



## A WAY FORWARD?

Anti-torture reforms in Sudan  
in the post-Bashir era

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## PHOTO CREDITS

### Cover photo

**Photo cover credits:** David Rose/Panos Pictures. Protesters crowd a bridge in the city centre of Khartoum, Sudan, as the continuing citizen protests enter their fourth week since the fall of President Omar al-Bashir. The protesters were demanding that a new interim civilian ruling council be formed to enable the country to move towards a more democratic form of rule.

### Torture in Sudan

**Photo credit:** David Rose/Panos Pictures. Two women look at a display of photographs of people killed during recent protests in Sudan after the fall of President Omar al-Bashir.

### African Commission

**Photo credit:** David Rose/Panos Pictures. Protesters pass graffiti calling for 'justice' in the city centre of Khartoum, Sudan, during recent protests in Sudan after the fall of President Omar al-Bashir.

### Domestic Law

**Photo credit:** David Rose/Panos Pictures. Protesters during a night time vigil for victims of the recent violence in Sudan following the fall of President Omar al-Bashir.

### Implementation of Domestic Law and Institutional Reforms

**Photo credit:** David Rose/Panos Pictures. Youths hold up signs on which they have written slogans demanding democratic civilian rule as citizen protests continue in Sudan.

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**REDRESS** is an international human rights organization that represents victims of torture to obtain justice and reparations. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations. Our cases respond to torture as an individual crime in domestic and international law, as civil wrong with individual responsibility, as a human rights violation with state responsibility. Through our victim-centered approach to strategic litigation we can have an impact beyond the individual case to address the root causes of torture and to challenge the impunity. We apply our expertise in law of torture, reparations and the rights of victims, to conduct research and advocacy to identify necessary changes in law, policy and practice. We work collaboratively with international and national organisations and grassroots victims' groups.

**African Centre for Justice and Peace Studies** is dedicated to creating a Sudan committed to all human rights, the rule of law and peace, in which the rights and freedoms of the individual are honored and where all persons and groups are granted their rights to non-discrimination, equality and justice. Since its inception in 2009 ACJPS has performed vital human rights monitoring and protection functions and has built a solid reputation for the credibility, impartiality and professionalism of its work. ACJPS has also played a vital role in providing technical support and training to new civil society organisations and informal activist networks. The expulsions and suspensions of international and national civil society groups in Sudan after the March 2009 decision by the International Criminal Court (ICC) to issue an arrest warrant for President al-Bashir severely cur-

tailed the ability of groups within Sudan to openly monitor the human rights situation in the country. However, through the expertise of our staff and their networks throughout Sudan, ACJPS is uniquely positioned to conduct monitoring, legal, and advocacy functions. ACJPS works with dedicated networks and partners inside and outside Sudan to achieve its goals, build alliances and strengthen the impact of its work. Through the expertise of our staff and networks, ACJPS is uniquely positioned to monitor and strengthen respect for human rights in Sudan.

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# I. EXECUTIVE SUMMARY

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*Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Comm. No. 379/09 (2014)* 33

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Since 1989 when President Al-Bashir took power, Sudan has been governed by a single party that deployed the use of torture as a central tool to oppress its citizens. The prohibition of torture has long been recognized as a non-derogable *jus cogens* norm under customary international law. Yet Sudan has fallen short in its international obligations to prohibit and prevent torture.

The African Commission on Human and Peoples' Rights and relevant UN bodies have repeatedly called out the government of Sudan for failing to uphold its obligations under international law and urged the government to adopt or amend laws in compliance with these international obligations.

Sudan's failure to ratify the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), its weak domestic legal framework, and rampant impunity have contributed to the widespread use of torture in Sudan by the police, military, and the National Intelligence and Security Service (NISS), leaving many victims with no effective remedy and no access to reparations. The fall of Al-Bashir, the introduction of a new government, and the

adoption of the 2019 Constitutional Declaration provide an opportunity for the Sudanese authorities to adopt legal and policy reforms that safeguard against torture and provide justice and reparations for victims.

As advocated in this report, Sudan should ratify the UNCAT and other relevant human rights treaties and amend its Constitution to ensure the definition of torture is in line with Article 1 of UNCAT. Further, it should remove any immunities that prevent effective investigation and prosecution of torture by the security, police and military forces.

Sudan's legal framework and policies should follow international law and ensure that detained persons have basic rights and freedoms, including the provision of legal aid, effective communication with family and a lawyer, and having access to independent judicial review, amongst other basic safeguards.

Finally, Sudan should ensure that victims of torture and other gross human rights violations have access to justice, truth and reparations as required by international law.

# ACRONYMS

<b>ACJPS</b>	African Centre for Justice and Peace Studies
<b>ACHPR</b>	The African Commission on Human and Peoples' Rights
<b>The African Charter</b>	The African Charter on Human and Peoples' Rights
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>FFC</b>	Forces for Freedom and Change
<b>GIS</b>	General Intelligence Service
<b>HRC</b>	Human Rights Council
<b>HRDs</b>	Human rights defenders
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICC</b>	International Criminal Court
<b>NCP</b>	National Congress Party
<b>NISS</b>	National Intelligence and Security Service
<b>NIF</b>	National Islamic Front
<b>NSA Act</b>	National Security Act 2010
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>RSF</b>	Rapid Support Forces
<b>SC</b>	Sovereign Council
<b>SPLAM/N</b>	Sudanese People's Liberation Movement North
<b>SAF</b>	Sudanese Armed Forces
<b>SPLA/M</b>	Sudanese People's Liberation Army/Movement
<b>SRF</b>	Sudanese Revolutionary Front
<b>SPA</b>	Sudanese Professionals Organisation
<b>TMC</b>	Transitional Military Council
<b>UNCAT</b>	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

# II. INTRODUCTION

The prevalence of torture in Sudan has been a long-standing concern, and Sudan has consistently failed to meet its international obligations on torture.

The current period of transition provides an opportunity to ensure Sudan meets its international law obligations and implements robust mechanisms to safeguard against, investigate and provide redress for torture. The current domestic legal framework and its implementation are wholly inadequate.

Sudan is a party to several relevant international treaties prohibiting torture, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the African Charter on Human and Peoples' Rights (the African Charter). These treaties are also an integral part of Sudan's 2019 Constitutional Declaration. Sudan is, therefore, obliged to take measures aimed at preventing torture, responding to allegations of torture by means of prompt, impartial and effective investigations and prosecutions, and providing effective remedies and reparations.

Over the last decade, national, regional and international actors have identified a series of problems in the Sudanese legislative and institutional framework and practice in relation to the prohibition of torture. One such body is the African Commission on Human and Peoples' Rights (ACHPR), a quasi-judicial body tasked with interpreting the African Charter and ensuring the protection and promotion of the human and peoples' rights included in the African Charter.

To date, the ACHPR has issued seven decisions on Sudan that have been decided on their merits. These

decisions are yet to be implemented and the former Sudanese Government has been wholly non-compliant. Non-compliance has disastrous impacts on victims, who find themselves without remedy, even after resorting to international fora. This in turn erodes and undermines the Commission's credibility and authority as an effective protector of the rights enshrined in the African Charter.<sup>1</sup>

Under the previous regime there was no coherent anti-torture policy or a coordinated effort to tackle the causes of torture and to provide justice, accountability and redress in individual cases.

Such a policy would need to be developed and be based on Sudan's obligations under international law and its Constitutional Declaration. To this end, it should include the absolute prohibition of torture in Sudanese law, the provision of safeguards to prevent torture, and measures to ensure accountability and reparations. Sudan should ratify treaties to which it is not yet a party, particularly the UNCAT, and the Optional Protocol thereto, which provide for additional monitoring on the prohibition of torture.

Effectively combating the legacy of torture in Sudan, and the structural factors contributing to its persistence, requires fundamental reforms. Legislative reform, such as the adoption of an anti-torture law that meets international standards, is an important component of these broader reforms.

<sup>1</sup> George Mukundi Wachira and Abiola R Ayinla, 'Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples' Rights: A Possible Remedy' <<https://repository.up.ac.za/handle/2263/3123>> accessed 7 October 2019.



This report does not contain a comprehensive analysis of all laws and policy reforms needed in Sudan. The purpose of this report is to identify priorities for change and to assist the new Government and Civil Society to introduce robust, practical and effective reforms to ensure Sudan meets international law obligations to combat and eradicate torture.

Section III of this report briefly sets out the unfolding events that have taken place in Sudan in the last year and situate these in the broader context that has allowed torture to be a widespread practice in the country. Section IV outlines the

nature of torture in Sudan, identifying the main perpetrators, methods and patterns, and victims of torture. Section V explores Sudan's international obligations to prevent torture pursuant to relevant international and regional treaties, including an analysis of the existing ACHPR decisions against Sudan. Section VI highlights the key priorities for domestic legal and policy reform needed in the current Sudanese context, to ensure the prevention of torture, accountability for torture and access to remedies and reparations. Finally, Section VII contains a summary of all recommendations made in the report.



