several months until they are allowed to visit. The right to contact a lawyer is not recognized by the National Security Forces Act although it is part of the 1991 Criminal Procedure Act. Lawyers who volunteer to represent a NISS detainee are frequently not allowed to see their client in NISS detention.

Risk of Ill-Treatment and Torture

Incommunicado detention increases the risks of ill-treatment and torture. When persons are detained without contact with the outside world for prolonged periods of time, experience shows they face a high risk of ill-treatment and torture. The United Nations Special Rapporteur on Torture has observed that torture is most frequently exercised during *incommunicado* detention.[21] A large number of NISS detention cases involving ill-treatment and torture have been reported to United Nations human rights officers over the past three years. Ill-treatment and torture are reportedly used to intimidate detainees, to punish them, to extract information or to force them to incriminate themselves or others. In some cases death threats are made against detainees prior to their release to prevent them from speaking out about the abuses they suffered in detention.

International law also strictly prohibits the use of confessions obtained through torture as evidence in judicial proceedings, primarily because of the absolute prohibition on torture under international law[22], but also since no one may be compelled to testify

[20] See, e.g. *Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Gerhardt Baum*, UN. Doc. E/CN.4/2002/46 (2002).
[21] *Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38* U.N. Doc. E/CN.4/2003/68 (2003), para. 26 (g).
[22] Art 2(2) and (3), and Art 15 of the Convention Against Torture (CAT), signed by Sudan in 1986.Art 15 states: Each State Party shall ensure that any statement which is established to have been made as a

against himself or confess a crime.[23] The Sudanese Evidence Act of 1993 fails to implement this fundamental principle, instead stipulating that evidence obtained by unlawful means may be admitted in judicial proceedings whenever the court is satisfied that the substance of the evidence is genuine.[24] Courts may decline to base a conviction exclusively on such evidence, however, if they deem it is in the interest of justice to do so.[25] In practice judges often fail to disregard evidence that appears to have been obtained under torture. Nevertheless, there have been notable instances where judges have disregarded written confession statements that had allegedly been obtained under torture and acquitted defendants who had retracted such confessions in court. In April 2006, for example, a Special Court in Khartoum acquitted and released ten people who had been tried on charges of having planned to overthrow the government. The defendants stated in court that they had been tortured in NISS detention to obtain confession statements. The Court found that the confession statements made by the defendants were not reliable in the absence of corroborating evidence. The ten defendants had been arrested between January and May 2005 and were held *incommunicado* by the NISS for between two and six months.

United Nations human rights officers have regularly brought cases of alleged ill-treatment or torture to the attention of relevant Government authorities. In the rare cases in which the authorities responded to concerns expressed, they denied the allegations without providing information on the investigative steps taken to come to this conclusion.[26] None of the alleged perpetrators are known to have been brought to justice.

As a result of the Government's refusal to provide United Nations human rights officers with access to NISS detention facilities and in the absence of a procedure allowing alleged victims of torture to undergo a forensic examination by an independent medical practitioner, the numerous reports of ill-treatment and torture by the NISS cannot be independently verified.

The following cases involving *incommunicado* detention and allegations of ill-treatment and torture, which took place between February 2007 and June 2008, illustrate some of the concerns about arbitrary NISS arrests.

Arrests of SPLM and SCP Student Supporters

On 18 May 2008, the Court of Appeal ordered the immediate release of four students, after they had spent more than a year in detention. Among them were the two leaders of the student movements of the Sudan People's Liberation Movement (SPLM) and the minor opposition group Sudan Congress Party (SCP).

---

result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

[23] See ICCPR, art. 14 (3) (g).

[24] Evidence Act, 1993, art. 10 (1).

Contrary to that, Section 28 of the Southern Sudan Evidence Act of 2006 provides that "a confession or any admission … made by an accused person is not admissible in criminal proceedings if, in the opinion of the court, the confession or admission appears to have been made under any inducement, torture, duress, or threat."

[25] Evidence Act, 1993, art. 10 (2).

[26] Article 12 of CAT states: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

The four students were the last to remain in detention among a group at least 20 university students, who had been arrested by NISS and police in February and March 2007. Some of the students were arrested and detained by the NISS; others were transferred from police to NISS custody for interrogation. The arrests followed clashes at Sudanese universities between students affiliated with the SCP and SPLM on the one hand, and student supporters of the ruling National Congress Party (NCP) on the other. During one of the clashes, which took place on 8 February at Nilein University in Khartoum, one student supporter of the NCP was stabbed and later died of his injuries, prompting a murder investigation.

Half of the arrested students were released without charge after being detained for interrogation for up to five days. Most of those released alleged that they were questioned at length about the political groups they belonged to, and that they were threatened, intimidated and humiliated to discourage them from political opposition activities. For instance, one detainee was reportedly told, "This is happening to you because you are a member of the Sudan Congress Party; you should stay away from politics." These allegations indicate that their detention may have been intended to deny them the exercise of fundamental political and civil rights, and may therefore be considered arbitrary.

Some of the detainees were also forced to make false statements under torture, which were later used as evidence in court, claiming that they had witnessed the involvement of some of the detained student leaders in the killing of the NCP student at Nilein University. The torture or ill-treatment is reported to have occurred in NISS custody, mainly in unofficial places of detention in and around Khartoum. Several of the detainees were reportedly blindfolded and taken to unofficial detention places where they were subjected to severe beatings with hands and electric cables, or kicked while lying on the floor. Other reported methods of ill-treatment or torture included making a detainee stand naked in front of an air conditioner to decrease the body temperature or pulling the tongue of a detainee with a pair of pliers. Several detainees were forced to sign statements prior to their releases which they were not allowed to read and were told, under threats, not to tell anyone about what happened to them in detention.

The ten students who remained in detention were charged in March 2007 with the murder of the NCP student. Basic procedural safeguards had not been complied with during the inquiry stage. The detainees were reportedly denied access to legal counsel and family visits, in violation of the Criminal Procedure Act. They were not promptly brought before a judge nor given the opportunity to challenge the lawfulness of their detention in a court of law. During the initial weeks of the police inquiry, at least two of the defendants were transferred repeatedly from police custody to unofficial places of detention believed to belong to the NISS. They were interrogated and reportedly subjected to severe beatings and intimidation. In a trial that concluded on 25 March 2008 all ten defendants were acquitted of murder. However, four of them were convicted on new charges of arms possession and sentenced to four years' imprisonment, among them the two leaders of the SPLM and SCP student movements. The Court of Appeal overturned this conviction on appeal due to a lack of sufficient material evidence and ordered the immediate release of the four students.

Arrests of persons opposing the Kajbar and Merowe hydropower dam projects

In connection with community protests against hydropower dam projects on the Nile River in Merowe and Kajbar in Northern State, the NISS arbitrarily arrested and detained a number of persons in Khartoum and in Northern State. Arrests have targeted mainly community leaders who are opposed to the dam constructions. Journalists and lawyers investigating human rights violations in the context of clashes with security forces have also been subjected to arbitrary arrest and detention. Basic procedural guarantees under international law were not upheld and there are strong indications that the arrests and detentions were carried out to hinder community mobilization, restrict independent reporting in national media and hamper the effective legal representation of victims of human rights abuses.

During a community protest on 13 June 2007 in the Kajbar area, the security forces shot and killed four civilians. Following the protests, at least 26 people were arrested by police and NISS in the Kajbar area and in Khartoum. Among them were three lawyers and a local community leader who were arrested by NISS in Dongola, the capital of Northern State, in the late evening of 13 June after having arrived in the area to investigate the events. Four journalists of national newspapers were also arrested in Dongola on 13 June. The four journalists were released without charge on 20 June after sustained protests by Sudanese journalists.

Eight of the 26 arrested persons remained in NISS detention without charge, first in Kober Prison and later in Dabak Prison, until their releases between 18 and 24 August 2007. They remained without contact to the outside world until early August 2007, when most of them were allowed to receive family visits in NISS custody. The eight persons claim they were only released after signing pledges stating that they would cease to be active on the Kajbar issue or engage in other public political activities.

Between late August and September 2007, seven more Kajbar activists were arrested and held for different periods of time in NISS detention facilities in Northern State. In violation of basic procedural guarantees under international law, they were not given access to lawyers or allowed to communicate with their families. The men were reportedly told that they were being detained due to their opposition to the dam and their open criticism of government policy in relation to the dam. One of them was reportedly arrested to force his brother, an active dam opponent, to turn himself in.

In letters sent to OHCHR, the Government's Advisory Council on Human Rights (ACHR) stated that the persons arrested between June and September 2007 had been arrested for inciting public opinion against the building of the Kajbar Dam, urging to use force against State officers, assaulting the police and vandalizing public assets. ACHR further claimed that detainees only signed pledges to stop any activities that might "endanger state security and public order" and that they would not "vandalize public property." Furthermore, the ACHR stated that the detainees were not subjected to inhumane treatment or torture and that they were granted all due process rights guaranteed by the Constitution, the National Security Forces Act and applicable Sudanese regulations on the treatment of detainees.

Repression of community protests against the dam projects continues. According to credible eye-witness reports, on 23 August 2008, police broke up a peaceful community protest staged by residents of the Dal area on Sai Island by beating protesters with batons and assaulting them with bayonets. [27]

[27] When this report was finalized, the Government was denying United Nations human rights officers access to areas affected by dam projects. In March 2008, the Government also withdrew permission for

Arrests of Darfurians in Khartoum

Darfurians in the Khartoum area are at heightened risk of being subjected to arbitrary arrests, in particular if they are suspected of maintaining links with Darfurian rebel groups or political movements. Darfurians may raise the suspicion of the security forces by the mere fact of travelling from other parts of Sudan to Darfur, by having travelled abroad, or by having been in contact with individuals and organizations abroad. Over the past three years, United Nations human rights officers have conducted numerous interviews with Darfurians who have been arbitrarily arrested and detained.[28] Many reported that they were ill-treated and tortured. Reports on the questioning which they underwent in detention indicate that most of the detentions were carried out to obtain information about Darfurian political groups and rebel movements.

A major wave of arrests of Darfurians, apparently triggered by students exercising their human rights to peacefully assemble and freely express their political opinion, was carried out by the NISS between late September and early December 2007. The arrests began after student sympathizers of the Abdel Wahid Al Nour branch of the Sudan Liberation Army (SLA/AW) participated in a public Khartoum demonstration on 20 September 2007 that supported SLA/AW demands for a resolution of the conflict in Darfur. United Nations human rights officers documented over thirty cases of arbitrary arrest and detention by the NISS. Many detainees were reportedly beaten in detention, and several subjected to ill-treatment or torture to extract information or discourage them from exercising their political rights. Those detained were members of a student organization supporting the SLA/AW, and others believed to support, or maintain links with, the SLA/AW. In addition, the Sudan People's Liberation Movement (SPLM) Secretary for Information, Amar Najmadin, was detained by the NISS from 23 November 2007 to 23 January 2008 in Khartoum and allegedly interrogated under torture about his relationship with the SLA/AW. Other arrests also targeted people advocating for the release of the detainees.

