



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights

#### Concluding observations on the second periodic report of the Sudan\*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of the Sudan on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/SDN/2) at its 66th and 67th meetings (see E/C.12/2015/SR.66 and 67), held on 1 and 2 October 2015, and adopted the following concluding observations, at its 78th meeting, held on 9 October 2015.

##### A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party and the written replies to the list of issues (E/C.12/SDN/Q/2/Add.1). The Committee also appreciates the opportunity to engage with the State party's high-level delegation.

##### B. Positive aspects

3. The Committee welcomes the ratification by the State party of the following international human rights instruments since the last review in 2000:

- (a) The Convention on the Rights of Persons with Disabilities, in 2009;
- (b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, in 2004 and 2005, respectively;
- (c) The International Labour Organization (ILO) Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182), in 2003;
- (d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2014.

4. The Committee also welcomes the following legislative, institutional and policy measures to promote economic, social and cultural rights:

- (a) The adoption of the Anti-Trafficking Act, in 2014;

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\* Adopted by the Committee at its fifty-sixth session (21 September-9 October 2015).



- (b) The adoption of the Disabilities Act, in 2009;
- (c) The establishment of the National Human Rights Commission.

## **C. Principal subjects of concern and recommendations**

### **Domestic application of the Covenant**

5. The Committee is concerned that: (a) the lack of explicit recognition of several Covenant rights in the State party's Constitution weakens their protection; (b) there are no mechanisms for ensuring compliance of the laws of the constituent states with the Covenant and therefore legal provisions that are incompatible with the Covenant are still in force in the State party; and (c) the Convention has not been invoked by or before courts in the State party.

6. **The Committee recommends that the State party: (a) incorporate all Covenant rights in its Constitution; (b) undertake a comprehensive review of federal and state laws with a view to bringing them into conformity with the Covenant; (c) put into place a mechanism to ensure that draft laws introduced and adopted by constituent states comply with the Covenant; (d) raise awareness of the Covenant and its justiciability among the general public and legal professionals, including through their training programmes; and (e) take the recommendations contained in the present concluding observations into account in its legal reforms. The Committee refers the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.**

### **Access to remedies**

7. The Committee is concerned at the limited access to justice in the State party, which deprives victims of effective remedies for violations of economic, social and cultural rights. The Committee is also concerned at reports of harassment and intimidation of defenders of economic, social and cultural rights, and of violent repression of actions aimed at claiming Covenant rights. (art. 2)

8. **Recalling the obligation of the State party to provide judicial or other effective remedies, the Committee recommends that the State party: (a) step up efforts to train more legal professionals; (b) expand the reach of justice services and law enforcement outside urban areas; (c) ensure that legal aid is in fact available to victims and defendants; (d) promote access to mechanisms, including non-judicial ones, for lodging complaints for violations of economic, social and cultural rights; and (e) ensure that those involved in customary justice are aware of the rights covered by the Covenant. The Committee urges the State party to condemn and punish acts of harassment, intimidation or violence against individuals claiming their Covenant rights and to take appropriate measures against those found responsible for such acts. The Committee refers the State party to its general comment No. 3 (1990) on the nature of State parties' obligations.**

### **National human rights institution**

9. The Committee is concerned that the National Human Rights Commission is not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Committee is also concerned, in the context of limited resources in the State party, at the existence of numerous public bodies with a human rights mandate.

10. **The Committee recommends that the State party bring the National Human Rights Commission into compliance with the Paris Principles, guaranteeing its independence and financial autonomy. The Committee also encourages the State party to streamline its human rights machinery to avoid duplication and to achieve a more efficient use of limited resources. The Committee refers the State party to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.**

#### **Rights of land users**

11. The Committee is alarmed by the negative impact on the rights of land users, particularly small-scale farmers and agropastoralists, of development projects such as the construction of dams and large-scale leasing of farmland in the country to local or foreign investors, facilitated by the Land Confiscation Law (1930), the Unregistered Land Act (1970), the Land Allocation Act (1990) and the National Investment Encouragement Act (2013). (arts. 1 and 11)