## III. CURRENT CONTEXT

In December 2018, a threefold increase in the price of bread triggered peaceful mass protests against economic hardship, inequality and poverty in Sudan. These protests expanded all over the country and became known as the “Sudanese Uprising” uniting citizens over concerned grievances over lack of good governance, authoritarian rule, and human rights violations in Sudan. Tens of thousands of Sudanese people peacefully protested on a daily basis for a four-month period.

In this period, the authorities regularly used “excessive and disproportionate force to disperse protests, resulting in the deaths and injuries of several protesters,” including firing “live ammunition and tear gas into hospital premises, where protesters were taking shelter,” and deploying “arbitrary arrest, detention, torture and ill-treatment of persons suspected of participating in or supporting the protests.”<sup>2</sup>

On the night of 10 April 2019, the protest movement led to the ouster of President Omar Al-Bashir and the installation of a Transitional Military Council (TMC). Peaceful protests – punctuated by unlawful attacks continued even after the ouster of Al-Bashir. Protesters and their representatives continued to demand a civilian-led transition to a civilian rule.

On 5 July 2019, the TMC and representatives of the civilian protest movement, the Forces for Freedom and Change (FFC) agreed to a power-sharing deal. The agreement provided for a 39-month transition period led by a Sovereign Council (SC) with a rotating

(TMC/FFC) presidency, followed by elections. The agreement also called for investigation into unlawful violence against protestors and set a six-month time frame to reach a peace agreement with all armed rebel groups throughout the country, including Blue Nile, Darfur and South Kordofan.

On 4 August, the parties signed a Constitutional Declaration that establishes the transitional bodies and sets out mandated tasks. On 17 August, the parties signed the power-sharing agreement which together with the Constitutional Declaration made up the Transitional Agreement. On 21 August, the new SC members were sworn in along with the prime minister. Prime Minister Hamdok nominated a new cabinet and a 300-member legislative council is to be appointed within 3 months after the SC and the Cabinet's meeting on 1 September 2019.<sup>3</sup>

During his time in power (1989-2019), President Al-Bashir and his government committed a spectrum of human rights violations: the dissolution of political organs of the State, political parties, trade unions, press and civil society organisations; the mass arrest, arbitrary detention and torture of politicians and activists; as well as the mass killings, rape and enforced disappearance of ordinary citizens. Al-Bashir is wanted by the International Criminal Court (ICC) on several counts of crimes against humanity, war crimes, and genocide for crimes committed in Darfur.<sup>4</sup>

<sup>2</sup> African Commission on Human and Peoples' Rights, '413 Resolution on the Human Rights Situation in the Republic of The Sudan – ACHPR/Res. 413 (EXT.OS/XXV)' (2019) <<https://www.achpr.org/sessions/resolutions?id=431>> accessed 7 October 2019.

<sup>3</sup> 'Sudan Factions Initial Pact Ushering in Transitional Government' *Reuters* (4 August 2019) <<https://uk.reuters.com/article/uk-sudan-politics-idUKKCN1UU09P>> accessed 7 October 2019.

<sup>4</sup> *Al Bashir Case: The Prosecutor v Omar Hassan Ahmad Al Bashir* (International Criminal Court) <<https://www.icc-cpi.int/darfur/albashir>> accessed 7 October 2019.



Initially, Al-Bashir consolidated control through the imposition of a state of emergency for many years and the formation of the National Intelligence and Security Service (NISS) in the years following 1989.<sup>5</sup> Until April 2019, the NISS dominated many spheres of life in Sudan and benefitted from extensive powers vested in it by the National Security Acts of 1999 and 2010.<sup>6</sup>

After the secession of South Sudan in 2011, fighting erupted between the Sudanese People's Liberation Movement North (SPLAM/N), and the Sudanese Armed Forces (SAF) in South Kordofan and the Blue Nile.<sup>7</sup>

The war in Darfur began in 2003, when the government and government backed tribal militia started fighting local opposition groups, the Sudanese People's Liberation Army/Movement (SPLA/M).<sup>8</sup> The conflicts between the government and South Kordofan, Blue Nile and Darfur are intertwined, and rebel forces from all three regions have formed an alliance known as the Sudanese Revolutionary Front (SRF).<sup>9</sup> The Constitutional Declaration mandates the resolution of these conflicts.<sup>10</sup>

5 Amnesty International, 'Sudan: Agents of Fear: The National Security Service in Sudan' (2010) AFR 54/010/2010 <<https://www.amnesty.org/en/documents/document/?indexNumber=AFR54%2f010%2f2010&language=en>> accessed 8 October 2019.

6 *ibid.*

7 Louisa Brooke-Holland, 'Sudan: December 2017 Update' 11 <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8180>> accessed 8 October 2019.

8 Nicolas Van De Walle, 'Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan' (2004) 83 *Foreign Affairs* 184, 1 <<https://www.hrw.org/reports/2004/sudan0504/sudan0504simple.pdf>> accessed 8 October 2019.

9 AL Jazeera and Agencies, 'Sudan Rebels Form Alliance to Oust President' *Al Jazeera* (13 November 2011) <<https://www.aljazeera.com/news/africa/2011/11/2011111313442277256.html>>.

10 Constitutional Declaration 2019 <<http://constitutionnet.org/vl/item/sudan-constitutional-declaration-august-2019>> accessed 8 October 2019.

## THE JUNE MASSACRE

In the context described above, on 3 June 2019, security forces, predominantly made up from Rapid Support Forces (RSF) attacked peaceful demonstrators at a sit-in in Khartoum (the June Massacre). The RSF is a paramilitary force under the authority of General Mohamed Hamdan Dagalo, known as "Hemedti," who served as deputy head of the TMC and has since been sworn in as a member of the SC. More than one hundred civilians were reported killed and hundreds more injured.<sup>11</sup> Protesters were also beaten and detained, subjected to rape, including gang rape, and other forms of intimidation and humiliation.<sup>12</sup>

The security forces attacked the protest site, blocked the exit so that protesters could not leave, and used live ammunition. Gunmen reportedly threw bodies into the Nile, weighing them down with bricks. At least three hospitals were attacked, with reports of doctors being assaulted. Following the June Massacre, targeted harassment of medical personnel led to the closing of eight hospitals.<sup>13</sup> Key opposition figures were detained and beaten.

Violence and abuses by forces under the command of the TMC continued. On 30 June 2019, RSF forces attacked protesters in Omdurman, killing at least

11 Jason Burke and Zeinab Mohammed Salih, 'Sudanese Protesters Demand Justice Following Mass Killings' *The Guardian* (13 July 2019) <<https://www.theguardian.com/world/2019/jul/13/sudanese-protesters-demand-justice-after-mass-killings>> accessed 20 November 2019.

12 Zeinab Mohammed Salih Jason Burke, 'Sudanese Doctors Say Dozens of People Raped during Sit-in Attack' *The Guardian* (11 June 2019) <<https://www.theguardian.com/world/2019/jun/11/sudan-troops-protesters-attack-sit-in-rape-khartoum-doctors-report>> accessed 20 November 2019.

13 African Centre for Justice and Peace Studies, '30 CSOs Appeal to UN Security Council for Urgent Intervention to Prevent Further Bloodshed in Sudan – African Centre for Justice and Peace Studies' <<https://www.acjps.org/30-csos-appeal-to-un-security-council-for-urgent-intervention-to-prevent-further-bloodshed-in-sudan/>> accessed 8 October 2019.

ten people.<sup>14</sup> On 29 July 2019, security forces broke up a student protest in the city of El-Obeid, shooting dead at least six protesters, including three minors.<sup>15</sup>

Following the violence, the Sudanese public carried out mass civil disobedience campaigns with calls to investigate and punish those responsible.<sup>16</sup>

The Constitutional Declaration, for its part, mandates the formation of a:

national, independent investigation committee, with African support if necessary, as assessed by the national committee, to conduct a transparent, meticulous investigation of violations committed on 3 June 2019, and events and incidents where violations of the rights and dignity of civilian and military citizens were committed.<sup>17</sup>

The Constitutional Declaration also provides that the Investigation Committee is formed within one month from the date when the appointment of the Prime Minister is approved.<sup>18</sup> The seven-member Investigation Committee was announced on 24 September 2019, and includes a representative from the Ministry of Defence, which oversees all armed forces including the RSF, and a Supreme Court Judge. Human Rights Watch has raised concerns that the Commit-

14 'Restrictions, Unmet Promises, Unbridled Violence in Sudan, a "Recipe for Disaster", Says Bachelet' *UN News* (3 July 2019) <<https://news.un.org/en/story/2019/07/1041802>> accessed 8 October 2019.

15 African Centre for Justice and Peace Studies, 'North Kordofan: Urgent Call to Investigate the Killing of Six Peaceful Protesters Including 3 Minors in El Obeid. – African Centre for Justice and Peace Studies' <<https://www.acjps.org/north-kordofan-urgent-call-to-investigate-the-killing-of-six-peaceful-protesters-including-3-minors-in-el-obeid/>> accessed 8 October 2019.