Most detainees were held in NISS detention facilities for weeks without contact with the outside world. In accordance with the provisions of the National Security Forces Act, but in breach of international due process guarantees, they were not promptly brought before a judge and denied the right to challenge the legality of their detention in a court of law. Nearly all of those interviewed by United Nations human rights officers alleged that they were ill-treated or tortured in detention. In addition, detainees were reportedly insulted because of their Darfurian origin as well as their alleged links with the SLA/AW group. At least six detainees reported that they were threatened that they would be killed. Detainees reportedly also received threats that they could be arrested again at any time, in particular if they disclosed information to human rights groups and others about what had happened to them in detention. At

---

a scheduled three-day visit by the United Nations Special Rapporteur on the Situation of Human Rights in the Sudan to these areas, ostensibly on security grounds.

[28] Detailed interviews were conducted with released detainees. The Group of Experts on Darfur established by the United Nations Human Rights Council has recommended that the Government grant the United Nations human rights monitors full and unimpeded access to all those detained in Darfur or in other parts of the Sudan in relation to the Darfur conflict. See *Report on the situation of human rights in Darfur prepared by the group of experts mandated by Human Rights Council Resolution 4/8*, U.N. Doc. A/HRC/5/6 (2007). This has not resulted in United Nations human rights officers receiving independent access to persons detained in Khartoum in relation to the conflict in Darfur.

least eight detainees were in fact subjected to repeated arrests and were reportedly ill-treated or tortured on more than one occasion. Several reports indicate that detainees were forced, under the threat of violence, to give statements, the contents which were dictated to them, or to sign statements which they were not allowed to read, and which may be used to incriminate them in criminal proceedings. In at least two cases, detainees were allegedly forced to sign a blank piece of paper prior to their release, apparently to threaten them that a false declaration may be attributed to them, possibly to prosecute them for unspecified criminal activities.

At the time this report was finalized, United Nations human rights officers were closely monitoring the arrests and detentions of hundreds of people in Khartoum and other parts of Sudan following the armed attack on Omdurman by Darfurian rebels of the Justice and Equality Movement on 10 May 2008. Among those arrested by the NISS were hundreds of civilians of Darfurian origin who in many cases appeared to have been targeted solely because of their Darfurian ethnicity or appearance.[29] While the Government had brought to trial 113 people for alleged participation in the Omdurman attack by the end of September, hundreds of people, who were reportedly arrested, remained unaccounted for and were believed to be held *incommunicado* by the NISS. Among them were several Darfurian members of the opposition Popular Congress Party (PCP), including Barood Sandal Rajab, a prominent PCP member and also the Secretary-General of the Darfurian Lawyers Committee. [30]

Need for NISS Reform

The human rights concerns related to the NISS are longstanding and institutionalized problems [31] that should be addressed through institutional reform. The CPA explicitly states that the National Security mandate "shall be advisory and focused on information gathering and analysis." Similarly, the Interim National Constitution demands the National Security Service's "mandate shall focus on information gathering, analysis and advice to the appropriate authorities.[32]

Over three years into the interim period of the CPA, legislation to implement these commitments and transform the NISS from an enforcement to an intelligence agency remains to be adopted.

---

[29] The African Commission on Human and Peoples' Rights has held that arrest and detention "on grounds of ethnic origin alone…constitute arbitrary deprivation of the liberty of an individual." See *Organisation contre la torture and others v. Rwanda*, Communications Nos. 27/89. 46/91. 49/91, and 99/93, decision adopted during the 20th Ordinary session, October 1996, para. 28. Available from: http://www1.umn.edu/humanrts/africa/comcases/27-89_46-91_49-91_99-93.html.

[30] Barood Sandal had previously been detained three times between 2003 and 2006 because of his political and human rights activities. On 19 April 2006, the NISS arrested and detained him, apparently to prevent him from attending the signing of the Darfur Peace Agreement in Abuja, Nigeria, on 5 May 2006, which Barood Sandal had been scheduled to attend as an advisor to the rebel movements.

[31] See, e.g. *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan, Gaspar Biro,* U.N. Doc. E/CN.4/1994/48, paras. 30 ff., *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan, Leonardo Franco,* U.N. Doc. E/CN.4/1999/38/Add.1 (1999), at para. 37, *Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Gerhardt Baum,* UN. Doc. E/CN.4/2003/42 (2003), at para. 28.

[32] CPA, Chapter II (Power Sharing), para. 2.7.2.4. Cf. also Interim Constitution, art. 151.

2. ARREST AND DETENTION OF CIVILIANS BY THE MILITARY

According to international law, military authorities may only exercise criminal jurisdiction over civilians in exceptional circumstances that must be specified by law. There must be objective and serious reasons that show why the military authorities should investigate, prosecute or adjudicate the case and why the civilian authorities would be unable to do the same.[33] Military authorities of course also have to respect all due process and fair trial rights provided under international and Sudanese law.

a) Sudan Armed Forces (SAF)

Marking a step forward compared to previous legislation, the 2007 Armed Forces Act limits the criminal jurisdiction of SAF military authorities over civilians to a narrow range of combat-related offences that amount to grave breaches of international humanitarian law such as "attacks against civilians" or "offences against prisoners of war."[34] Conversely ordinary crimes committed by civilians (e.g. theft) are never under the jurisdiction of the military authorities, even if they target military personnel, equipment or installations. Instead dealing with such crimes remains the responsibility of the civilian police, the civilian state prosecutor and the civilian criminal courts.

Cases have been reported from the Three Areas in which SAF arbitrarily arrested and detained civilians, violating jurisdictional limits imposed by Sudanese law as well as basic procedural rights of the victims.

On 6 March 2008, SAF Military Intelligence Officers attached to the Damazin Artillery Battalion (Blue Nile State) arbitrarily arrested two boys aged 14 and 16, in connection with a series of fires that broke out for undetermined reasons in a residential area inhabited mainly by SAF personnel. SAF alleged that the boys set the fires to cover up thefts they had committed. Between 6 and 11 March the boys were detained first at the SAF Artillery Barracks and then at SAF Headquarters in Damazin. During the entire time, they were never brought before a judge or informed of their right to consult a lawyer. The boys' families were not informed of their arrest. Only later, one of the suspects was briefly allowed to see his mother who had found out about his whereabouts. One of the boys alleged to have been beaten on repeated occasions with a rubber belt until he signed a confession. Following an intervention by United Nations human rights officers with the commander of the SAF Artillery Battalion, the boys were transferred to the police. On 16 March 2008 they were released on bail and were facing prosecution at the time this report was finalized.

Immediately after the mother of one of the boys had reported his arrest to United Nations human rights officers, SAF evicted her from the house that she had been permitted to build from her own materials on SAF-owned land. The Commander of

---

[33] Cf. *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism* U.N. Doc. A/HRC/8/13 (2008), para. 42. Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair tria*l, CCPR/C/GC/32 (2007), para. 22 (both on the exercise of jurisdiction over civilians by military courts).

[34] See Article 4 (h), read together with Part II of Chapter III "Offenses committed by combatant personnel during operations." The People's Armed Forces Act of 1986 gave the military jurisdiction over civilians with regard to an extremely wide range of offences. See 1986 People's Armed Forces Act, article 4 (as amended).

SAF Military Intelligence in Damazin justified this apparent reprisal with a supposed need to remove persons who harbour criminals from SAF property.

Another 14-year-old boy, a basic school student from Kadugli (Southern Kordofan), was arrested by SAF military intelligence officers from the 18th Brigade of the 5th Division on 5 March 2008. Accused of having stolen a Sterling submachine gun from a SAF garrison, the boy was held for one day and night at the military barracks in a container that served as a detention cell. He was then moved to an ordinary cell, where he remained – in breach of the ICCPR 10(3) requirement for separate detention facilities for juveniles - together with a changing population of adult men, mainly soldiers, for a total of 44 days. During his time in detention, his family brought him food on a daily basis and tried - with no avail - to persuade his guards that the boy should be turned over to police or freed. The family was never able to see the responsible commander. On 16 March, the prosecutor directed police to transfer the boy to police custody and conduct a preliminary investigation according to Art. 47 of the 1991 Criminal Procedure Act. On 19 March, the police wrote a letter to the 18th Brigade Commander seeking the transfer of the boy. There was no response from SAF. The boy was only freed on 17 April, two days after United Nations human rights officers raised the issue with high ranking officers at the SAF 5th Division Headquarters. On the same day, SAF also freed a 29 year-old former soldier, who had been detained for 51 days at SAF 18th Brigade in relation to the same theft case.

b) Sudan People's Liberation Army (SPLA)

The Interim Constitution of Southern Sudan establishes a civilian Southern Sudan Police Service (SSPS), while at the same time prohibiting the SPLA from initiating police action. Article 154 (5) clearly states: "The Armed Forces in Southern Sudan shall have no internal law and order mandate, except as may be requested by the civil authority when necessity so requires."

At the level of ordinary legislation, the SPLA Act 2003 only specifies under what conditions military personnel can be detained by military or civilian authorities. Civilians are not subject to the provisions of the SPLA Act, [35] which implies that there is no legal basis for the detention of civilians by the military. Any detention of civilians at SPLA installations must be regarded as arbitrary and without legal basis. SPLA soldiers and officers have no wider powers of arrest than private citizens. A soldier may for example arrest a person who he catches in the process of committing a crime, but he must then immediately hand the suspect over to the police.

The strict division of functions between military and police foreseen by the Southern Sudan Interim Constitution is often not adhered to in practice.

Detention of civilians at SPLA military installations

United Nations human rights officers encounter many cases in Southern Sudan and the Three Areas, in which SPLA soldiers arrest and detain civilians. In minor cases, the civilians are arrested, briefly detained and then handed over to the police, sometimes after first being beaten. More serious cases often relate to civilians suspected of state security offences. In these cases, detainees are usually detained at military barracks or military prisons for weeks or months until a commanding officer

[35] See Article 5 SPLA Act. An exception only applies for civilians on active service with the SPLA and civilians co-accused with SPLA personnel in a court martial proceeding.

eventually assesses whether the detainee should be kept in SPLA detention, released or handed over to the civilian authorities. The civilian authorities are often afraid to challenge SPLA interference in the administration of justice.

In early February 2008, a group of young men from Southern Kordofan were travelling along the road connecting Wangkei and Duar (Unity State), when they were intercepted by SPLA soldiers, arrested and detained at the SPLA camp in Duar. The SPLA, which acknowledges to have arrested and detained the men, claims that the men had engaged in smuggling activities, posing as SPLA members for this purpose. The leader of the group had allegedly pretended to be a SPLA colonel. The men were not handed over to the competent civilian authorities but detained at the SPLA camp at Duar. United Nations human rights officers had been able to confirm the release of at least one of the detainees at the time this report was finalized. [36]

On 28 January 2008, the SPLA arrested and detained a 55-year old veterinary assistant of the Hawazma tribe in White Lake- Jaw. The man had worked for six years in the White Lake region, which is an assembly area for SPLA troops moving out of Southern Kordofan. The man was reportedly questioned by SPLA military intelligence in connection with the arrest of a SAF soldier. He was allegedly given 25 lashes on the morning of 29 January, and again three days later after he was questioned. The victim reported that he had 2,000 Sudanese pounds worth of medicine with him when he has arrested and alleges that it was not given back to him when he was released on 12 February.