12. **The Committee urges the State party to ensure that:**

(a) **Legislative provisions protecting security of tenure recognize customary forms of tenure and take account of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of 2012;**

(b) **Legislative provisions that allow for expropriation for the “public good” or on the ground that the land is declared as “unused” are not abused nor relied upon by the State party to supply land to private investors, and that courts are empowered to review the decisions taken in this regard by the executive branch of the Government;**

(c) **No land shall be ceded to investors or for development projects without first carrying out a full human rights impact assessment and without first seeking the free, prior and informed consent of the communities who depend on the land for their livelihoods;**

(d) **Land users who consider that their rights have been violated have access to redress.**

#### **Investment regime**

13. The Committee expresses serious concern that the provisions of article 4 of the National Investment Encouragement Act (2013) giving primacy to the Act over any other piece of domestic legislation has a negative impact on the protection of the economic, social and cultural rights afforded by other domestic laws of the State party. (art. 1)

14. **The Committee recalls that the rights of investors should in no circumstance undermine the State’s obligations to protect, respect and fulfil the Covenant rights. In this regard, the Committee recommends that the State party ensure effective protection of the rights holders concerned, such as workers, trade unions members and members of local communities, in its investment regime.**

#### **Maximum available resources**

15. The Committee is concerned that significant revenue gained from the exploitation of natural resources prior to the secession of part of the country has not led to tangible progress in the realization of economic, social and cultural rights for most persons living in the State party. The Committee is also concerned at the poor management of public resources and corruption in the State party and at considerable security and military

expenditures diverting funds away from sectors such as education, health and social protection, which receive only marginal allocations from the State budget. (art. 2)

16. **The Committee urges the State party to:**

(a) **Improve public governance and ensure transparency, in law and in practice, in the conduct of public affairs, including in the administration of humanitarian and development aid, and the granting of natural resources exploitation licences and the management of revenues therefrom;**

(b) **Combat corruption and related impunity effectively, including by protecting whistle-blowers, strengthening the independence of anti-corruption institutions and putting in place safe mechanisms at the national and local levels for submitting complaints and reporting irregularities;**

(c) **Invest every effort, including through the national reconciliation process, to seek a sustainable settlement of the conflicts in the State party, reduce security and military spending and allocate more resources to the reconstruction of conflict-affected areas;**

(d) **Increase public social investments to address the concerns contained herein related to the limited enjoyment of economic, social and cultural rights.**

#### **Austerity measures**

17. While noting the need for fiscal adjustments subsequent to the loss of an important share of the State party's budget revenue, the Committee is concerned that measures taken to mitigate the effect of the austerity programme have further corroded the enjoyment of certain Covenant rights, such as the right to food, especially by the most marginalized and disadvantaged groups. (art. 2)

18. **Referring to the letter dated 16 May 2012 addressed by the Chair of the Committee to States parties on austerity measures, the Committee recalls that policy reforms should identify and protect the minimum core content of Covenant rights at all times and should not disproportionately affect marginalized and disadvantaged groups. The Committee also recommends that the State party ensure that its obligations under the Covenant are duly taken into account in negotiations with international financial institutions such as the International Monetary Fund.**

#### **Non-discrimination**

19. The Committee notes with concern the discriminatory provisions affecting women, religious minorities and lesbian, gay, bisexual, transgender and intersex persons that are still in force in the State party, including those contained in the Criminal Law Act, the Personal Status Act, the Public Service Regulations, the Social Insurance Act and the Sudanese Nationality Act. The Committee is also concerned at the lack of legislation to implement the constitutional and Covenant provisions on non-discrimination. Moreover, the Committee is particularly concerned at reports of discrimination of individuals on the basis of religion and of sexual orientation and gender identity. (art. 2)

20. **The Committee urges the State party to amend legal provisions that are discriminatory or have a discriminatory effect on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in accordance with article 2 of the Covenant. The Committee also recommends that the State party adopt a comprehensive anti-discrimination law defining, prohibiting and punishing discrimination. The law should cover not only direct but also indirect discrimination and provide for the implementation of temporary special measures and remedies for victims. Furthermore, the Committee**