16 Agence France-Presse, 'Sudan Protesters Begin Civil Disobedience Campaign against Military Rulers' *The Telegraph* (9 June 2019) <<https://www.telegraph.co.uk/news/2019/06/09/sudan-protesters-begin-civil-disobedience-campaign-against-military/>> accessed 11 October 2019.

17 Constitutional Declaration 2019 (n 10), Article 7(16).

18 *ibid.*

tee will not conduct an independent, credible and impartial inquiry.<sup>19</sup> Human Rights Watch also criticized the investigation foreseen in the Constitutional Declaration noting it does not seem adequate to lead to eventual criminal prosecution, and the failure to request involvement of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and Human Rights Council (HRC).<sup>20</sup>

Sixteen Civil Society Organisations, including RE-DRESS, have called upon the HRC to support the establishment of an independent commission to investigate all human rights violations and abuses, including sexual and gender-based violence, committed in the context of peaceful protests since December 2018 (including the June Massacre).<sup>21</sup> No concrete action was taken by the Human Rights Council in its 42<sup>nd</sup> session in September 2019 beyond the adoption without a vote a report of the Independent Expert (IE) on the situation of human rights in Sudan. In the report, the IE expressed his concerns about the independence and impartiality of the national fact-finding mechanism.

19 Human Rights Watch | 350 Fifth, 34th Floor | New York and NY 10118-3299 USA | t 1.212.290.4700, 'Sudan's New Investigation Committee Raises Concerns' *Human Rights Watch* (24 September 2019) <<https://www.hrw.org/news/2019/09/24/sudan-new-investigation-committee-raises-concerns>> accessed 8 October 2019.

20 Human Rights Watch, 'Sudan: Prioritize Justice, Accountability' (2019) <<https://www.hrw.org/news/2019/08/23/sudan-prioritize-justice-accountability>> accessed 8 October 2019.

21 ACJPS, 'Sudan: Ensuring a Credible Response by the UN Human Rights Council at Its 42nd Session – African Centre for Justice and Peace Studies' <<http://www.acjps.org/sudan-ensuring-a-credible-response-by-the-un-human-rights-council-at-its-42nd-session/>> accessed 11 October 2019.



# IV. TORTURE IN SUDAN

Torture was an integral component of the Sudanese government's methodology of repression in the Al-Bashir era. When the National Congress Party (NCP) (formerly the National Islamic Front or the NIF) came to power in 1989, it introduced amendments to the Penal Code. These amendments included advanced punishments based on *Shari'a* and purging

the independent judiciary, replacing it with senior party members.<sup>22</sup>

Once in power, the NCP converted the pre-existing conflict with southern states into a coordinated policy of discrimination and ethnic cleansing and conducted it with unprecedented levels of aggression.<sup>23</sup> It pursued a policy of repression through mass rape, looting, destruction and killing across multiple internal conflicts, providing a climate for torture to thrive. This section briefly sets out the main perpetrators, practices and victims of torture identified in Sudan, as well as the prevailing impunity for this crime.

## PERPETRATORS OF TORTURE

### National Intelligence and Security Service

The NISS has been the primary institution responsible for torture and ill-treatment in detention.<sup>24</sup> Security agents vested with wide-ranging immunities have carried out a range of human rights violations with impunity.<sup>25</sup> Sudan's National Security Act 2010 (NSA Act) provides the legal foundation for the NISS extensive powers to arrest, arbitrarily detain, and interrogate perceived opponents and those with perceived links to rebel groups, in order to silence

22 Nasif BE Ahmed, *Torture in Sudan 1989-2016* (New Horizons Research Centre 2017) 127; Fathi Aldaw, *Spider House: Unravelling the secrets of Sudanese Islamist Securities* (1 edition, Jazeera Al-ward/ Egypt 2016) 235; Interview with Fath El-Alaim Abd-Alhai, 'Leader of the Elsayhoun: Torture and Murder of Captives in "Civilisation Project" Based on Religious Fatwai' (12 March 2015).

23 Berghof Foundation for Peace Support (Ed.), 'Sudan: Conflict Analysis and Options for Systemic Conflict Transformation' (2006) 17 <[https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Other\\_Resources/SUD\\_Sudan\\_Options\\_for\\_Systemic\\_Conflict\\_Transformation.pdf](https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Other_Resources/SUD_Sudan_Options_for_Systemic_Conflict_Transformation.pdf)>.

24 'Sudan: Agents of Fear: The National Security Service in Sudan' (n 5).

25 Ahmed (n 22) 1.





opposition. The NSA Act fails to provide appropriate human rights guarantees, such as judicial review and custodial safeguards.<sup>26</sup> Furthermore, in 2015 and again in 2017, the NSA's powers were expanded beyond intelligence to include the collection, analysing and classification of information.<sup>27</sup> As a result, torture and ill-treatment are endemic within security service detentions. Political opponents are held without charge or trial and routinely tortured in unacknowledged secret detention centres known to the Sudanese public as 'ghost houses'.<sup>28</sup> The NISS runs these centres without judicial oversight, and victims are usually held incommunicado, without access to a lawyer, doctor, or any family members, thereby providing the necessary deniability to carry out rights violations. The conditions in the ghost houses are reportedly so poor, that the mere act of detention itself amounts to ill-treatment. Detainees are forced to occupy dirty, small unventilated spaces, where they are usually deprived of rest, sleep, food, and water.<sup>29</sup>

Sudan's 2019 Constitutional Declaration replaces the NISS with the General Intelligence Service:

[A] uniformed agency that is competent in national security. Its duties are limited to gathering and analysing information and providing it to the competent bodies.<sup>30</sup>

On 29 July 2019, Constitutional Decree No. (33), known as the Miscellaneous Amendments Act

26 'Sudan: Agents of Fear: The National Security Service in Sudan' (n 5).

27 'Situation of Human Rights in the Sudan - Report of the Independent Expert on the Situation of Human Rights on His Visit to Sudan - Comments by the State (A/HRC/42/63/Add.1) - Sudan' 28 August 2019 <<https://reliefweb.int/sites/reliefweb.int/files/resources/G1925592.pdf>> accessed 8 October 2019.

28 Ibid.

29 Ahmed (n 22) 265.

30 Constitutional Declaration 2019 (n 10), Article 36.

of 2019 amended the NSA Act again. The decree changed the name of the agency and allegedly restricted its power of search and arrest under Article 50 of the NSA Act.<sup>31</sup> Under the new amendments, GIS will no longer be authorized to arrest people or carry out search operations.<sup>32</sup>

### Police and prison staff

Torture has been perpetrated by police and prison staff to extract confessions or to extort money.<sup>33</sup> Police officers are granted conditional immunities for any act done in the discharge of their duties, which can only be lifted by the head of their forces, as outlined in Article 45 (1) of the 2008 Police Act.<sup>34</sup> As with the NISS, this largely equates to impunity. Prison conditions throughout the country are severe, suffering from extreme shortages in food supplies and overcrowding.<sup>35</sup> The prisons have issues with lighting, ventilation, and lack of basic resources including bedding, and access to medical care.<sup>36</sup> There

31 "Sudan Issues a decree to restructure national security body." [http://www.xinhuanet.com/english/2019-07/30/c\\_138268173.htm](http://www.xinhuanet.com/english/2019-07/30/c_138268173.htm)

32 Sudan Tribune, "Sudan's military reforms security services, 30 July 2019, <http://www.sudantribune.com/spip.php?article67863>, accessed 20 November 2019.

33 African Centre for Justice and Peace Studies, "'I Was Electrocuted': Torture in Sudan from 2011 – 2015 – African Centre for Justice and Peace Studies' 12–15 <<http://www.acjps.org/wp-content/uploads/2017/05/TORTURE-IN-SUDAN-v4.pdf>> accessed 8 October 2019.

34 Redress, 'Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives - A Compilation of Sudan Law Reform Advocacy Briefings' 7 <<https://www.refworld.org/docid/5331852e4.html>> accessed 8 October 2019.

35 African Centre for Justice and Peace Studies, 'Update: Third Detainee Dies in Custody Following Detention in Hot Crowded Cell and Court-Ordered Flogging in Port Sudan – African Centre for Justice and Peace Studies' (19 August 2014) <<http://www.acjps.org/update-third-detainee-dies-in-custody-following-detention-in-hot-crowded-cell-and-court-ordered-flogging-in-port-sudan/>> accessed 8 October 2019.

36 US Department of State, '2017 Country Reports on Human Rights Practices: Sudan' (2018) 7 <<https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/sudan/>> accessed 8 October 2019.

have been multiple reports of deaths in detention, although no comprehensive figures exist.<sup>37</sup>

### Army and paramilitary

Members of the army and paramilitary forces have also been extensively implicated in torture in the course of military campaigns in Southern Sudan, Kordofan, the Blue Nile region and Darfur.<sup>38</sup> The RSF, a military organisation under the command of the NISS, and other government aligned militia (such as the *Janjaweed*, or Darfuri tribal militia) have been reported to have committed multiple human rights violations. In 2015, the UN Panel of Experts on Sudan noted that the government's strategy in Darfur includes one of "collective punishment" of communities, and is characterised by the forced displacement of communities, destruction of physical infrastructure of communities, mass rape, torture and killing of civilians.<sup>39</sup> Like acts governing the NISS and the police, Article 42 (1) of the Armed Forces Act of 2007 provides immunities for military officers, preventing investigation without the approval of the Commander in Chief,<sup>40</sup> further fortifying a culture of impunity within the authorities.