Parallel law and order structures

During decades of armed conflict, in the absence of a civilian administration and properly functioning rule of law institutions, the SPLA often assumed policing functions to maintain law and order in areas under its military control. Even after the advent of peace, some officers and ordinary soldiers still take it on themselves to deal with criminal cases, rather than referring them to the fledgling civilian police. Local communities often also remain accustomed to approach the military to follow up on a criminal matter.

In some places, the SPLA also seems to maintain fully-fledged parallel law and order structures that outrightly rival civilian police authority. Reportedly, the SPLA has operated a "Civilian Security" Service in Kurmuk (southern Blue Nile State) since taking military control of the town in 1997. While SPLA soldiers have openly spoken to United Nations human rights officers about the work of SPLA Civilian Security, local SPLA commanders have officially denied its existence. The SPLA officially handed over military control of Kurmuk to the SAF/SPLA Joint Integrated Unit in January 2008, but SPLA soldiers appear to still interfere in civilian police matters.

SPLA Military Intelligence continues to operate an unofficial detention facility known as "Jail 1", which is located in a group of *tukuls* (straw thatched huts) near Kurmuk

[36] A similar case took place on 28 April 2007, when soldiers from the 25th Brigade arrested two young men in Kurchi (Southern Kordofan) on allegations of spying and arbitrarily detained them for over a month. The case was taken up by the Area Joint Military Committee (AJMC) in Kadugli; a CPA conflict resolution mechanism chaired by the Sector Commander of UNMIS troops in the area and attended by SAF and SPLA representatives. The AJMC chair registered the matter as an SPLA violation of the CPA and reported it to the higher-level Ceasefire Joint Military Committee (CJMC).

Community Lake. At the end of April 2008, United Nations human rights officers carried out an unannounced visit to the facility, but were prevented by SPLA guards from entering the compound itself. Reliable sources reported at the time that at least 12 persons were detained at "Jail 1", among them civilians. Reportedly, detainees are routinely physically ill-treated during the first few days of arrest and do not receive adequate food or medical care. On 9 March 2008, a SAF soldier detained at "Jail 1" on allegations of spying was shot and injured by the guards during an apparent escape attempt. The SPLA claims that only soldiers are held at "Jail 1" and told United Nations human rights officers that arrangements were being made to bring military judges from Juba to review their cases.

Politically motivated arrests

United Nations human rights officers have also documented politically motivated cases of arrest and detention by the SPLA. On 14 July 2008, the Government of Southern Sudan finally released a former member of the Eastern Equatoria State Government in Torit, who had spent more than two years in arbitrary military detention. SPLA soldiers had arrested the man in Torit in the early evening of 13 July 2006. He was taken to Juba around midnight the same day and from there to Nimule, where he was detained at the SPLA Military Prison for two years. The man was never formally charged with having a committed a criminal offence or brought before a judge. Instead, officials reportedly accused him of working against the SPLA and in support of the ruling National Congress Party. On two occasions the man was questioned by SPLA officers and in February 2007, his family was informed that a committee of investigation in his case had been set up by the GoSS. Neither the man nor his family were formally informed about the outcome of this investigation.

The man was reportedly never physically ill-treated during his time in detention, but had to endure inhumane prison conditions characterized by an overcrowded cell, the complete absence of medical care and, in August 2007, also a severe shortage of food. On 29 July and 3 August 2006, his son was allowed to visit him in his cell, but thereafter he was denied access. His wife was only allowed to visit him on four occasions during his two years of detention. While the man was in detention, United Nations human rights officers repeatedly raised the case with GoSS authorities.

On 24 January 2008, SPLA soldiers arrested the Omda (local chief) of Ganai village (Southern Kordofan) Brought to the SPLA assembly area of White Lake-Jaw, and detained there for six days, until 30 January, he was freed after the intervention of a Kadugli-based SPLA colonel. The Omda is a leader of the National Congress Party (NCP) in his village. His arrest occurred shortly after he hosted a two-day visit by his Amir, an important and controversial NCP figure in the state, at his house during his tour of the area. The Omda says that SPLA soldiers from White Lake came to Ganai and questioned him about his NCP work and the Amir's visit and then ordered him to come to White Lake with them. The Omda fetched a gun from his house and refused. Later the same day, there was a second, related quarrel involving his nephew in nearby Angolo, and both the nephew and the Omda were arrested. SPLA and SPLM sources claim that the Omda had waved his gun in a threatening manner at SPLA troops moving through Angolo. According to the Omda, he was slapped hard once on the right side of the face by a SPLA captain. He was detained in a thorn enclosure, which is a typical detention site in areas without solid buildings. He slept on the ground, eating poorly and feeling sick. He was never questioned or brought before a

judge. His mobile phone with a 40 Sudanese pound (SDP) balance and reading glasses were taken from him and not returned upon his release.

3. ARBITRARY ARREST AND DETENTION BY THE POLICE FORCES

Article 148 of the Interim National Constitution and Article 162 of Interim Constitution of Southern Sudan foresee a decentralization of the police force. Accordingly, Northern and Southern Sudan have distinct police forces each having separate chains of command and political leadership. The Southern Sudan Police Service (SSPS) polices the whole of Southern Sudan and is answerable to the GoSS. In Northern Sudan, a national police exists.[37] Despite the existence of distinct and separately administered police forces in Southern and Northern Sudan, there are considerable similarities in the patterns of arbitrary arrest and detention that can be found in both regions.

a) Excessive use of arrest and detention in criminal investigation

The Sudanese laws of criminal procedure allow the police to arrest a criminal suspect without first obtaining an arrest warrant in relation to many of the most common offences (e.g. theft).[38] The police tend to make excessive use of this unchecked power. Every arrest constitutes a limitation of the human right to physical liberty and the police must use restraint. The police may only resort to arrest where it is necessary because there is a significant risk that the suspect may abscond, destroy evidence, influence witnesses or commit further serious crimes. [39] Arrest and pre-trial detention must not be used as means of punishment, given that every suspect is presumed innocent until proven guilty in a court of law. Disregarding these basic principles, the police tend to follow an 'arrest first, ask questions later' approach. Police very often arrest criminal suspects on the basis of little evidence or mere allegations, without considering whether an arrest is actually necessary to pursue the criminal investigation or prevent the suspect from absconding.[40] While this cannot justify the conduct of police or detract from their obligations under international human rights law, this practice is sometimes driven by the expectations of the community, who want to see a suspect "punished" right away and might resort to violent self-justice, if the police do not arrest the suspect.

According to Sudanese law, the police may detain an arrested suspect for up to 24 hours. Any detention longer than 24 hours must be authorized by a judge or a prosecutor.[41] The realities on the ground look very different. Police regularly fail to

[37] At the time this report was finalized, an agreement to integrate the SPLM police, which had operated in SPLM-administered parts of Southern Kordofan since 2005, with the Government of Sudan police in Southern Kordofan was being implemented.

[38] See 1991 Criminal Procedure Act, art. 68. 2003 New Sudan Criminal Procedure Code, art. 25

[39] See Human Rights Committee, Communication No. 458/1991, A.W. Mukong v. Cameroon (Views adopted on 21 July 1994), UN Doc. GAOR, A/49/40 (vol. II), p. 181, para. 9.8: "Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of the crime." See also 1991 Criminal Procedure Act, art. 4: "exercise of the powers of arrest shall not be resorted to save where necessary".

[40] For example, UN Police regularly finds breastfeeding mothers detained by police on suspicions of minor crimes, even though under the circumstances it would be most unlikely that they would try to abscond before their case goes to trial.

[41] According to the 1991 Criminal Procedure Act, the police must notify the prosecutor within 24 hours who can then authorize the extension police detention for purposes of inquiry by up to three days. Any detention beyond three days has to be approved by a court.

submit cases for review within the legal deadlines and wait instead until they have concluded their own investigation. Even suspects of petty crimes may sometimes languish for weeks in jail.

The conditions of detention in police jails visited by United Nations human rights officers in Southern Sudan and the Three Areas are often appalling. Most cells are dilapidated and overcrowded. Police stations in Southern Sudan and also Blue Nile State are generally not provided with a budget to provide food, drinkable water or medical care to detainees. Police detainees in these areas therefore have to rely on the support of their families to survive or, failing that, the compassion of co-detainees or guards. Human Rights Officers witnessed on several occasions how individual police officers shared food with detainees that they bought from their own meagre salaries.

b) Arrests of affiliates and family members of criminal suspects

Criminal responsibility is personal and punishment can only be imposed on the offender himself.[42] In contravention of this basic principle, the police forces sometimes stage collective reprisals, in which persons are arrested for their mere affiliation or family ties with criminal suspects. Such arrests must be considered unlawful and arbitrary, since they target persons against whom no reasonable suspicion of having committed a crime exists.

In Southern Sudan, collective reprisals have been repeatedly documented by United Nations human rights officers. If the police are unable to find and arrest a suspected criminal, they sometimes arrest the suspect's family members in order to exercise pressure on the fugitive to turn himself in.[43] On 19 September 2008, for instance, police in Bentiu (Unity State), following orders of the local Chief's Court, arrested the father of a woman who had abandoned her partner and eloped with another man, because the father refused to search and bring back his daughter. United Nations human rights officers brought the arbitrary detention case to the Senior Public Prosecutor in Bentiu, who promised to take remedial action.

In November 2007, the police arrested a young man in Nzara (Western Equatoria State), because his father had allegedly committed murder and police supposed the father to be on the run (in fact the father was already detained at Yambio Central Prison). The young man was transferred to Yambio Prison and detained for four months. Only in mid-February 2008, when examining the case file to renew remand detention, the High Court President noted that the man was detained on account of an offence attributed to his father and ordered his immediate release.

The police were also implicated in a case reported from Rumbek, although the SPLA was responsible for the arrest itself. In the early morning of 25 October 2007, a 20-

---

The New Sudan Criminal Procedure Code assigns control functions exclusively to the judiciary. The police may not detain a suspect for more than 24 hours. Thereafter, the police must either bring the person before the nearest magistrate or release him, with or without bail. The only reason that an arrested person could legally be held longer in the police jail is that the transfer to the magistrate is not immediately "practicable". In such a case, it must take place "as soon as practicable". MoLACD officials highlighted that the 2008 Criminal Procedure Code will give a larger role to prosecutors.

[42] See African Charter on Human and Peoples' Rights, art. 7 (last sentence).