**recommends that the State party condemn and punish acts of discrimination against religious minorities as well as against individuals on the basis of sexual orientation and gender identity. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

#### **Regional disparities**

21. The Committee notes with concern the significant disparities in the enjoyment of economic, social and cultural rights among the constituent states of the State party, with states in the eastern Sudan, Darfur and Kordofan regions being particularly disadvantaged, as extreme poverty remains widespread there and access to education, health services and safe drinking water is limited. The Committee is further concerned that disadvantaged states do not received federal resources proportionate to their needs. (art. 2 and 11)

**22. The Committee recommends that the State party: (a) raise awareness among its constituent states of their obligations under the Covenant; (b) integrate accountability mechanisms at the federal and state levels into the design and implementation of programmes and policies aimed at the realization of economic, social and cultural rights; (c) allocate adequate budgetary resources to close regional disparities in the level of enjoyment of economic, social and cultural rights in the State party; (d) intensify efforts to deliver basic services in hard-to-reach and conflict-affected areas, bearing in mind that the enjoyment of Covenant rights should not be conditional on, or determined by, place of residence. The Committee requests that the State party provide in its next periodic report statistical data showing the progress achieved with regard to allocation of federal and state resources to sectors such as health, education and social security and the realization of related rights.**

#### **Internally displaced persons**

23. The Committee is concerned at the plight of internally displaced persons in the State party. It is particularly concerned at their limited access to basic services, including in camps. The Committee is also concerned at reports of forced evictions of internally displaced persons settled in urban areas such as Khartoum, impeding their prospects for local integration. Moreover, it regrets the slow pace of progress made in ensuring favourable conditions for the safe return of volunteers to their place of origin. (art. 2)

**24. The Committee recommends that the State party intensify efforts to create conditions for the voluntary return or local integration of internally displaced persons. In this regard, the State party should address obstacles to the return of internally displaced persons, such as lack of safety and restitution of land and property, and ensure that, if relocated, they have access to basic services. It also recommends that the State party respect the Covenant rights of internally displaced persons wherever they are settled. Therefore, it recommends that the State party cease the practice of forcibly evicting such persons, without due process, from informal settlements and camps.**

#### **Asylum seekers and refugees**

25. The Committee expresses concern at the barriers, including language barriers, experienced by asylum seekers and refugees in the State party in accessing health care and education. (art. 2)

**26. The Committee recommends that the State party ensure effective access to health-care services and education by asylum seekers and refugees, including through cooperation with the Office of the United Nations High Commissioner for Refugees and non-governmental organizations.**

### **Stateless persons**

27. The Committee notes with concern that, as a result of the 2011 amendment to the Sudanese Nationality Act, individuals from South Sudan have become stateless. It is further concerned that such persons who reside in the State party are unable to access basic services and/or benefits, such as education, health, employment and pensions. (art. 2)

**28. The Committee recommends that the State party establish clear procedures by which persons from South Sudan in its territory can regularize their status and ensure that procedures are in place so that individuals who have not in fact acquired South Sudanese nationality are not deprived of their Sudanese nationality and rendered stateless.**

### **Equality between men and women**

29. The Committee is concerned at the inferior status of women in the family and in the society in the State party, which is reflected in several legal provisions limiting their rights. It is also concerned at the negative impact of this status on women's access to education, employment, health (including women's autonomy in regard to their health) and vulnerability to violence. It notes in particular that women are primarily employed in low-skilled jobs and in the informal economy. (art. 3)

**30. Recalling its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of economic, social and cultural rights, the Committee recommends that the State party:**

- (a) Raise awareness among lawmakers of equality between men and women and repeal laws that do not conform with article 3 of the Covenant;**
- (b) Intensify efforts aimed at the elimination of prejudice and customary and other practices that perpetuate the notion that women are inferior;**
- (c) Promote women's equal representation in public office and decision-making bodies;**
- (d) Take concrete measures to increase women's labour participation and ensure that programmes promoting women's economic rights do not perpetuate their concentration in low-skilled jobs and in the informal economy;**
- (e) Ensure that all sectoral policies and programmes provide for measures to accelerate women's equal enjoyment of the Covenant rights;**
- (f) Expedite the adoption of the new law to combat violence against women.**