Further, Articles 125 and 126 of the 1991 Criminal Procedure Act, authorize the NISS, police, and armed forces to disperse public protests and assemblies, and detain protestors.<sup>41</sup> All of these au-

37 'Update' (n 35).

38 Human Rights Watch, 'World Report 2018: Rights Trends in Sudan' (2018) <<https://www.hrw.org/world-report/2018/country-chapters/sudan>> accessed 8 October 2019.

39 African Centre for Justice and Peace Studies (ACJPS), International Federation for Human Rights (FIDH), and International Refugee Rights Initiative (IRRI), 'Submission to the Universal Periodic Review of Sudan 2016' (2015) 6 <<http://www.acjps.org/wp-content/uploads/2016/03/ACJPS-FIDH-and-IRRI-joint-submission-UPR-Sudan-2016-ENGLISH.pdf>>.

40 The Armed Forces Act 2007, Article 42 <<http://www.pclrs.com/downloads/bills/Institutional%20Law/Armed%20Forces%20Act%202007.pdf>>

41 'Sudan Law Reform Advocacy Briefing' (n 34)

thorities have repeatedly been found to have used excessive force (including lethal force), amounting to torture and other violations, in the course of these duties.<sup>42</sup>

## METHODS AND PATTERNS OF TORTURE

The list of torture methods practised in Sudan is vast, brutal and diverse. They include but are not limited to:

"routine beatings, kicking and stamping detainees, electric shocks, harsh regimes of physical exercise, prolonged exposure to the sun, pouring cold water on the naked body, rape in custody and threatening with rape, sleep deprivation, refusal of food and medical treatment and forcing some detainees to witness the torture of others."<sup>43</sup>

Reports have been made of the application of hot metal and burning chemical substances to the skin, pulling out of teeth and nails, coercive inhalation of toxic and irritating fumes, hanging from the feet upside down,<sup>44</sup> whipping, slashing of the skin,<sup>45</sup> along with the breaking of bones and the injection of detainees with unknown substances.<sup>46</sup>

Sexualised torture is endemic, and human rights organisations have documented several cases of sexual violence against male and female detainees, including rape, the threat of rape, inserting solid

42 'Submission to the Universal Periodic Review of Sudan 2016' (n 39) 7.

43 Ahmed (n 22) 171.

44 Ibid.

45 Redress, 'National and International Remedies for Torture: A Handbook for Sudanese Lawyers' (2005) 3 <<https://redress.org/publication/national-and-international-remedies-for-torture-a-handbook-for-sudanese-lawyers/>> accessed 8 October 2019.

46 Ahmed (n 22) 11.

objects into the mouth, the anus, and the crushing of testicles.<sup>47</sup>

Psychological forms of torture include prolonged solitary confinement, mock executions and witnessing the torture of others.<sup>48</sup>

## VICTIMS OF TORTURE

The list of victims of torture and ill-treatment in Sudan is extensive. Broadly, victims of torture can be categorized as being within one or more of the following groups (and in no particular order): students, human rights defenders (HRDs) and political activists, professionals (e.g. doctors, lawyers), trade unionists, minority ethnic groups, members of the diaspora, those in conflict zones, women and protesters.

### Students

Students and universities are systematically targeted as a result of their centrality in resistance movements and social activism against the regime.<sup>49</sup> Anti-government demonstrations proliferated amongst campuses after the 1989 coup, in 2011 as a result of austerity measures, and in 2019 as part of the Sudanese Uprising.

A 2017 Amnesty International report examined the scale of human rights violations and specific targeting against students in Darfur, noting that at least 10,000 student activists had been arbitrarily arrested and detained since 2003. In 2015, 20 students

47 'National and International Remedies for Torture' (n 45) 3; Human Rights Watch, "'They Were Shouting Kill Them': Sudan's Violent Crackdown on Protesters in Khartoum' (2019) 32–34 <<https://www.hrw.org/report/2019/11/17/they-were-shouting-kill-them/sudans-violent-crackdown-protesters-khartoum>> accessed 20 November 2019.

48 'National and International Remedies for Torture' (n 45).

49 Ahmed (n 22) 97, 189.

were arrested using excessive force, and beaten over their bodies with hoses and pipes.<sup>50</sup>

In July 2019, security forces used live ammunition on hundreds of students protesting in school uniforms. Four students were killed and at least 62 people were wounded.<sup>51</sup>

### Human Rights Defenders and Political Activists

Prior to the Sudanese Uprising, Sudan was one of the most difficult operating climates for HRDs globally. They were systematically harassed, singled out and abused, in order to prevent the monitoring and reporting of the prevalent practices of extra-judicial killings, enforced disappearances, torture and other human rights violations.<sup>52</sup>

In January 2018, the ACJPS reported the arbitrary and incommunicado detention of nine HRDs, lawyers and journalists, all in relation to peaceful protests against rising commodity prices. One of the victims, Amel Hamani, reported being beaten by an electric rod.<sup>53</sup>

50 Amnesty International, 'Sudan: "Uninvestigated, Unpunished": Human Rights Violations Against Darfuri Students' (2017) AFR 54/4848/2017 34 <<https://www.amnesty.org/en/documents/document/?indexNumber=afr54%2f4848%2f2017&language=en>> accessed 8 October 2019.

51 'Sudan Suspends Schools after Student Killings' *BBC News* (30 July 2019) <<https://www.bbc.com/news/world-africa-49172861>> accessed 8 October 2019.

52 'Sudan: Arrest of Dr. Amin Mekki Medani' (*International Federation for Human Rights*, 7 December 2014) <<https://www.fidh.org/en/region/Africa/sudan/16596-sudan-arrest-of-the-president-of-the-sudan-human-rights-monitor>> accessed 20 November 2019.

53 FIDH and the World Organisation Against Torture (OMCT), 'Sudan: Incommunicado Detention of 8 Human Rights Defenders, Lawyer and Journalists, and Arbitrary Detention of a Journalist and Human Rights Defender for Participating in Peaceful Protests' (2018) <<https://www.fidh.org/en/issues/human-rights-defenders/sudan-incommunicado-detention-of-8-human-rights-defenders-lawyer-and>> accessed 8 October 2019.

### Professionals (e.g. Doctors, Lawyers)

Professionals, such as lawyers and doctors were a particular target of the NISS. The objective is to hamper their work against rights violations, deter them from providing future support to victims, and deter their counterparts in the field from doing the same.

### Journalists

The Sudanese government had regularly engaged in a number of repressive practices of arbitrary detention and torture of journalists to maintain control over the information landscape.

In 2016, Phil Cox, a British journalist working for Channel 4, along with Daoud Hari, his local producer, was captured by the RSF militia whilst investigating allegations of chemical warfare in the Jebel Marra region. Cox reported being beaten, shocked with electricity, and asphyxiated over the course of 70 days' detention without charge or trial.<sup>54</sup>

On 6 December 2018, ACJPS reported the arrest of four journalists. They were arrested and allegedly physically assaulted while in NISS custody, and their phones were also confiscated and inspected.<sup>55</sup>

54 Phil Cox, 'Kidnapped, Tortured and Thrown in Jail: My 70 Days in Sudan' *The Guardian* (5 April 2017) <<https://www.theguardian.com/world/2017/apr/05/captured-in-darfur-south-sudan>> accessed 9 October 2019.

55 ACJPS, 'Sudan: Activists Targeted with Arbitrary Arrest and Incommunicado Detention Whilst the Media Remains Restricted amidst Crackdown on December 2018 Peaceful Protest. – African Centre for Justice and Peace Studies' <<http://www.acjps.org/sudan-activists-targeted-with-arbitrary-arrest-and-incommunicado-detention-while-the-media-remains-restricted-amidst-crackdown-on-december-2018-peaceful-protest/>> accessed 29 October 2019.

### Minority Ethnic Groups

Ethnic minority groups, including Darfuris and people displaced from the Blue Nile and South Kordofan states, are particularly vulnerable to torture and ill-treatment. Detainees have reported the use of racist verbal abuse and poor detention conditions.<sup>56</sup>

### Members of the Diaspora

As part of the Khartoum Process (a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe), many Sudanese nationals who have been unsuccessful with their asylum application have been forcibly or voluntarily returned back to Sudan. Although post-deportation monitoring is difficult, many of them have reported ill-treatment and torture.<sup>57</sup>

In December 2017, eight deportees described a period of detention on arrival at Khartoum airport and interrogation lasting several days, with some of them describing being beaten with a stick.<sup>58</sup>

56 ACJPS, 'Sudan: On the International Day in Support of Torture Survivors, End Torture and Repeal Enabling Legislation – African Centre for Justice and Peace Studies' <<http://www.acjps.org/sudan-on-the-international-day-in-support-of-torture-survivors-end-torture-and-repeal-enabling-legislation/>> accessed 9 October 2019; Human Rights Council, 'Report of the Commission on Human Rights in South Sudan' (2019) A/HRC/40/69 4–5 <[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/69](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/69)> accessed 20 November 2019.