[43] This concern has also been noted by the Southern Sudan Human Rights Commission, which found during the course of visits to prisons and detention centers that some prisoners had been arrested and were serving sentences in the place of their escaped relatives. See Southern Sudan Human Rights Commission, *First Annual Report* (July 2006-December 2007), p. 21.

year old man who had been convicted of murder and sentenced to death, escaped from Rumbek Central Prison. Later that day, the SPLA Commander for Lakes State ordered the arrest of the convict's father, who happened to be a SPLA colonel. The colonel was arrested at Rumbek Military Headquarters, briefly detained at Rumbek Police Station, and sent from there to Rumbek Central Prison without judicial order. During the initial detention phase, the colonel was not allowed to receive family visits, although he suffers from diabetes and relied on his family to bring him medicine. The colonel was released on 5 February 2008 from Rumbek Central Prison, along with a number of other detainees, after a Special Court had reviewed long-term detention cases.[44]

Occasionally, the police reportedly arrest relatives of criminal suspects to force them to compensate the victim of their relative's crime. This practice is rooted in customary law notions of collective responsibility. One exemplary case concerned a man from Eastern Equatoria who had killed first a woman and then himself. The family of the victim subsequently demanded that his brother pay blood money for the murder of their daughter. As the brother was unwilling and unable to pay, he was arrested in Ikotos and on 9 December 2007 transferred to Torit Police Station and then to Torit Prison. During his detention his arms were tied so tight behind his back with ropes, that he suffered an infection that reportedly left one arm paralysed. He was released on an order of the 2nd grade Magistrate on 8 April 2008. The police station commander acknowledged that the brother had not committed any offence, but explained that customary law held the family of the perpetrator responsible for compensating the victim's family. The police commander expressed concerns for the man's safety in case he was released without first compensating the victim's family.

Arrests of family members of suspects have been mainly reported from Southern Sudan, although cases have also been reported from Khartoum and the Three Areas. In the aftermath of the 10 May 2008 armed attack of the Justice and Equality Movement (JEM) on Omdurman, the Government arrested hundreds of civilians according to information received from eye-witnesses, family members, lawyers and civil society organisations. These included a number of persons who seem to have been arrested solely due to their family ties with alleged JEM members.

A particularly serious case of collective reprisal took place in Northern Sudan after a shooting took place, on 24 March 2007, between members of the Minni Minnawi faction of the Sudan Liberation Army (SLA/MM) and Government forces in the Mohandiseen area of Omdurman. Twelve people were reportedly killed in the shooting, among them three police agents and nine members of the SLA/MM. Several more were injured.

During and after the shooting, the police arrested some 95 people and opened a murder inquiry for the killing of the police officers. A majority of persons appeared to have been arrested because they were affiliated, or believed to be affiliated, with the SLA/MM, rather than for unlawful activities. A large number of arrests, for example, took place during raids on premises used by the SLA/MM which were not in the area of the shooting. Those arrested included a number of disabled SLA fighters who were receiving medical treatment in Khartoum, in addition to nearly 40 civilians affiliated with the SLA/MM who were not present at the site of the shooting incident, including

[44] Special Courts were established by the Lakes States Judiciary to review especially the cases of persons detained in relation to inter-community conflict. See below, section D.5 a).

three women. Four people not affiliated with the SLA/MM were reportedly arrested in the Mohandiseen area, among them one radio journalist. Numerous eye-witness accounts indicated that security personnel used excessive force while conducting the arrests. A number of those detained at Mohandiseen and Omdurman Central police stations also reported that they were beaten, some of them severely.

On 17 April 2007, the representative of the High Commissioner for Human Rights in Sudan submitted concerns to an investigation committee which was set up by presidential decree to investigate the incident. No response to this communication was received. The report compiled by the committee was never made public and the High Commissioner has not been informed of any criminal or disciplinary action taken against any of the police officers involved. In September 2007, the only five persons who were eventually indicted for the killing of police officers were all acquitted.

c) Arrest and detention to force compensation payments

The civil justice process before state courts is complicated, expensive and out of reach for the majority of the population in Southern Sudan and the Three Areas. Compensation claims are therefore sometimes handled by the police, who often abuse their powers of arrest and detention to force compensation payments on behalf of the injured party. While not condoning their conduct or detracting from their basic human rights obligations, police officers often justify this illegal practice as "protective custody" aimed at preventing the claimants from resorting to violent self-justice. This is important to take into account when planning human rights awareness-raising campaigns, which should also target local community leaders in addition to police.

In March 2008, for example, United Nations human rights officers found a 14-year old boy at Roro Police Station (Blue Nile State) who had already been detained for two weeks without judicial order. The acting police station commander explained that the boy had damaged another family's property and would remain in detention until his family had raised the money to pay compensation.

Another case that took place on 7 August 2007 in Rumbek concerned a man who accused his wife of adultery and tried to kill her. An SPLA soldier tried to intervene. In the struggle between the two men, the husband was shot dead when he refused to surrender. The wife went to the SSPS police station to protect herself against reprisals from her husband's family. The police detained her for seven days in an attempt to force her to pay compensation to her late husband's family.

United Nations human rights officers have also repeatedly witnessed that persons involved in traffic accidents, in which the other party was injured, were detained for several days in the police jail. The detention aims in these cases at forcing the detainee to agree to make a compensation payment to the injured party without any investigation being carried out into the responsibility for the accident.

Many arrests in Southern Sudan that are ostensibly linked to sexual morality appear also driven by a desire to force compensation. The 2003 New Sudan Penal Code criminalizes some forms of consensual sexual contact outside marriage. Men incur criminal responsibility for all forms of sexual intercourse outside marriage regardless of whether they are themselves married or not. Women only commit a crime if they

are married and engage in adultery.[45] In Southern Sudan, criminal proceedings against men are usually initiated by the husband or father of the woman, who want to receive compensation from a man who had intercourse with a woman for whom he never paid dowry. Initially, the police will be asked to detain the man to put pressure on him. If he still refuses to pay, he will usually be brought before a traditional court that will sentence him to imprisonment. A significant part of the prison population in Southern Sudan serves time for offences relating to sex outside marriage, because they could not afford to pay compensation.[46]

4. GROUPS FACING PARTICULAR RISKS OF ARBITRARY DETENTION

a) Women

Women are sometimes arbitrarily arrested and detained on the basis of charges that do not exist in the Penal Law. Married women, for example, are occasionally arrested at the request of their husbands for "marital disobedience." In other cases, justice and law enforcement officials (who are in the vast majority men), apply existing penal norms in a gender discriminatory manner.

Dowry-related arrests

Many arrests of women in Southern Sudan and the Three Areas relate to dowry, which is paid by the groom's family to the bride's family according to the customs and traditions of most ethnic groups. Families at times request the police to arrest and detain their own daughter, to prevent her from eloping with a male partner and thereby endangering the family's dowry expectation. UN human rights officers regularly see cases in which police have complied with such requests and unlawfully arrested the woman. Since unmarried women and girls do not commit a crime under the New Sudan Penal Code if they have sexual intercourse with a man, the police often resort to peculiar legal arguments to register such arrests. A woman may find herself charged, for example, with being an accomplice to her own abduction.

Women and girls sometimes also end up in detention if they refuse to enter or stay in an arranged marriage even though the dowry has already been agreed or exchanged between the families. Sometimes the women are detained by the police. More often than not, traditional courts sentence them to imprisonment. In both scenarios the detention is arbitrary and in violation of human rights, because it denies the victim her right to choose who to marry.[47]

In April 2008, for example, United Nations human rights officers found a 17-year old Kakwa girl in Yei Prison, who had been sentenced to one year of imprisonment by a traditional Boma Court in Yei for leaving her husband. She had completed three months of her sentence when United Nations human rights officers interviewed her in prison. She said that she had not been ready and willing to marry but that her family forced her to marry her husband to benefit from dowry. After a few months of

[45] A man commits "adultery" (art. 427) if the woman is married, "sexual intercourse with girls" (art. 316(A) if she is an unmarried adult and statutory rape (art. 317) if she is a minor younger than 18 years. Married women engaging in extra-marital sex commit the crime of "adultery" (art. 428).
[46] It is uncertain whether Chiefs Courts are authorized to impose prison sentences. The Interim Constitution of Southern Sudan recognizes the institution, status and role of traditional authority (art. 174) and assigns states the competence to determine the powers of traditional courts (art. 171).
[47] See Interim Constitution of Southern Sudan, art. 19; Universal Declaration, art. 16; ICCPR, art. 23.

marriage the girl left her husband and returned to her family. The family presented an accusation against her before the traditional court in order not to have to return the dowry.

In March 2008, United Nations human rights officers discovered a 16-year old Dinka girl in Bor prison, who had been convicted by a traditional court and sentenced to two months imprisonment, and a 200 Sudanese Pound (approximately US dollar 100) fine (payable by her brother). The police reportedly arrested her for running away from her husband of one month. She said that she had not wanted to marry the man but that he had paid her family ten cows for the marriage. She also said that he raped her and that she will try to divorce him as soon as she is released. When informed about the case, the President of the Jonglei Judiciary assured United Nations human rights officers that the release of the girl would be ordered as soon as the prison authorities would file an appeal on her behalf. During the course of a visit to Bor Prison on 21 May 2008, UN human rights officers learned that the girl had recently been released.

In response to a draft version of this report, MoLACD officials have pointed out that dowry related arrests are typically grounded in customary law and based on decisions of legitimate traditional authorities. Therefore, it was argued, they should not be characterized as arbitrary or illegal.

Customary law is recognized as a source of law by the Interim Constitution of Southern Sudan. [48] Traditional authorities also enjoy constitutional recognition and in practice often play a crucial role in resolving conflicts and ensuring community cohesion. At the same time, however, the Interim Constitution provides that traditional authority must function in accordance with the Constitution and that the courts must apply customary law subject to this Constitution.[49] Decisions under customary law must therefore be regarded as illegal if they violate provisions of the Interim Constitution of Southern Sudan, such as the right to marry a person of the opposite sex and the requirement that no marriage must be entered into without the free and full consent of both partners.[50]

Unequal application of adultery norms

The sharia-based 1991 Criminal Act, which is applied in Northern Sudan, criminalizes all forms of sexual contact outside marriage. The criminalization of consensual sex is very problematic from a human rights point of view, especially with regard to women since it deters victims of rape and other sexual violence from reporting their cases for fear of being themselves prosecuted. [51] In practice, adultery norms are often applied in a gender discriminatory way: Women are arrested and prosecuted for adultery; their male sexual partners are not.

One notable case (which attracted worldwide attention) concerned two married women, both in their early twenties, who were arrested and detained on charges of adultery by police in Gezira State in June 2006. In March 2007, a criminal court in Gezira State convicted them and sentenced them to death by stoning. The sentences

[48] See Interim Constitution of Southern Sudan, art. 5 (c) and 174 (1).
[49] See Interim Constitution of Southern Sudan, art. 174 (2) and (3).
[50] See Interim Constitution of Southern Sudan, art. 19.
[51] In its concluding observations of 26 July 2007 on Sudan's latest periodic report under the ICCPR (CCPR/C/SDN/CO/3/CRP.1) the Human Rights Committee has implicitly taken the view that practices such as committing "illicit sex" should not be criminalized.

caused widespread protests among Sudanese and international human rights groups and prompted an urgent action by United Nations Human Rights experts, in particular because the women did not have legal counsel during the judicial proceedings.[52] The men questioned in connection with the adultery charges were released without charge after having denied the accusation. The women's convictions were eventually overturned by the Gezira State Appeal Court. On 7 April 2007 the two women were reportedly released from prison, after having spent more than nine months in prison.