### **Unemployment**

31. The Committee notes with concern the high rate of unemployment among youth and women in the State party. (art. 6)

**32. The Committee recommends that the State party ensure that its development policy, including the investment policy, leads to the creation of employment for nationals, thereby contributing to the realization of the right to work and the right to an adequate standard of living. The Committee also recommends that educational, vocational and professional training programmes offer skills that facilitate access to employment opportunities, particularly in the priority areas of the country's economic development. The Committee draws the attention of the State party to its general comment No. 18 (2005) on the right to work.**

### **Informal economy**

33. The Committee is concerned at the extent of the informal economy in the State party, in which labour, trade union and social security rights are not protected. (arts. 7, 8 and 9)

34. **The Committee recommends that the State party address regulatory and administrative barriers to the creation of employment in the informal economy and take measures to progressively enforce labour regulations therein. In this regard, the Committee recommends that the State party expand the capacity of its labour inspectorate and train its personnel on how to address working conditions in the informal economy. The Committee draws the attention of the State party to ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).**

### **Trade union rights**

35. The Committee notes with concern that trade union rights are restricted under the State party's 2010 Trade Union Act. It also expresses concern that workers abstain from engaging in trade union activities out of fear of reprisals. (art. 8)

36. **The Committee recommends that the State party bring its legislation on trade unions into conformity with the provisions of article 8, including by guaranteeing workers' right to freely form and join the trade union of their choice and the free registration of trade unions and by subjecting union activities to the trade unions' own rules. The Committee also recommends that workers be allowed to freely exercise trade union rights and be effectively protected against reprisals.**

### **Social security**

37. While noting the activities undertaken by the Zakat Fund, the Committee is concerned that only a small fraction of the population is covered by social security in the State party. (art. 9)

38. **The Committee recommends that, besides the activities of the Zakat Fund, measures be taken to develop a social security system, based on the right to social security and with adequate public budget allocations with a view to reaching full coverage of all the segments of its population. In this regard, the Committee recommends that the State party consider the establishment of a social protection floor as envisaged in the ILO Social Protection Floors Recommendation, 2012 (No. 202). The Committee refers the State party to its general comment No. 19 (2008) on the right to social security and its statement on social protection floors (2015).**

### **Minimum age of marriage**

39. The Committee is concerned at the very low ages of marriage for boys and girls in the State party, of 15 and 10 years, respectively. (art. 10)

40. **The Committee recommends that the State party raise the legal minimum age for marriage to 18 years for boys and girls to protect children from early and forced marriage.**

### **Female genital mutilation**

41. While noting the commitment of the State party to eradicate female genital mutilation by 2018, the Committee expresses concern that its prevalence remains high in spite of the measures taken. It is also concerned that provisions criminalizing female genital mutilation have been removed from the Child Health Act. (art. 10)

42. **The Committee recommends that the State party: (a) expedite the adoption and the application of legislation against female genital mutilation in all constituent states; (b) address the obstacles to the abandonment of the practice of female genital mutilation; (c) continue raising awareness of the harmful consequences of female genital mutilation through culturally sensitive campaigns; and (d) provide assistance to victims of female genital mutilation, including medical procedures to treat immediate and long-term complications.**

#### **Poverty**

43. The Committee is concerned that poverty, including extreme poverty, continues to be prevalent in the State party. It is particularly concerned that it disproportionately affects children, women, internally displaced persons and those living in rural areas.

44. **The Committee recommends that the State party intensify efforts to reduce poverty, including by adopting a human-rights approach to its poverty reduction strategy that targets the needs of disadvantaged and marginalized individuals and groups and by providing federal and state resources for its implementation. In this regard, the Committee draws the attention of the State party to the Committee's statement on poverty and the Covenant (2001).**

#### **Access to affordable housing**

45. The Committee is concerned that the number of housing units built and planned by the Housing Fund is not commensurate with the acute shortage of housing in the State party. It is also concerned at the resulting increase in housing prices, especially in urban areas. (art. 11)