57 Centre for Human Rights Law, SOAS, University of London, the International Refugee Rights Initiative (IRRI), and Waging Peace (WP), 'Sudan's Compliance with Its Obligations under the International Covenant on Civil and Political Rights in the Context of Mixed Migration from, and to Sudan 124th Session of the Human Rights Committee - Review of Sudan's State Party Report' (2018) 4–5 <<https://www.soas.ac.uk/human-rights-law/reports-research-projects-and-submissions/file138868.pdf>>.

58 *ibid* 5; 'Deported Sudanese Migrants Say They Were Tortured' *vrtnews.be* (20 December 2017) <[https://www.vrt.be/vrtnews/en/2017/12/20/deported\\_sudanemigrantssaytheyweretortured-1-3117089/](https://www.vrt.be/vrtnews/en/2017/12/20/deported_sudanemigrantssaytheyweretortured-1-3117089/)> accessed 21 November 2019; *Deported from Belgium, Tortured in Sudan?* (2018) <<https://www.bbc.com/news/av/world-europe-42725089/deported-from-belgium-tortured-in-sudan>> accessed 21 November 2019.



## Those in conflict zones

Numerous reports support evidence of government backed mass atrocities that amount to torture and crimes against humanity in Sudan's conflict zones, including killings, mass rape and torture of civilians, and the destruction and displacement of entire communities.<sup>59</sup>

A 2016 Amnesty International report documented the attack of 171 villages in the Jebel Marra region of Darfur by paramilitary forces. Interviews with local survivors suggest that 367 civilians were killed during this attack, either during bomb blasts or by being shot whilst fleeing. Many survivors confirmed the use of a "poisonous smoke" by government forces, with the limited available physical and biological evidence suggesting possible use of chemical weapons.<sup>60</sup>

## Women

Women in Sudan are at risk of experiencing sexual and gender-based violence (SGBV) in many forms, including rape, female genital mutilation, and other forms of sexual violence, and across multiple intersections of age, ethnicity, religion and displacement.<sup>61</sup> Furthermore, women are discriminated and susceptible to frequent arrests, detention, trial and punishment under the public order laws (strict moral codes incorporated in law, including the restriction of women's participation and presence in the public sphere and prescribing dress code).<sup>62</sup>

59 Human Rights Watch, 'Failing Darfur, Q and A: Crisis in Darfur' <<https://www.hrw.org/legacy/features/darfur/fiveyearson/qanda.html>> accessed 9 October 2019.

60 Amnesty International, 'Scorched Earth, Poisoned Air Sudanese Government Forces Ravage Jebel Marra, Darfur' (2016) 5 <<https://www.amnesty.org/download/Documents/AFR544872016ENGLISH.PDF>> accessed 9 October 2019.

61 SHIA and Redress, 'Criminalisation of Women in Sudan: A Need for Fundamental Reform' (2017) <<http://sihanet.org/wp-content/uploads/2018/02/Criminalization-of-Women-in-Sudan.pdf>> accessed 8 October 2019.

62 *ibid.*

Hundreds of rapes, including gang rapes, reportedly occurred during the June 2019 Massacre and the days that followed. Many women and girls were gang-raped on the spot, while others were kidnapped and continuously raped for days elsewhere.<sup>63</sup>

## Protesters

Peaceful protesters, including those during the Sudanese Uprising, have been victims of beatings, arbitrary arrests and detention, torture, live ammunition and killings.

In a report examining the detention of protesters between 2012-2014, Amnesty International noted in relation to protests against fuel subsidies cuts in 2013 that the army reportedly used excessive force. While a Human Rights Watch report documented the most violent of the dispersal of protests since December 2018, including killings, beatings, arbitrary arrests and sexual violence.<sup>64</sup> In addition, ACJPS received verifiable information of over 800 arbitrary arrests, and 185 deaths during the protest.<sup>65</sup>

63 Hala Al-Karib, 'Sudan's Youth Showed Us How to Counter Sexual Violence' <<https://www.aljazeera.com/indepth/opinion/sudan-youth-showed-counter-sexual-violence-190904113714967.html>> accessed 9 October 2019.

64 Human Rights Watch, "'They Were Shouting Kill Them": Sudan's Violent Crackdown on Protesters in Khartoum' (2019) <<https://www.hrw.org/report/2019/11/17/they-were-shouting-kill-them/sudans-violent-crackdown-protesters-khartoum>> accessed 20 November 2019.

65 Amnesty International, 'Sudan: Excessive and Deadly: The Use of Force, Arbitrary Detention and Torture against Protesters in Sudan' (2014) 17 <<https://www.amnesty.org/en/documents/document/?indexNumber=AFR54%2f020%2f2014&language=en>> accessed 9 October 2019.

## IMPUNITY FOR TORTURE IN SUDAN

Sudan's system of immunities (analysed in Section V below) effectively bars accountability for torture – by preventing victims from obtaining justice and reparations in the course of criminal proceedings and/or from filing an independent civil legal claim against the individual official concerned.

Accordingly, prosecutions for torture are extremely rare. In a promising decision handed down in 1993, the Supreme Court held that authorisation<sup>66</sup> was not required to proceed in cases involving the use of torture.<sup>67</sup> In this specific case, three police officers were convicted under Article 115(2) and 142(2) of the Criminal Act 1991 for torturing a woman in order to extract a confession.<sup>68</sup> The Court unanimously held that the absence of prior permission to prosecute under Article 61 of the (then) Police Forces Act did not invalidate the conviction of the accused. The decision essentially waived immunity for such cases. Referring to circulars issued by the General Director of the Police,<sup>69</sup> the Court held that authorisation needed to be obtained only when the act in question is one that is required by law to be performed. In all other cases there is no need to obtain authorisation. Thus, the express prohibition in the law of

66 The authorisation needed will differ based on the agency. In general, it would be authorisation from the senior members within the agency. By way of example, article 52 of the NSA provides that: (3) Without prejudice to the provisions of this Act and any right to claiming compensation against NSS [National Security Service], no civil or criminal procedures may be brought against a member or associate unless upon the approval of the Director. The Director shall give such approval whenever it appears that the subject of such accountability is not related to official business, provided that the trial of any staff or associates shall be before a closed criminal court, during their service or after its termination, with regards to acts committed by them.

67 Case No. 875/1993, Supreme Court of Sudan (28 November 1993) taken from 'National and International Remedies for Torture' (n 45) 27

68 *Ibid.*

69 Circular Nr. 139 issued in 1989; Circular Nr.140 issued in 1992.

using torture to extract confessions removes any necessity for permission to prosecute. Still, the police officers involved in the case were sentenced only to six months imprisonment and a fine of 9,000 Sudanese Pounds.<sup>70</sup>

However, this judgment has not been followed in subsequent cases.<sup>71</sup> The Attorney General has pursued cases before the courts requesting the removal of immunities but those immunities have been upheld, and the cases dismissed.<sup>72</sup> The Sudanese Constitutional Court has since justified immunities, emphasising their conditional nature and the possibility of judicial review.<sup>73</sup>

There is only one other known successful prosecution. In 2004, a Military Court found officers from the national security forces guilty of torture.<sup>74</sup> The officers were sentenced to one-year imprisonment, discharged from their jobs and made to pay 3,000,000 (sic) Sudanese Dinars (then approximately US \$12,000) as compensation to the torture survivor. This sentence, and the sentence in the 1993 decision, are wholly incommensurate to the harm caused.

In the context of Sudan, the African Commission has admitted cases on the grounds of domestic remedies being either unavailable,<sup>75</sup> inaccessible,<sup>76</sup>

70 *Ibid.*

71 'National and International Remedies for Torture' (n 47) 27–28.

72 See, for example, Case Nr. 2181/2001 Dueim Criminal Court (25 March 2002) in 'National and International Remedies for Torture' (n 45) 28.

73 *Farouq Mohamed Ibrahim Al Nour v (1) Government of Sudan; (2) Legislative Body* [2008] (Constitutional Court of Sudan).

74 'National and International Remedies for Torture' (n 45) 32.

75 *Law Offices of Ghazi Suleiman / Sudan, Comm No 228/99* (African Commission on Human and Peoples' Rights) [33] <<https://www.achpr.org/sessions/descions?id=141>>.

76 *Curtis Francis Doebbler v Sudan, Comm No 236/00* (African Commission on Human and Peoples' Rights) [27] <<https://www.achpr.org/sessions/descions?id=191>>.



ineffective,<sup>77</sup> insufficient,<sup>78</sup> or even non-existent,<sup>79</sup> or that the violations are such that they cannot be 'remedied by domestic remedies.'<sup>80</sup>

77 *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Comm No 368/09 (African Commission on Human and Peoples' Rights) [48] < <https://www.achpr.org/sessions/descions?id=249>>; *Law Offices of Ghazi Suleiman / Sudan*, Comm. No. 228/99 (n 75) para 39.