Arrests for indecent clothing

Cases of women arrested for wearing supposedly indecent clothing have been reported from Northern and Southern Sudan. It is very rare that men are subjected to arrest on such grounds. With regard to the legal enforcement of social norms on clothing, it is essential that any enforced standards are based on valid laws, that their scope is reasonably ascertainable by the public and that they do not – whether inherently, or in their practical application – discriminate on the basis of gender, social origin or ethno-cultural background. Moreover, the moral views of a genuine majority of the community and the right of individuals to express themselves through their choice of attire have to be carefully balanced against one another in establishing standards and appropriate penalties.

Arrests of women for indecent dressing continue to be reported from Northern Sudan. On 12 August 2008, for instance, police in Khartoum reportedly arrested an Eritrean woman and four Sudanese women (including two women from Southern Sudan) for wearing jeans or trousers. The five women were only released from police custody after influential relatives of two victims intervened. Before their release without charges, all victims had to sign a declaration that they would not wear clothing like this again and were warned that they could face unspecified police action if they failed to respect that pledge.

Article 152 of the Criminal Act 1991, which applies in Northern Sudan, prohibits "indecent or immoral dress, which causes annoyance to public feelings." Bearing in mind Sudan's cultural, ethnic and religious diversity, vague and undefined terms such as "indecent," "immoral" or "public feelings", provide no real guidance on whether a certain type of clothing can still be lawfully worn or not. It is not surprising that there are vast differences in their concrete interpretation by different authorities. Article 152 therefore violates the principle that no person must be charged with any act or omission which did not constitute an offence at the time of its commission (Art. 15 ICCPR, Art. 34 (4) Interim National Constitution), which implies that the actual scope of a criminal prohibition must be reasonably ascertainable. In addition, arrests under Article 152 must be considered as arbitrary on the ground that they form part of a pattern targeting almost exclusively women.

United Nations human rights officers have also received reports about arrests for indecent dress from Southern Sudan. On 22 October 2007, for instance, United Nations police advisors stationed in Malakal observed that SSPS officers had arrested three teenage girls wearing knee high skirts and jeans. A crowd of men, including some police officers, were taunting the girls. When asked about the reason for the arrest, SSPS officers explained that the girls were detained for the way they were

[52] See Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Yakin Erturk: Communications to and from Governments (A/HRC/7/6/Add.1), paras. 474-482.

dressed. United Nations human rights officers followed up on the matter and found that a whole group of teenagers had been arrested at a party and charged with "Public Nuisance" (Article 232 New Sudan Penal Code). On the same day, a customary court sentenced several of the teenagers (male and female) to lashing, although the law stipulates that the maximum penalty for "Public Nuisance" is a monetary fine. The corporal punishment was reportedly executed in a prompt manner in front of a large crowd. In June and July 2008, several cases of police arresting, fining or threatening young women and girls for wearing trousers or short skirts occurred in Yei County (Central Equatoria).

The legal basis of such arrests in Southern Sudan is not clear given that the New Sudan Penal Code does not contain a prohibition of "indecent or immoral dress" that would be equivalent to Article 152 of the Criminal Act 1991. Representatives of the Government of Southern Sudan highlighted that such arrests could be based on general orders issued by local authorities that reflect widely held moral views, which are different in Southern Sudan than in Western countries.

"Protective Custody"

Women are often also detained – by judicial order or at the police's own initiative – with the argument that they need to be protected from a threat posed by their families or husbands. While the "protective custody" argument is sometimes a mere pretext, there are many other cases in which the authorities are genuinely concerned about a woman's safety. The problem is rooted in the fact that there are virtually no shelters in Northern or Southern Sudan for women at risk of violence.

According to reports received, many police officers also still seem to consider men beating their wives to be a "family matter" rather than a crime and therefore end up detaining the victim of domestic violence instead of the perpetrator. The case of a 42-year old woman and her daughter, arrested on 12 February 2008 and detained at Akobo Police Station (Jonglei State), illustrates the observed problem. While the woman's husband was out of town, the couple's son had stolen money from someone. Upon his return, the husband directed his anger against his wife and daughter, accused them of having misled the boy, and threatened to kill them. The police reacted by placing the two women in protective custody, rather than arresting the husband.

In response to a draft version of this report, MoLACD highlighted that domestic violence cases are not considered as a family matter by the authorities if they are taken to the police and emphasized that police will take them up.

b) Children

The Convention on the Rights of the Child, which Sudan has signed and ratified, requires that arrest, detention or imprisonment of a child must be used only as a measure of last resort and then only for the shortest period of time. Juvenile detainees should also be segregated from adults and accorded treatment appropriate to their age (Art. 10(3), ICCPR). The Children Act of 2004 (a national law) specifies additional safeguards. Children are to be arrested only by a specialized Children Police and their parents or guardians have to be informed first. No child may be detained longer than seven days. Children awaiting trial are supposed to be kept in special remand homes.[53]

[53] Children Act, art. 52 & 53.

At the time this report was finalized, a New Sudan Children Act adopted by the Southern Sudan Legislative Assembly, which sets out very similar safeguards, was about to be signed into law by the President of Southern Sudan.

Some authorities have taken steps to create specialized institutions for children in contact with the law. In 2006, the police in Khartoum established a Gender and Child Unit. In addition, there are two reformatories in Khartoum (in Kober and Gereif Gharib), where children in contact with the law can be placed. The Kadugli Police (Southern Kordofan) recently set up a Family Protection Unit, which is also supposed to receive children in contact with the law. A cell especially for minor boys has been refitted at Kadugli Prison. The Southern Sudan Police Service has also begun to establish Gender and Children's Desks, which will be staffed with police officers who have received specialized training. The Judiciary of Western Bahr el Ghazal has appointed two judges to deal specifically with juvenile offenders. A judge for juvenile cases has also been appointed in Upper Nile State.

In most places, however, no specialized institutions exist and it is left to the regular police to deal with children in conflict with the law, although they lack the necessary training and infrastructure. Some police officers, for example, remain unaware of the basic human rights principle that children must not be detained together with adults. Officers who are aware of the principle grapple with the dilemma of separating adult and child detainees, in police stations which have only one cell.

Children below the age of criminal responsibility are frequently arrested and detained on criminal charges by the police.[54] In April 2008 alone, UN Police Officers found 33 children aged twelve years or younger detained in police jails across Southern Sudan and the Three Areas; seven children were no older than 8 years of age.

United Nations human rights officers have documented several cases in which the police took it upon themselves to punish children below the age of criminal responsibility. On 13 August 2007, for instance, United Nations human rights officers visiting Rumbek Police Station witnessed an investigator of the Criminal Investigation Department (CID) severely beating three children with a horse rider's stick. On 15 January 2008, the Police in Roseris (Blue Nile State) arrested an 8-year old who had fought with another boy. The boy's parents refused to pick him up when contacted by the police. Instead, they asked the police to detain the boy for a few days "to teach him a lesson." The police complied with the parent's request and held the boy in a separate cell for three days. In its recently published comprehensive report on juvenile justice in Southern Sudan, the Child Protection Unit of the United Nations Mission in Sudan reported another case, in which police subjected seven children arrested for theft to public humiliation. The police tied them together and forced them to march while singing "we are thieves."[55]

[54] According to art. 9 of the 1991 Criminal Act only children who have reached puberty can incur criminal responsibility. Reformatory measures can be imposed on children aged 7 years and older. The 2004 Children Act clarifies that juvenile offenders between the ages of 15-17 must not be imprisoned, but placed in reformatories.
The New Sudan Penal Act stipulates that children aged 10 years and younger can not incur criminal responsibility, children younger than 14 years only if they have attained sufficient maturity and understanding to judge the nature and consequences of their act. The Southern Sudan Child Act, once signed into law, would raise the minimum age of criminal responsibility to 12 years and introduce a rebuttable presumption that a child younger than 14 years is incapable of committing a crime.

[55] See UNMIS Child Protection, *Biannual Report on Juvenile Justice in Southern Sudan* (May 2008).

The Chief Justice of Southern Sudan has taken the positive step to issue a judicial circular ordering the courts to immediately acquit or set at liberty children below the age of criminal responsibility. In practice, however, even very young children often spend weeks in police detention before they are brought before a judge, because child detention cases are often not sufficiently prioritized.

c) Persons with psychosocial disabilities

The armed conflict has been a traumatic experience for the civilian population in Southern Sudan and the Three Areas, especially for children who were forced to become soldiers, women survivors of sexual violence and other victims of torture. Yet, there are no specialized psychiatric institutions for persons with psychosocial disabilities such as depression or schizophrenia. Persons with psychosocial disabilities, who are considered uncontrollable by their families or the authorities, therefore often end up in regular prisons. Sometimes the person is sent to prison by order of a judge or prosecutor. In other cases, the police make an ad hoc decision. International standards require that a person with psychosocial disabilities may only be confined on the basis of professional psychiatric risk assessment.[56] In Juba prosecutors and judges generally request a psychiatric assessment from the resident medical officer before ordering the confinement of persons with psychosocial disabilities. However, it appears that such good practices are not followed in many other places, not least because specialized medical personnel are not available.

Prisons are ill-equipped to address the special needs of persons with psychosocial disabilities. United Nations human rights officers have seen mentally ill persons, who were left chained up in the prison yard, because no adequate holding facilities were available. OHCHR is not aware of any specialized psychiatric care and treatment provided in prisons to persons with psychosocial disabilities. Senior state level officials in Southern Sudan have acknowledged that the current practices are deeply problematic but also pointed out that there were no adequate resources to establish specialized psychiatric institutions.

d) Refugees and asylum seekers

Since 2005, the authorities in Khartoum have been actively arresting undocumented immigrants and expelling them to their countries of origin. Agents from the Alien Section of the Ministry of Interior, joined by police, regularly conduct operations in areas of Khartoum with a high concentration of immigrants, during which suspected undocumented immigrants are rounded up and arrested. Among those arrested are often refugees and asylum seekers. They are detained under the Passport and Immigration Act on charges of "Illegal Entry," often even if they have papers identifying them as refugees or asylum seekers.[57] According to reports received,

[56] See *United Nations Principles for the protection of persons with mental illness and the improvement of mental health care*, adopted by General Assembly resolution 46/119 of 17 December 1991).

[57] Since February 1974, Sudan has been party to the 1951 Convention and its 1967 Protocol relating to the Status of Refugees and since November 1978 to the 1969 OAU Convention governing the specific aspects of refugee problems in Africa. According to Article 31 of the 1951 Convention, state parties must not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Sudanese courts ordinarily acquit refugees and asylum seekers who manage to get timely legal representation of the charges, which is very positive.

There have been several reports that the NISS has arrested and detained former political opposition members from other countries who have sought or been granted refugee status in Sudan. Such persons have been arrested in individually targeted operations and were later forcibly returned to their country of origin. In early July 2007, for instance, the NISS arrested a number of Ethiopian refugees in Khartoum and Damazin and detained them in NISS facilities in Khartoum. The United Nations High Commissioner for Refugees reported that on 27 September 2007, 15 of these refugees were handed over by Sudanese officials to Ethiopian authorities at the border crossing of Metema (500 km south-east of Khartoum).[58] This constituted a breach of Sudan's obligation under the 1951 Refugee Convention, its 1967 Protocol and the 1969 OAU Refugee Convention, which prohibit the forced return of refugees to their country of origin where they could face persecution (*refoulement*).