46. **The Committee recommends that the State party adopt a human rights-based national housing strategy outlining the measures to be taken and the resources involved to progressively address the housing shortage. The State party should seek the cooperation of the private sector in this regard. The Committee also recommends that the State party take regulatory and other measures to protect tenants against unreasonable rent or rent increases. The Committee draws the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing.**

#### **Forced evictions**

47. The Committee is concerned about the large number of house demolitions and forced evictions carried out with excessive force by the armed police and the special force of the State party without prior notice, compensation or the provision of adequate alternative housing. (art. 11)

48. **The Committee recommends that the State party cease forthwith house demolitions and bring its legislation and regulations on forced evictions into line with international standards and ensure that, in law and in practice: (a) evictions are only used as a measure of last resort; (b) circumstances and safeguards under which evictions can take place are strictly defined and observed; and (c) victims of forced evictions are not subjected to excessive force, are provided with adequate alternative housing or compensation and have access to effective remedies against agents of the State party, who should be made accountable for their actions and not be immune from criminal prosecution. The Committee refers the State party to its general comment No. 7 (1997) on forced evictions.**

### **Food insecurity**

49. The Committee is concerned at food insecurity in the State party and particularly at the fact that the minimum essential level of the right to food is not realized for a segment of the population, including undernourished children and those who depend on humanitarian aid. Moreover, the Committee is concerned that the State party's agricultural policy is not primarily targeted at the realization of the right to food, as evidenced by the fact that the country is a net exporter of food. (art. 11)

**50. The Committee recommends that the State party allocate the resources necessary to ensure the satisfaction of the minimum essential level of food required for everyone to be free from hunger. The Committee also recommends that the State party anchor its food and agriculture policies to the realization of the right to adequate food. In this regard, priority for land use and agricultural projects should be accorded to ensure domestic food and nutrition security. The Committee refers the State party to its general comment No. 12 (1999) on the right to adequate food.**

### **Access to health-care services**

51. The Committee is concerned that half of the population does not have access to basic health services. It is also concerned that a third of public health facilities are not fully functioning, owing to staff shortage and poor physical infrastructure. The Committee is further concerned that, as a result, maternal and child mortality rates remain very high in spite of the implementation of policies such as the Roadmap for Reducing Maternal and Newborn Mortality in the Sudan. (art. 12)

**52. The Committee recommends that the State party take measures to ensure access to the essential primary health package for all. It also recommends that the State party ensure the appropriate training of medical personnel and the provision of a sufficient number of health-care facilities. The Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.**

### **Access to education**

53. The Committee expresses concern at the large number of children who are not in school, including as a result of dropping out. The Committee is also concerned at the slow pace of progress made in the provision of primary education free to all. (arts. 13 and 14)

**54. The Committee recommends that the State party ensure that action and resource plans are adopted and implemented at the federal and state levels to accelerate the attainment of universal primary education, addressing the obstacles that leave many children without education. The Committee also recommends that the State party ensure that the federal Government discharge its obligation to transfer funds to constituent states that rely thereon to finance education. The Committee draws the attention of the State party to its general comment No. 13 (1999) on the right to education.**

### **Right to take part in cultural life**

55. The Committee is concerned that the freedom indispensable for the enjoyment of the right to take part in cultural life, required in article 15 of the Covenant, is not sufficiently respected in the State party. (art. 15)

**56. Recalling its obligation under article 15 of the Covenant, the Committee recommends that the State party fully respect the freedom indispensable for the enjoyment of the right to take part in cultural life, especially freedom of expression,**

opinion and creation, as well as publication, in the press, in print and on the Internet. The Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

#### **D. Other recommendations**

57. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

58. The Committee recommends that the State party collect data and use statistics for human rights indicators, including for economic, social and cultural rights. In this respect, the Committee refers the State party to the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

59. The Committee invites the State party to continue and strengthen its collaboration on issues relating to economic, social and cultural rights with the Office of the United Nations High Commissioner for Human Rights, specialized agencies and the relevant United Nations programmes.

60. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials and the judicial authorities, and to inform the Committee in its next periodic report of the steps taken to implement them. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

61. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, Chap. I).

62. The Committee requests the State party to submit its third periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2020.

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