78 *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, Comm No 379/09 (African Commission on Human and Peoples' Rights) < <https://www.achpr.org/sessions/descions?id=221>> [48].

79 *Amnesty International and Others v Sudan*, Comm Nos 48/90, 50/91, 52/91, 89/93 (African Commission on Human and Peoples' Rights) [34] < <https://www.achpr.org/sessions/descions?id=106>>.

80 *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, Comm Nos 279/03-296/05 (African Commission on Human and Peoples' Rights) [94] < <https://www.achpr.org/sessions/descions?id=190>>.



## V. SUDAN'S INTERNATIONAL LAW OBLIGA- TIONS

Sudan is a party to several relevant human rights treaties at the international and regional level related to the prohibition of torture. This includes the ICCPR, with the UN Human Rights Committee as the monitoring body, and the African Charter, which is monitored by the ACHPR. Sudan is, therefore, obliged to take measures aimed at preventing torture, responding to allegations of torture by means of prompt, impartial and effective investigations and prosecutions, and providing effective remedies and reparation.

Chapter 14 of the Constitutional Declaration 2019 includes a new Rights and Freedoms Charter, which is described as:

*"...a pact between all the people of Sudan, and between them and their governments at every level. It is an obligation on their part to respect the human rights and fundamental freedoms contained in the document, and to work to advance them, and they shall be considered the cornerstone of social justice, equality and democracy in Sudan."<sup>81</sup>*

81 Constitutional Declaration 2019 (n 10), Article 41(1).



Further, the Constitutional Declaration has pledged respect for international human rights standards, stating that: “All rights and freedoms contained in international human rights agreements, pacts and charters ratified by the Republic of Sudan shall be considered to be an integral part of this document.”<sup>82</sup> This includes the prohibition of torture or “harsh, inhumane, or degrading treatment or punishment, or debasement of human dignity.”<sup>83</sup>

However, Sudan has not yet ratified the UNCAT, despite signing it on 4 June 1986. In 2016, Sudan reported that committees had been formed to study the possibility of acceding to the UNCAT,<sup>84</sup> yet no progress has been made so far.

While Sudan is yet to ratify the UNCAT, the prohibition of torture is enshrined under customary international law and carries the special status of a *jus cogens* norm, from which no derogation is permitted.<sup>85</sup> In addition, torture is firmly forbidden under international humanitarian law (IHL)<sup>86</sup>, and in the context of individual criminal responsibility by inter-

national criminal law.<sup>87</sup> A range of other rules and standards have also been developed to safeguard against torture.

The reports from the Independent Expert on the Situation of Human Rights in Sudan, established in 1993, have highlighted the systematic practice of torture and ill-treatment and made numerous recommendations to Sudan.<sup>88</sup> However, the Sudanese government has generally failed to engage with the United Nations Special Procedures, occasionally denying them the right to visit the country, and denying access to civil society organisations.<sup>89</sup>

## AFRICAN COMMISSION FOR HUMAN AND PEOPLES' RIGHTS

The ACHPR is a quasi-judicial body, tasked with deciding complaints related to alleged violations of the rights protected in the African Charter and making remedial recommendations to State parties.

<sup>87</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1st July 2002) 2187 UNTS 90. Note that The Rome Statute was adopted in July 1998 and entered into force in 2002. Sudan signed the Statute in 2000 but has not ratified it. The situation in Darfur was referred to the ICC by the Security Council in 2005, on the basis of the findings of the UN International Commission of Enquiry on Darfur in 2004. The ICC issued six arrest warrants for high-ranking Sudanese officials, including one in 2009 for President Omar Al-Bashir, for crimes against humanity and war crimes. In 2010, a second arrest warrant was issued against al-Bashir for three counts of genocide, allegedly committed against the Fur, Masalit, and Zaghawa groups. Sudan has rejected the legitimacy of the ICC and the arrest warrants remain outstanding.

<sup>88</sup> ‘Situation of Human Rights in the Sudan - Report of the Independent Expert on the Situation of Human Rights on His Visit to Sudan - Comments by the State (A/HRC/42/63/Add.1) - Sudan’ (n 27).

<sup>89</sup> Ahmed (n 22) 353.

Under Article 5 of the African Charter, Sudan has a legal obligation to prohibit torture.<sup>90</sup> In 2017, the ACHPR adopted General Comment 4 on the Right to Redress for Victims of Torture following consultation with State and non-State stakeholders.<sup>91</sup> General Comment 4 provides an authoritative interpretation of the scope and content of the right to redress for victims of torture and other ill-treatment under the mandate of the African Commission.

There are also regional standards developed under the ACHPR, including the Robben Island Guidelines, which created the first regional instrument for the prohibition and prevention of torture in Africa and the Principles on the Right to a Fair Trial and Legal Assistance in Africa.<sup>92</sup>

The ACHPR has decided seven cases against Sudan on their merits (out of a total 13) with at least ten cases pending.

In every case that was found admissible, the African Commission found instances of torture and cruel, inhuman and degrading treatment or punishment (article 5 of the African Charter), often in conjunction with other human rights violations.

<sup>90</sup> Article 5 states: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

<sup>91</sup> African Commission on Human and Peoples’ Rights, ‘General Comment No.4: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)’ <<https://www.achpr.org/legalinstruments/detail?id=60>> accessed 10 October 2019.

<sup>92</sup> Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment In Africa, adopted by the ACHPR in 2002 (the Robben Guidelines) and Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the ACHPR in 2003.

Some of the pending cases involve instances of SGBV, including rape in custody,<sup>93</sup> and torture based on discrimination due to religious beliefs. In addition, the cases showcase how any person perceived as a threat, regardless of their nationality, is exposed to torture.<sup>94</sup>

In its jurisprudence, the ACHPR has called out the failure of Sudan to “put in place an adequate legislative framework” or “afford an adequate remedy to the victims”.<sup>95</sup> It has repeatedly recommended that Sudan should compensate victims, investigate and prosecute those responsible of violations, and make judicial and legislative reforms in conformity with the African Charter.<sup>96</sup>

In terms of accountability, the African Commission has either found the Sudanese government directly involved in the violations, or that the government had not taken “appropriate measures to protect the physical integrity of its citizens from abuse either by official authorities or other citizens/third parties.”<sup>97</sup>

<sup>93</sup> *Safia Ishaq Mohamed Issa (represented by The REDRESS Trust) v Republic of Sudan*, Comm No 443/13 (African Commission on Human and Peoples’ Rights) [2013] Submission on the merits: complaint of a female student human rights activist who has allegedly been raped whilst in the custody of three security officers.

<sup>94</sup> E.g. *Magdy Moustafa El-Baghdady v The Republic of the Sudan*, Comm. No. 476/14 (African Commission on Human and Peoples’ Rights) [2018] Submission on the merits: British citizen who wanted to explore business opportunities in Sudan and who has been accused by the Sudanese authorities of coming to Sudan in order to incite revolution and thereby detained over nearly three months.

<sup>95</sup> See, for example, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Comm. No. 368/09 (n 77) para.92.

<sup>96</sup> *Amnesty International and Others v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91, 89/93 (n 79); *Curtis Francis Doebbler v Sudan*, Comm. No. 236/00 (n 76); *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Comm. Nos. 279/03-296/05 (n 80); *Law Offices of Ghazi Suleiman / Sudan*, Comm. No. 228/99 (n 75); *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, Comm. No. 379/09 (2014) (n 78); *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Comm. No. 368/09 (n 77).

<sup>97</sup> *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Comm. Nos. 279/03-296/05 (n 80).para. 179



In the latter category, the ACHPR has acknowledged that the Sudanese government has failed to protect victims of alleged human rights violations including torture, and failed to investigate the allegations and to prosecute perpetrators.<sup>98</sup>

In its more recent decisions, the ACHPR has recommended more specific legislative and judicial reforms. The inclusion of victims' "prayers" from 2009 in cases on Sudan has given more material to the African Commission for its recommendations.<sup>99</sup> The ACHPR has requested that the Sudanese government inform the Commission of measures taken to implement its decisions.<sup>100</sup>

In its 2012 Concluding Observations, the ACHPR recommended that Sudan should:

- abolish laws that allow corporal punishment, including stoning, amputation, cross-amputation and whipping;
- include human rights standards, such as the Robben Island Guidelines, in the training of prison staff and police officers;

98 Amnesty International and Others v. Sudan, Comm. Nos. 48/90, 50/91, 52/91, 89/93 (1999) para. 51 ; Law Office of Ghazi Suleiman / Sudan, Comm. No. 222/98-229/99 (2003) para. 46 ; Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v. Sudan, Comm. Nos. 279/03 & 296/05 (2009) paras. 164, 166, 168, 179, 190, 205 ; Abdel Hadi, Ali Radi & Others v Republic of Sudan, Comm. No. 368/09 (2013) paras. 77, 88, 92 ; Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Comm. No. 379/09 (2014) para. 64. 99 Abdel Hadi, Ali Radi & Others v Republic of Sudan, Comm. No. 368/09 para. 13. See also Ilias Bantekas and Lutz Oette, International Human Rights Law and Practice (2<sup>nd</sup> edn CUP 2016) 280.