In a letter to OHCHR dated 7 April 2008, the Government's Advisory Council on Human Rights (ACHR) stated that large numbers of refugees had left their designated refugee camps without the necessary written permission required by Sudanese law. According to ACHR this led to a "disturbing increase of foreign presence in Khartoum," obliging the police "to conduct occasional campaigns to organize the foreign presence." ACHR stated that documented refugees arrested in these operations were released, while those without papers were detained for a few days before being released on bail and allowed to defend themselves in court. ACHR further claimed that there were no refugees or asylum seekers in any detention centres.

5. Structural Challenges underlying Arbitrary Arrest and Detention

a) Absence of Judicial Oversight and Legal Assistance

Judges and prosecutors are supposed to prevent or put an end to instances of arbitrary detention by reviewing all cases of arrest and detention. In practice, there are serious gaps in the oversight exercised by the justice system.

Absence of Judges and Prosecutors

The legacy of the armed conflict and the underdevelopment of Southern Sudan and war-affected parts of the Three Areas, which is linked to the conflict, pose daunting challenges for authorities, who have to transform the rudimentary governance structures of the armed conflict period into fully functional state institutions, including by building a justice apparatus staffed with adequately trained professionals.

In large parts of Southern Sudan, judicial oversight of the detention process breaks down, because there are simply not enough judges and prosecutors to cover the entire area. The Ministry of Legal Affairs and Constitutional Development (MoLACD) has made some progress in deploying more legal counsellors, who represent the State as prosecutors and in other legal functions.

At the same time, the Judiciary of Southern Sudan (JoSS) has found it more difficult to find enough adequately trained candidates who are acquainted with Southern

[58] See *UNHCR condemns Sudan's recent deportation of Ethiopian refugees*, Press Release issued 11 October 2007, available from: http://www.unhcr.org/news/NEWS/470e4b092.html

Sudanese law, speak relevant languages and agree to serve as judges in remote rural areas. In addition, appointed judges are often absent from their duty stations for training, medical treatment or unspecified purposes, which aggravates the judicial coverage problem. Lack of office facilities, vehicles and other necessary equipment make it difficult for judges and prosecutors to carry out their functions. United Nations human rights officers have assisted judges on a number of occasions with transport so that they can reach outlying towns and villages.

Some exemplary figures may illustrate the gaps in judicial coverage. At the time this report was finalized, there were 19 judges in Central Equatoria, 11 of whom were based in the Southern Sudan capital of Juba. At the same time, only 4 out of 10 counties in Western Equatoria had a county court judge. Only one of these judges was graded as a first class county court judge with the competence to deal with more serious criminal cases. Eastern Equatoria, which covers an area of 82542 km² (more than twice the size of Switzerland), had only a total of five judges. The President of Judiciary in Jonglei State told United Nations human rights officers that the personnel at his disposal is only able to cover 4 out of the State's 11 counties. The population of rural counties of Western Bahr el Ghazal, Northern Bahr el Ghazal and Warrap State also lacks access to the justice system, since judges are only deployed in the main towns of Wau, Kuajok, Tonj and Aweil.

Coverage and capacity problems are not limited to Southern Sudan, but extend to the Three Areas. The SPLM administered areas of Southern Kordofan had no prosecutors and only one High Court Judge at the time this report was finalized. In Blue Nile State, no judges or prosecutors were permanently stationed in four out of six localities, even though these rural localities become more or less inaccessible during the long rainy season. It is positive that the justice authorities of Blue Nile State were pursuing plans to expand coverage: five prosecutors were reportedly awaiting their deployment to outlying localities at the time this report was finalized.

In the absence of the state justice system, traditional courts are often the only institution to dispense criminal justice. Chiefs and Omdas are often very effective in resolving the local conflicts and petty crimes that make up the bulk of cases for which people end up in detention. However, as mentioned above, traditional courts can also be themselves responsible for arbitrary detention, if the constitutionality of their work is not closely monitored by state courts.

The judiciary in Lakes State has piloted an interesting hybrid model combining state and traditional justice. Eight Special Courts, composed of state judges and chiefs, have been created to review the cases of persons arrested in connection with cattle rustling and other violent conflicts between communities. In several places the work of Special Courts has resulted in a significant reduction of the number of detainees in prolonged pre-trial detention.

Lack of Proactive Approach to Oversight

A proactive approach, where judges and prosecutors visit places of detention and review individual cases on the spot, is probably the most effective way to reduce arbitrary arrest and detention in Sudan. Regular inspection visits to police station conducted by the prosecutors in Juba and Yei appear to have led to the release of numerous arbitrarily arrested persons and resulted in a sharp decline of the average duration of police custody. In March 2008, United Nations human rights officers also

had the chance to accompany the President of the High Court in Equatoria on a visit to Yambio Prison. When the judge found two persons apparently detained without warrant and others in prolonged pre-trial detention, he immediately ordered the local authorities to clarify the status of these cases or release the detainees.

The High Commissioner for Human Rights recognizes that on-site visits by judges or prosecutors will often not be possible given the size of the country and the limited coverage of the justice sector at this point. At the same time, it appears that justice authorities often do far less of what is possible. Many judges and prosecutors sign detention orders requested by the police without demanding to personally see the detainee in question even if the detainee is held in the same town. This practice violates international law, which requires the detainee to be promptly brought before a judge, as well as Sudanese Law. The Prosecutor General of Sudan recently issued a circular, clarifying that the Prosecutor must personally visit places of detention on a daily basis.[59] The New Sudan Criminal Procedure Code requires the police to "forward" the detained suspect together with the case diary to the nearest Magistrate within 24 hours.[60]

The failure of many judges and prosecutors to see detainees in person means that the majority of detainees have no chance to challenge their detention, because most are illiterate and cannot afford a lawyer to write an appeal on their behalf. Legal aid is generally unavailable during the pre-trial stage. In Northern Sudan legal aid is made available for the trial itself and then only in serious cases. A Legal Aid Directorate has been established in Southern Sudan, which is planning to launch its legal aid programme soon. At the time this report was finalized, however, even persons facing the death penalty were often not assigned a public defender in Southern Sudan. In practice, dedicated officials of the Southern Sudan Prison Service often help detainees to file an appeal against their detention. Paralegal programmes, set up with the support of donors such as the United Nations Development Programme, as well as interventions by United Nations human rights officers have also helped detainees.

A case from Western Equatoria State illustrates how a passive judicial approach, coupled with the absence of legal aid, leads to arbitrary detention. A husband severely beat his wife and her lover when he caught them in the act of adultery. The lover died of his injuries the same night. The police charged not only the husband with murder but also his wife, based on the consideration that "if she had not engaged in adultery with that man, he would still be alive." In addition, the woman was charged with adultery. The case diary was sent to the county court judge, who signed a paper remanding the women to be detained as a murder suspect. The woman never saw the judge and had no chance to explain the circumstances of her case. In February 2008, after the woman had already spent seven months in remand detention, the case finally came to trial before the High Court. The High Court judge immediately dismissed the murder charges against the woman as manifestly unfounded, transferred her adultery case to the county court and released her on bail.

United Nations human rights officers' monitoring work in Southern Sudan and the Three Areas indicates that prolonged remand detentions is also common. Prolonged

[59] Circular issued on 25 February 2008.

[60] See New Sudan Code of Criminal Procedure, art. 120. According to the Southern Sudan Ministry of Legal Affairs and Constitutional Development, the new Southern Sudan Code of Criminal Procedure, which was not yet signed into law when this report was finalized, will give a greater role to prosecutors in the oversight process.

pre-trial detention violates the human right to be tried without undue delay (art. 14 ICCPR) and also amounts to arbitrary detention. Persons detained on remand often have to wait months or sometimes years in prison until their case finally comes to trial. Judges often routinely renew remand detention without considering bail or exercising pressure on the investigating authorities to speed up the process. One case monitored by United Nations human rights officers, for instance, concerns a man who had already spent 17 months in remand detention in Juba at the time this report was finalized. His case has been rescheduled five times, because the victim's relatives prefer the case to be handled by the traditional justice system and have therefore refused to appear in court. The judge has failed to order the prosecution to either proceed without the relatives' presence or drop the charges. Meanwhile, the detainee developed serious health problem in prison. He lost the use of both legs due to an undiagnosed disease and has skin rashes covering his entire body.

b) Executive Interference in the Administration of Justice

The effectiveness of judicial control is further undermined by political interference in the administration of justice. Executive interference is particularly problematic, because it often results in prolonged arbitrary detention. Detainees who were sent to prison by civilian officials or military commanders without knowledge of judges or prosecutors are invisible to the justice system (especially since a number of prisons fail to maintain an accurate detainee register) and they may languish in jail for an indefinite amount of time.

In a considerable number of cases, senior civilian officials and military commanders in Southern Sudan send suspects to prison or into police custody without the judiciary's knowledge or approval. The Southern Sudan Human Rights Commission (SSHRC) established during the course of its visits to prisons and detention centres that most arrests had been ordered by the Governor using the SPLA without involving the police and that most prisoners had been arrested, remanded or transferred without proper investigations or warrants of arrest.[61]

United Nations human rights officers have documented a number of arbitrary arrests based on political interference. On 3 December 2007, for instance, the then Governor of Warrap State had eleven wildlife guards arrested. The men were detained without charges for months at Tonj Prison without ever being brought before judge. The Southern Sudan MoLACD highlighted that the Governor in question has since been removed from his post to illustrate the commitment of the Government of Southern Sudan to tackle issues of political interference.

United Nations human rights officers have also learned that the Commissioner of Nassir County (Upper Nile State) effectively forced the county court judge assigned to the area to leave his office and has since taken over judicial functions. In addition, the Nassir County Commissioner provided traditional courts with forms allowing them to send persons to state prisons without prior approval of the state judge. The conduct of the Nassir County Commissioner, which is exceptional and not representative of the conduct of other officials, constitutes a serious breach of the Interim Constitution of Southern Sudan, which proscribes that judicial power must be exercised by courts (article 126 (1) ICSS) and that the Judiciary of Southern Sudan

[61] Southern Sudan Human Rights Commission, *First Annual Report* (July 2006-December 2007), p. 21

must be independent from the executive and the legislature (article 128 (1) ICSS). United Nations human rights officers were informed that the Upper Nile State Court of Appeal and the Governor of Upper Nile State intend to take up the matter with the County Commissioner in the near future, which would be a very positive step.

Even where a judge becomes aware of an arrest ordered by a senior civilian or military official, he may lack the necessary political clout to challenge that decision. In December 2007, for instance, the Commissioner of South Tonj ordered the arrest and detention of four chiefs, who had allegedly operated illegal courts and extorted fines from the civilian population. Even though the county court judge tried to intervene in the case, the four men remained in detention, without formal charge or a date for a court hearing. They were only released in June 2008 when the Commissioner dismissed allegations against the four chiefs and ordered their release.