100 Abdel Hadi, Ali Radi & Others v Republic of Sudan, Comm. No. 368/09 (n 77) para 93 (iii)Rule; Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Comm. No. 379/09 (2014) (n 78) para 142 (iv); African Commission on Human and Peoples' Rights, 'Rules of Procedure' <<https://www.achpr.org/rules>> accessed 10 October 2019: ) Rule 112(2): "in the event of a decision against a State Party, the parties shall inform the Commission in writing, within one hundred and eighty (180) days"

- consider enacting a law criminalizing torture;
- appoint an independent commission to investigate torture by the police, as well as all extrajudicial executions and enforced disappearances, and make the findings public; and
- enact legislation prohibiting female genital mutilations, violence and other discriminatory practices against women.
- take immediate steps to close down all unofficial places of detention; and
- ensure that the Prison Service get adequate resources to improve living conditions and access to health care in prisons and places of detention.<sup>101</sup>

The African Commission made specific recommendations with regards to the practice of granting immunities in Sudan, recommending that Sudan should repeal Article 52(3) of the National Security Act 2010 that provides members of the NISS and their associates with immunity from criminal and civil procedures<sup>102</sup>.

Sudan has not implemented any of the African Commission's recommendations nor has it indicated what steps it will take to implement the decisions when reporting back to the Commission. Sudan's written submissions were frequently late, requiring the ACHPR to send notifications to remind the Sudanese Government to make its submissions or defer

101 African Commission on Human and Peoples' Rights, 'Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan, Adopted at the 12th Extraordinary Session' 62–68 <[https://www.achpr.org/public/Document/file/English/concluding\\_observation\\_.pdf](https://www.achpr.org/public/Document/file/English/concluding_observation_.pdf)> accessed 9 October 2019.

102 *ibid* 66–68.

consideration of the case until receipt.<sup>103</sup> In 2015, the Sudanese Government's representative did not attend hearings.<sup>104</sup> Sudan currently has three reports overdue under the state reporting procedure.<sup>105</sup> The ACHPR sent five letters of urgent appeal to Sudan since November 2017. Sudan is yet to respond to four of these letters.<sup>106</sup>

At this transformative moment for Sudan, the African Commission's recommendations "constitute an important source and play a critical role in monitoring Sudan's implementation of its international obligations; they provide a baseline, give expression to shared concerns and allow identifying priority areas for prompt/overdue action to be taken."<sup>107</sup>

103 Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, Comm. Nos. 279/03-296/05 (n 80) para 22,41,53,56; Law Offices of Ghazi Suleiman / Sudan, Comm. No. 228/99 (n 75) para 16; Curtis Francis Doebbler v Sudan, Comm. No. 236/00 (n 76) para 16.

104 Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Comm. No. 379/09 (2014) (n 78) para 19.

105 ACHPR, '46th Activity Report of the African Commission of Human and People's Rights, Covering the Period from November 14, 2018 to May 14 2019' para 21 <[https://www.achpr.org/public/Document/file/English/46th%20Activity%20Report%20ACHPR\\_%20ENG.PDF](https://www.achpr.org/public/Document/file/English/46th%20Activity%20Report%20ACHPR_%20ENG.PDF)> accessed 10 October 2019.

106 ACHPR, '44th Activity Report of the African Commission of Human and People's Rights, Covering the Period from November 15, 2017 to May 9 2018' para 28 <[https://www.achpr.org/public/Document/file/English/actrep44\\_2018\\_eng.pdf](https://www.achpr.org/public/Document/file/English/actrep44_2018_eng.pdf)>; ACHPR, '45th Activity Report of the African Commission of Human and People's Rights, Covering the Period from 10 May 2018 to 13 November 2018' para 38 <[https://www.achpr.org/public/Document/file/English/45th%20Activity%20Report\\_ENG.pdf](https://www.achpr.org/public/Document/file/English/45th%20Activity%20Report_ENG.pdf)>; '46th Activity Report of the African Commission of Human and People's Rights, Covering the Period from November 14, 2018 to May 14 2019' (n 111) para 33.

107 Redress, Sudanese Human Rights Monitor, Criminal Law Reform Sudan, 'Sudan Law Reform Advocacy Briefing' (2014) 27 <<http://www.pclrs.com/downloads/advocacy-briefing-sudan-jan-2014.pdf>> accessed 10 October 2019.

## RECOMMENDATIONS BY THE ACHPR AGAINST SUDAN

In broad terms, the African Commission has considered and made recommendations in the following areas in relation to the prohibition of torture:

Legislative and judicial reforms;

The removal of immunities;

Investigation of and punishment for violations;

Compensation for victims; and,

Training of security officers regarding torture.

### Legislative and judicial reforms

In *Amnesty International and Others v. Sudan*, the first decision decided on the merits against Sudan in 1999, the ACHPR called for the respect of the African Charter and identified specific domestic legislation that enabled the violations.<sup>108</sup> In subsequent cases, it has recommended that Sudan "bring its legislation in conformity with the African Charter,"<sup>109</sup> and "amend its existing laws to provide for de jure protection of the human rights to freedom of expression, assembly, association and movement."<sup>110</sup>

In *Curtis Francis Doebbler v. Sudan* (in which the Sudanese government deemed a group of women improperly dressed, and acting in an immoral manner, thereby violating public order), the ACHPR requested that Sudan "immediately amend the Criminal Law of 1991, in conformity with its obligations under the Af-

108 *Amnesty International and Others v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91, 89/93 (n 79) para 3,11,13.

109 *Law Offices of Ghazi Suleiman / Sudan*, Comm. No. 228/99 (n 75).

110 *Ibid*.

rican Charter and other relevant international human rights instruments.”<sup>111</sup> In addition, in *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v. Sudan*, the ACHPR concluded that Sudan should “desist from adopting amnesty laws for perpetrators of human rights abuses.”<sup>112</sup>

## Immunities

The ACHPR considered the issue of immunities in a number of cases against Sudan, finding that immunities are incompatible with the right to an effective remedy under the African Charter and concluded that Sudan’s legal system does not provide effective remedies for victims of human rights violations.<sup>113</sup> The ACHPR has mentioned the issue of immunities frequently in the most recent cases, using it as a basis for determining the impossibility of exhausting domestic remedies, but has not made any recommendations on the topic.<sup>114</sup> The issue of immunities has resulted in an almost complete lack of prosecutions of torture cases even where credible evidence was available.<sup>115</sup>

## Duty to investigate and punish

In its most recent case, decided in 2014 in relation to Sudan, the ACHPR found that Sudan “failed in its positive obligation to carry out an effective investi-

gation, as required by article 1, particularly if read in conjunction with article 5 of the Charter.”<sup>116</sup> However, “to effectively discharge itself from responsibility, it is not enough to investigate.”<sup>117</sup> The ACHPR stressed that:

States are under an obligation not only to make sure that torture is absolutely prohibited in their legislation, but also in practical terms. Where torture is allegedly inflicted and this is brought to the attention of the State, it is also under an obligation to initiate a prompt, impartial and effective investigation in order to determine the veracity of the allegations and to bring the perpetrators to justice.<sup>118</sup>

To this end, in various cases, the ACHPR has recommended that Sudan “conducts effective official investigations into the abuses, committed by members of military forces, i.e. ground and air forces, armed groups and the Janjaweed militia for their role in the Darfur;”<sup>119</sup> and “takes steps to prosecute those responsible for the human rights violations, including murder, rape, arson and destruction of property.”<sup>120</sup>

## Compensation

Compensation is an essential remedy for victims. While, the ACHPR has referred to it alongside restitution as measures that Sudan has to take towards victims,<sup>121</sup> it has done so inconsistently.<sup>122</sup> Where individual reparations have been recommended, this has usually been unspecified, calling Sudan to “pay adequate compensation”<sup>123</sup> or to “take appropriate measures to ensure compensation.”<sup>124</sup> Yet, Sudan has not provided any compensation to victims of torture involved in the decided cases.

## Training security officers regarding torture

With respect to torture, the ACHPR has requested the Sudanese government to: “train security officers on relevant standards concerning adherence to custodial safeguards and the prohibition of torture”,<sup>125</sup> in line with the Robben Island Guidelines.<sup>126</sup>

111 *Curtis Francis Doebbler v Sudan*, *Comm. No. 236/00* (n 76); *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *Comm. No. 368/09* (n 77) para 93 (ii) (c).

112 *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, *Comm. Nos. 279/03-296/05* (n 80) para 229 (7).