Sudanese lawyers as well as international experts have also expressed concern over executive interference in the adjudication of high profile criminal cases in Northern Sudan, in particular through the creation of special courts. In her latest report to the United Nations Human Rights Council, for example, the Special Rapporteur on the Situation of Human Rights in Sudan expressed concern about the work of the Courts, which were set up under the Anti-Terrorism Act after the armed attack on Omdurman of 10 May 2008 and sentenced a total of 50 defendants to death in July and August 2008. The Special Rapporteur noted that they operate in accordance with procedural norms, set out by the Chief Justice in consultation with the Minister of Justice, which override parliamentary laws and the protection they offer from unfair trial.[62]

In a note verbale to OHCHR dated 20 August 2008, the Government has stated that consultations between the Minister of Justice and the Chief Justice concerned only the establishment of the Courts but not their procedures, which, the Government claims, follow the 1991 Criminal Procedure Act. The Government also insisted to characterize the Courts trying the Omdurman defendants as "specialized" rather than "special" courts.

The High Commissioner for Human Rights fundamentally disagrees with the idea that special courts with special procedures can be more suitable to address terrorist crimes than ordinary criminal courts and reemphasizes that the use of exceptional courts to try civilians has impacted upon the effectiveness of regular court systems and often has seriously prejudicial impacts on due process and non-discrimination rights.[63]

c) Impunity of perpetrators

Although unlawful detention of a person constitutes a crime under Sudanese law,[64] its perpetrators enjoy impunity in practice. State agents implicated in arbitrary arrest and

[62] *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan, Ms. Sima Samar*, U.N. Doc. A/HRC/9/13 (2008), para. 29. Cf. also *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir: Mission to Sudan* (E/CN.4/2005/7/Add. 2), paras. 51-56 (on the use of special courts in the Darfur Region).

[63] *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism* U.N. Doc. A/HRC/8/13 (2008), paras. 40-42.

[64] 1991 Criminal Act, Art. 165 ("Unlawful Detention"). 2003 New Sudan Penal Code, art. 139 ("Commitment for trial or confinement by person having authority").

detention cases are rarely prosecuted. With one exception,[65] none of the arbitrary detention cases documented by United Nations human rights officers in Southern Sudan, the Three Areas or Khartoum appear to have resulted in criminal or disciplinary action against individual perpetrators.

Laws and unwritten practices often shield national security agents, police and soldiers from being prosecuted. Article 33 of the National Security Forces Act of 1999 grants immunity to members of the security forces against ordinary civil or criminal proceedings for any act connected with official duties. Criminal cases may be prosecuted only with the approval of the Director-General of National Security.[66]

The 2008 Police Forces Act protects police officers from prosecution for offences committed during or because of executing their official duties, unless the Minister of Interior or his delegate waives immunity. [67] It is positive that the Director General of Police has issued an order intended to speed up the process of waiving immunity for National Police Officers. The decree establishes guidelines to be followed by Police when a request for immunity waiver has been received from the Minister of Justice. [68]

With regard to members of the Sudanese Armed Forces, Article 34 of the 2007 Armed Forces Act provides that officers and soldiers enjoy immunity for crimes committed in the discharge of their duties, unless the immunity is waived by the President of the Republic or his delegate. The SPLA Act does not contain a similar immunity provision. Nevertheless, in practice, there is an understanding that a court will not summon or arrest an SPLA soldier without going through the soldier's Commander who is expected to deliver the soldier to the justice authorities. In January 2008, for instance, Roseris Magistrate's Court summoned an SPLA Officer to appear before the court and threatened to arrest him for failing to comply with a bail undertaking that he had given in his private capacity. Several armed SPLA soldiers of the JIU in Ed Damazin stormed the court and freed the Officer. The SPLA and the civilian authorities eventually brokered a settlement and the SPLA Officer returned to court and apologized to the Magistrate. The problem apparently arose, because the judge was initially unaware that the man was an SPLA Officer and had therefore not asked the officer's commander to approve the arrest and deliver the Officer to court.

d) Fledgling Human Rights Monitoring Institutions

Decades of armed conflict have upset the checks and balances between government and civil society; military and civilian authority; security forces and the judiciary. The patterns of widespread arbitrary arrest and detention highlighted in this report appear to be in many ways a result of these power imbalances. Ensuring that these issues are subject to public scrutiny and discussion could be a positive step in finding long term solutions.

---

[65] In November 2007, officers of the SPLM police, unlawfully arrested two men on suspicions of spying and transferred them to the SPLM police station in Kurchi (Southern Kordofan), where they were severely beaten for about three hours. The men were held overnight in police custody until the authorities verified their identities and freed them with an apology. United Nations human rights officers were later informed by the SPLM Police commander that the officers responsible for this incident were jailed for one month, given lashes and assigned heavy duties.
[66] See National Security Act 1999, Art. 33.
[67] Police Forces Act 2008, art. 45.
[68] Order of the Director General of the Police No. 57/2007, 31 July 2007.

Much remains to be done in terms of developing and strengthening Sudan's fledgling human rights monitoring institutions. An independent National Human Rights Commission has still not been set up, even though both the CPA and the Interim National Constitution call for its establishment. Draft legislation to establish the Commission is still pending more than three years after the CPA entered into force.

Some institutional progress has been made in Southern Sudan. The GoSS has created the position of a Presidential Advisor on Gender and Human Rights and the office is operational although with scarce resources. The Southern Sudan Human Rights Commission has also been established and is beginning to take up its work, although an enabling law to provide the Commission with a clear mandate and powers still remains to be passed. The Commission has already demonstrated its potential by successfully intervening in a case of arbitrary arrest and detention of civilians by the military. On 5 January 2008, SPLA soldiers arrested several men in a village near Torit (Eastern Equatoria), who they suspected of purchasing arms for subversive purposes. Three of the men were eventually detained at the SPLA barracks in Kumodonge. The Southern Sudan Human Rights Commission took up their cases. The suspects were transferred from SPLA custody to the Torit Police Station and finally released on 12 February 2008.

While it is important that the Southern Sudan Human Rights Commission expands its presence and work to the state level, it is encouraging that some state legislatures in Southern Sudan and the Three Areas have already begun to monitor the human rights record of the executive branch of government. The Central Equatoria Legislative Assembly, for instance, took the praiseworthy step of establishing an ad hoc Committee to investigate reports of alleged disappearances and unofficial places of detention in Juba. The report of the ad hoc Committee presented a wealth of information on the issue as well as a set of concrete recommendations. In mid-October 2007, the plenum of the Legislative Assembly approved the report of the ad hoc Committee and requested the Central Equatoria's Minister of Law Enforcement and Local Government to come to the Legislative Assembly and report on the measures the government is taking to address the concerns raised in the report.

Although there is an increasing number of courageous individuals and local organizations defending human rights, civil society overall still has to cope with scarce resources and limited political space. In Northern Sudan, journalists continue to face restrictions on the freedom of the press and other media. The censorship of newspapers, a measure that is not foreseen in Sudanese statutory law and violates the Interim National Constitution, has been repeatedly used to prevent reporting on cases of arbitrary arrest and detention. This occurred, for instance, in relation to press coverage of the JEM attack on the national capital on 10 May 2008 and the subsequent mass arrests of civilians of Darfurian origin. It is particularly worrying that in early February 2008, the NISS reinstated a practice of systematically and directly censoring Sudanese newspapers.

CONCLUSION

Arbitrary arrest and detention constitutes a serious human rights problem in Sudan. The National Security and Intelligence Services (NISS) systematically use arbitrary arrest and detention against political dissidents in Northern Sudan. NISS detention is typically accompanied by allegations of serious human rights violations, such as

incommunicado detention, ill-treatment, torture or detention in unofficial places of detention. The military (both SPLA and SAF) often usurp civilian police functions, arbitrarily arresting and detaining civilians in the process. The civilian police itself also make excessive use of its powers of arrest, including in some cases by unlawfully arresting family members of criminal suspects.

Children, women and persons with psychosocial disabilities often end up in arbitrary detention since there are hardly any specialized institutions to accommodate their protection needs. Refugees and asylum seekers in Khartoum risk arrest and detention on charges of illegal entry into Sudan.

Several structural challenges contribute to the gravity of the situation. Effective oversight of the detention process does not exist in large parts of Southern Sudan due to a lack of judges, prosecutors and legal assistance. Appointed judges are often absent from their duty stations or fail to fulfil their oversight functions with the necessary rigor and proactive attitude. In Northern Sudan the prosecutorial oversight mechanisms envisaged by law are often not implemented, in particular with regard to arrests carried out by the NISS and the military. Impunity is a serious concern: even the most blatantly unlawful arrests do not appear to result in criminal or disciplinary action against the officials involved.

The problems identified in this report are serious, but not intractable even bearing in mind that Sudan emerges from decades of conflict and resources are limited. Positive examples of individual judges, prosecutors, police officers, parliamentarians and civil society activists, who have taken effective action against arbitrary arrest and detention, show that public officials who are committed to upholding the Law and Constitution can make a difference.

Both institutional reform and addressing individual behaviour will be fundamental in improving current practices related to arbitrary arrest and detention in Sudan. The Comprehensive Peace Agreement, the Interim National Constitution and the Interim Constitution of Southern Sudan offer a comprehensive blue print for institutional reform. The powers of the NISS should be in line with the Interim National Constitution and the Comprehensive Peace Agreement, both of which explicitly state that the National Security Service's mandate "shall be advisory and focused on information gathering and analysis." The functions of the military and the civilian police must be demarcated, with only the latter assuming law and order functions. Judges and prosecutors have to be provided with the resources and independence to effectively oversee the conduct of the executive branch of government. Strong human rights monitoring mechanisms, including independent human rights commissions at the national level and in Southern Sudan, parliamentary human rights committees and civil society-based human rights organisations, need be set up or strengthened to expose the most egregious violations to public scrutiny.

F. RECOMMENDATIONS

1. Recommendations that can be immediately implemented

No.	Responsible Actor	Recommendation	Implementation Indicator
1.1	NISS	• While the National Security and Intelligence Services (NISS) maintain powers of arrest and detention, the Director-General of NISS should publish and implement instructions that detainees may not be tortured, ill-treated or subjected to threats, and that violations will lead to disciplinary proceedings and the waiving of criminal immunity. • The NISS should allow detainees to contact their families and legal counsel immediately after they are detained. Families and lawyers should be allowed to have private meetings with detainees.	• Instructions published • Decrease in number of reported violations
1.2	Judiciary of Sudan, Constitutional Court	• While the NISS maintain powers of arrest and detention, the courts should accept *habeas corpus* cases brought by or on behalf of NISS detainees and review NISS detention cases on their merits. • The Constitutional Court, when petitioned by or on behalf of NISS detainees, should review the constitutionality of the National Security Forces Act, taking into account Sudan's international obligations.	• Increase in number of NISS detention cases reviewed on merits • Constitutional Court reviews constitutionality of National Security Forces Act.
1.3	Judiciary of Sudan, Judiciary of Southern Sudan, Constitutional Court	• Judges should consider confessions and witness statements made by a person held in incommunicado detention to be inadmissible evidence that was obtained through an unconstitutional procedure. In the interests of justice, they	• Decrease in number of convictions based on evidence obtained under torture

		should refuse to base convictions on such evidence	
1.4	Judiciary of Sudan, Judiciary of Southern Sudan	• Judges should prioritize the review of cases involving children in detention. • In sentencing juvenile offenders, courts should impose custodial sentences (including in reformatoried and other closed institutions) only as a last resort. In doing so, judges must be satisfied that children in detention will be held separately from adults.	• Decrease in number of children in detention
1.5	Judiciary of Sudan, Judiciary of Southern Sudan, Attorney General of Sudan, Southern Sudan MoLACD	• Judges and prosecutors should always see detainees in person before extending a request to prolong the detention. • Prosecutors and judges should proactively inspect places of detention, including police stations in remote areas, military installations, NISS facilities and jails operated by traditional authorities.	• Increase in number of detainees who had personal contact with judge or prosecutor • Increase in number and types of detention facilities regularly inspected by prosecutors and judges
1.6	Judiciary of Sudan, Judiciary of Southern Sudan	• Judges should routinely review decisions of traditional courts and order the immediate release of women and men who were detained in violation of the constitutional Bill of Rights or other Sudanese laws.	• Decrease in number of persons in detention based on unconstitutional traditional court decisions
1.7	GoNU, GoSS	• Traditional authorities should be instructed that they may not operate their own detention facilities, that they can incur criminal responsibility for doing so and that offenders will be prosecuted.	• No detention facilities operated by traditional authorities.
1.8	UNMIS Force Commander, UNMIS Sector Commanders, SAF, SPLA	• The Area Joint Military Committees should take up any human rights violation committed by military forces of either party, including acts of arbitrary arrest and detention. Cases that cannot be resolved in the AJMC framework should be referred to the Ceasefire Joint Military	• Increase in number of human rights cases resolved through AJMC and CJMC

		Committee	
1.9	Ministry of Interior Alien Section, NISS, Sudan Commissioner for Refugees	• Refugees and asylum-seekers should not be arrested on charges of illegal entry. • Refugees and asylum seekers must not be returned to the country from which they have fled (*non-refoulement*). • UNHCR should be consistently informed about any arrests of persons of concern to UNHCR's mandate and given immediate access to all detained refugees; in particular those detained at NISS and Alien Section facilities. • The Sudanese Commissioner for Refugees (COR), the government institution responsible for refugee and asylum issues, should issue identification cards to all refugees and asylum-seekers present in Sudan.	• Decrease in number of refugees and other persons of concern to UNHCR arrested and detained for illegal presence in Sudan • UNHCR informed about all arrests of persons of concern to its mandate • Identification cards issued by COR to all refugees and asylum seekers
1.10	GoNU, GoSS, civil society organisations, UNMIS	• All allegations of serious human rights violations should be investigated independently, impartially and promptly. The findings of such investigations should be made public and criminal investigations initiated against identified perpetrators. • Internal accountability and discipline mechanisms foreseen in the organic laws of the police, military and NISS should be applied in an effective and transparent manner.	• Increase in number of perpetrators of serious human rights violations subjected to criminal or disciplinary sanctions
1.11	GoNU & GoSS Ministry of Interior, GoNU & GoSS Ministry of Justice NISS, SAF, SPLA, SSPS, Sudan National Police,	• UNMIS should be given free and unrestricted access to all places of detention (including all military, CID and, while they still exist, NISS detention facilities). • The competent authorities should inform all duty stations and UNMIS in writing that UNMIS may carry out unannounced visits and that they may interview individual detainees in private and without the presence of guards or other officials.	• Provision of written notification that UNMIS HR has unfettered access to all places of detention • Decrease in number of denials of access to places of detentions or individual detainees
1.12	Sudan National Police,	• Police commanders should issue and enforce instructions that	• Decrease in arbitrary police

	SSPS	prohibit arresting people solely for their family ties with a suspect, placing people in protective custody against their will or otherwise arresting people for conduct that is not a crime.	arrests

2. <u>Recommendations for implementation within six months</u>

No.	Responsible Actor	Recommendation	Implementation Indicator
2.1	NISS	• While the NISS maintain powers of arrest and detention, the NISS should maintain an up-to-date list of all places of detention used by the agency, which should be available for inspection by international monitors (e.g. United Nations Human Rights Officers) and national monitors (e.g. the national legislature's Human Rights Committee, and once established, the Human Rights Commission). • The NISS should also maintain an up-to-date list of detainees held by it and make it available for inspection by international and national monitors	• Lists maintained and regularly inspected
2.2	Attorney-General of Sudan	• The Prosecutor-General of Sudan should specifically instruct prosecutors to regularly visit and inspect official NISS detention facilities. • While the NISS maintain powers of arrest and detention, NISS agents that detain suspects at other places than official and declared facilities should be prosecuted for unlawful detention.	• Regular visits conducted • Reports on detention in unofficial detention facilities duly investigated and perpetrators prosecuted.
2.3	National Minister of Defence, Southern Sudan Minister for SPLA Affairs, SPLA, SAF	• The National Minister of Defence and the Minister for SPLA Affairs should issue and publish clear instructions to all commanders and units that they are not to detain any person who is not a member of the military, that arrested civilians must be immediately handed over to the civilian authorities and	• Instructions published • Decrease in reported military arrests of civilians • Decrease of military interference in police tasks

		that any violation of these orders will be sanctioned. • Current practices of military involvement in law enforcement, e.g. participation in night patrols in towns, should be reviewed and continued only with the agreement of the competent civilian authority.	without agreement of civilian authority
2.4	United Nations Police advisors in Sudan (UNPOL), Sudan National Police, SSPS, CID	• All police forces should fully cooperate with the UNPOL training and co-location programme. • UNPOL should ensure that specialized branches such as the Criminal Investigation Department (CID) are included in the training and co-location programme.	• Decrease in number of police units not participating in UNPOL training programme • CID fully included in training and co-location programme of UNPOL
2.5	UNMIS, UNPOL, UN Agencies, NGOs	• UNMIS, specialized United Nations Agencies, non-governmental organizations, and UNPOL should launch civic education programmes for traditional leaders and communities, explaining the functions of the police and the justice system in a human rights based society.	• Number of communities and leaders reached
2.6	Director-General NISS, the Minister of Interior and the Southern Sudan Inspector General of Police	• Until legal immunity provisions are abolished, the Director-General of the NISS, the Minister of Interior and the Southern Sudan Inspector General of Police should issue blanket waivers of immunity, allowing the immediate prosecution of perpetrators of serious human rights violations such as torture or ill-treatment of detainees.	• Waivers issued • Increase in number of successful prosecutions for serious human rights violations
2.7	State Legislative Assemblies	• State Legislative Assemblies should consider setting up standing Human Rights Committees to the extent that they have not already done so. They should also initiate parliamentary inquiries into reported human rights violations, publish their findings and hold executive authorities politically accountable for human rights violations.	• Increase in parliamentary human rights committees • Increase in parliamentary inquiries into human rights violations that result in public reports and political

			accountability measures
2.8	Southern Sudan Human Rights Commission	• The Southern Sudan Human Rights Commission should expand its work and presence to the state level	• Permanent SSHRC presence in all Southern Sudan states
2.9	GoNU, UNMIS, donors	• A Human Rights Forum, bringing together representatives of the Government, the United Nations and donors should be created. The Forum should discuss issues of concern and areas of progress in Sudan on a monthly basis.	• Human Rights Forum established and convening on a monthly basis.

3. Recommendations that can implemented by July 2009 (within CPA Interim Period)

No.	Responsible Actor	Recommendation	Implementation Indicator
3.1	National Assembly	• A National Security Agency Act, based on the parameters set out in the CPA and the Interim National Constitution, should be enacted without further delay. The CPA requires that the mandate of the national security forces "shall be advisory and focused on information gathering and analysis," which implies that the national security forces should be prohibited from taking enforcement action such as arrest and detention.	• National Security Agency Act that complies with CPA and Interim National Constitution enacted within interim period
3.2	GoNU, National Assembly	• An independent National Human Rights Commission should be established without further delay. The mandate, structure and powers of the Commission should be based on the CPA, the Interim National Constitution and the Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights.	• Independent National Human Rights Commission established, functioning and provided with adequate resources • Independent mandate guaranteed by law
3.3	National Assembly,	• The Evidence Act of 1993 should be amended such that any evidence (confession or witness testimony) obtained	• Amendment of relevant legislation entered into force

		from detainees under torture or in a situation of *incommunicado* detention should be automatically considered legally inadmissible. Judges should also be legally obliged to investigate all allegations of torture of defendants and witnesses • Detainees who claim to be tortured should be awarded the legal right to undergo an immediate forensic medical examination by an independent medical professional of their choice.	• Increase in number of detainees given the opportunity to have forensic medical examination by person of choice following allegations of torture
3.4	National Assembly, Southern Sudan Legislative Assembly	• Legal immunity provisions for police, national security agents and soldiers should be abolished.	• Legal amendments abolishing immunity provisions entered into force
3.5	National Assembly, Southern Sudan Legislative Assembly	• The National Human Rights Commission and Southern Sudan Human Rights Commission should by law be given the mandate (1) to carry out unannounced monitoring visits to all places of detention, including police stations, military and national security detention facilities, (2) to conduct interviews with individual detainees without the presence of officials, and (3) to publicly report on the findings of monitoring visits.	• Laws establishing the National and Southern Human Rights Commissions and providing them with a detention monitoring, investigation and reporting mandate entered into force
3.6	SPLA, Police, SSPS	• SPLA Civilian Security, SPLM Police and other law and order structures not foreseen under the CPA or the Constitution should be integrated into the civilian police force without further delay.	• No law and order institutions exist other than those foreseen under the CPA or the Constitution
3.8	National Minister of Finance, GoSS Minister of Finance	• The Government should earmark a fixed portion of fines collected by the justice system to provide for the basic needs of police detainees.	• Funds earmarked in budget and dispensed to police stations
3.9	GoNU, GoSS, Donors	• The authorities, with the assistance of the donor	• Number of specialized

		community, should set up psychiatric wards for persons with psychosocial disabilities and shelters for women at risk of violence.	institutions established
3.10	National Police Force, SSPS	• Cases involving women or children as suspects or victims should be exclusively handled by specially trained police officers that should be appointed in each police district. • The police in Northern and Southern Sudan should institute measures and programmes to increase the percentage of women in the police.	• Specialized officers appointed in each police district • Increase in percentage of female police officers • More cases involving women and children dealt with by specialized police officers
3.11	Southern Sudan MoLACD	• The MoLACD should create legal aid centres in each state of Southern Sudan. At least two legal senior counsellors should be assigned to each centre to serve as a public defender in serious cases. • Paralegal staff should be recruited by these Centres and deployed in prisons and police stations to aid detainees claim their rights.	• Legal aid centre created in each state • Paralegals deployed in police stations and prisons