113 Redress, ACJPS, ‘Submission to the All-Parliamentary Group on Sudan and South Sudan on the Prohibition of Torture and Ill-Treatment in Sudan’ para 8 <<https://redress.org/wp-content/uploads/2017/12/THE-REDRESS-TRUST-AND-AFRICAN-CENTRE-FOR-JUSTICE-AND-PEACE-STUDIES.pdf>> accessed 10 October 2019.

114 *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *Comm. No. 368/09* (n 77) paras 47–49; *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, *Comm. No. 379/09 (2014)* (n 78) paras 66–70.

115 ‘Sudan Law Reform Advocacy Briefing’ (n 36) para 3.2.4.

116 *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, *Comm. No. 379/09 (2014)* (n 78) para 92.

117 *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, *Comm. Nos. 279/03-296/05* (n 80) para 150.

118 *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, *Comm. No. 379/09 (2014)* (n 78) para 100.

119 *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, *Comm. Nos. 279/03-296/05* (n 80) para 229 (1).

120 *ibid* 229 (3); *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *Comm. No. 368/09* (n 77) para 93 (ii) b; *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, *Comm. No. 379/09 (2014)* (n 78) para 142 (iii) (b).

121 *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, *Comm. Nos. 279/03-296/05* (n 80) para 229 (4).

122 *Law Offices of Ghazi Suleiman / Sudan*, *Comm. No. 228/99* (n 75).

123 *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *Comm. No. 368/09* (n 77) para 93(ii)(a); *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, *Comm. No. 379/09 (2014)* (n 78) para 142(iii)(a).

124 Frans Viljoen and Chidi Odinkalu, ‘The Prohibition of Torture and Ill-Treatment in the African Human Rights System: A Handbook for Victims and Their Advocates’ <<https://www.atlas-of-torture.org/en/document/uppc7pnojt?page=3>> accessed 21 November 2019.

125 *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, *Comm. No. 368/09* (n 77) para 93(ii)(d).

126 ACHPR, ‘Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)’ (2008) para 45.46 <<https://www.achpr.org/legalinstruments/detail?id=41>> accessed 16 October 2019.

## SUMMARY OF THE AFRICAN COMMISSION'S CASES

### Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan, Comm. Nos. 48/90-50/91-52/91-89/93 (1999)

<b>Facts</b>	Hundreds of lawyers, members of opposition and human rights defenders detained without trial or charge after the coup on 30 July 1989 and subjected to ill-treatments and torture in prisons and ghost houses.
<b>Articles violated</b>	2 (non-discrimination), 4 (right to life), 5 (torture), 6 (liberty), 7(1)(a) (right to appeal), (c) (right to defence), (d) (tried within a reasonable time), 8 (freedom of religion), 9 (freedom of expression), 10 (freedom of association) and 26 (independence of the courts).
<b>Legislative and Judicial Reforms</b>	The Commission recommended 'strongly to the Government of Sudan to put an end to these violations in order to abide by its obligations under the African Charter.' <sup>127</sup>  It identified specific domestic legislation that enabled the violations; however, it did not request any change in the new Sudanese legislation.

### Law Office of Ghazi Suleiman / Sudan, Comm. Nos. 222/98-229/99 (2003)

<b>Facts</b>	29 civilians accused of terrorism were arrested, detained and subjected to torture.
<b>Articles violated</b>	5 (torture), 6 (liberty) and 7(1) (fair hearing).
<b>Legislative and Judicial reforms</b>	... "to bring its legislation in conformity with the African Charter" <sup>128</sup>
<b>Compensation</b>	... "to duly compensate the victims" <sup>129</sup>

<sup>127</sup> Law Office of Ghazi Suleiman / Sudan, Comm. Nos. 222/98-229/99 (2003), 'Holding'

<sup>128</sup> Ibid.

### Law Office of Ghazi Suleiman / Sudan, Comm. No. 228/99 (2003)

<b>Facts</b>	A Sudanese lawyer and activist prohibited from giving a lecture and subjected to threats, arrests and attacks several times.
<b>Articles violated</b>	6 (liberty), 9 (freedom of expression), 10 (freedom of association), 11 (freedom of assembly) and 12 (freedom of movement).
<b>Legislative and Judicial reforms</b>	"Amend its existing laws to provide <i>de jure</i> protection of the human rights to freedom of expression, assembly, association and movement." <sup>130</sup>

### Curtis Francis Doebbler/Sudan, Comm. No. 236/00 (2003)

<b>Facts</b>	Eight student women convicted and sentenced to fines or lashes because they were not properly dressed or acting in a manner considered being immoral.
<b>Articles violated</b>	5 (torture).
<b>Legislative and Judicial reforms</b>	"Immediately amend the Criminal Law of 1991, in conformity with its obligations under the African Charter and other relevant international human rights instruments;  Abolish the penalty of lashes..." <sup>131</sup>
<b>Compensation</b>	"Take appropriate measures to ensure compensation of the victims." <sup>132</sup>

### Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan, Comm. Nos. 279/03-296/05 (2009)

<b>Facts</b>	Massive and systematic human rights violations including torture carried out by security and paramilitary forces against the indigenous Black African tribes in Darfur.
<b>Articles violated</b>	4(right to life), 5 (torture), 6 (liberty), 7 (fair trial), 12(1) (freedom of movement), 14 (right to property), 16 (health), 18(1) (family) and 22 (right to development).

<sup>129</sup> Law Offices of Ghazi Suleiman / Sudan, Comm. No. 228/99 (2003), 'Holding'.

<sup>130</sup> Curtis Francis Doebbler/Sudan, Comm. No. 236/00 (2003), 'Holding'

<sup>131</sup> Ibid.



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**Legislative and Judicial reforms** “undertake major reforms of its legislative and judicial framework in order to handle cases of serious and massive human rights violations”<sup>133</sup>

“desist from adopting amnesty laws for perpetrators of human rights abuses”<sup>134</sup>

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**Duty to investigate and punish** ... “conduct effective official investigations into the abuses, committed by members of military forces, i.e. ground and air forces, armed groups and the Janjaweed militia for their role in the Darfur”<sup>135</sup>

“take steps to prosecute those responsible for the human rights violations, including murder, rape, arson and destruction of property”<sup>136</sup>

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**Compensation** “to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation”<sup>137</sup>

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**Other** “rehabilitate economic and social infrastructure, such as education, health, water, and agricultural services, in the Darfur provinces in order to provide conditions for return in safety and dignity for the IDPs and Refugees”<sup>138</sup>

“establish a National Reconciliation Forum to address the long-term sources of conflict, equitable allocation of national resources to the various provinces, including affirmative action for Darfur, resolve issues of land, grazing and water rights, including destocking of livestock”<sup>139</sup>

... “consolidate and finalise pending Peace Agreements.”<sup>140</sup>

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### **Abdel Hadi, Ali Radi & Others v Republic of Sudan, Comm. No. 368/09 (2013)**

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**Facts** 88 IDPs from Darfur arbitrary arrested, held in incommunicado detention during 12 months and subjected to torture after the police tried to relocate families in the IDPs camp.

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**Articles violated** 1 (recognition of rights in the charter), 5 (torture), 6 (liberty) and 7(1) (c) (d) (right to defence and tried within a reasonable time).

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132 *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan*, Comm. Nos. 279/03-296/05 (2009), para. 229(2)

133 *Ibid*, para. 229(7)

134 *Ibid*, para. 229(1)

135 *Ibid*, para. 229(3)

136 *Ibid*, para. 229(4)

137 *Ibid*, para. 229(5)

138 *Ibid*, para. 229(6)

139 *Ibid*, para. 229(8)

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**Legislative and Judicial reforms** “Where appropriate, amend the legislation incompatible with the Charter”<sup>141</sup>

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**Duty to investigate and punish** “Initiate an effective and impartial investigation into the circumstances of arrest and detention and the subsequent treatment of the Complainants”<sup>142</sup>

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**Compensation** “pay adequate compensation to the victims named in the present Communication in accordance with the domestic law for the rights violated”<sup>143</sup>

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**Other** “train security officers on relevant standards concerning adherence to custodial safeguards and the prohibition of torture”<sup>144</sup>

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### **Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Comm. No. 379/09 (2014)**

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**Facts** Three human rights defenders arrested and detained because accused of spying on behalf of the ICC, and who left the country thereafter.

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**Articles violated** 1 (recognition of rights in the charter), 5 (torture), 6 (liberty), 9 (freedom of expression), 10 (freedom of association), 12 (freedom of movement), 15 (work under equitable conditions) and 16 (health).

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**Duty to investigate and punish** “Investigate and prosecute all those persons who participated in the illegal incarceration and torture of the Complainants”<sup>145</sup>

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**Compensation** “Pay adequate compensation to the Complainants named in the present Communication in accordance with the domestic law of The Sudan for the rights violated”<sup>146</sup>

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**Other** ... “Reopen and unfreeze the bank accounts of [the victim]”<sup>147</sup>

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140 *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Comm. No. 368/09 (2013), para. 93(ii)(c)

141 *Ibid*, para. 93(ii)(b)

142 *Ibid*, para. 93(ii)(a)

143 *Ibid*, para. 93(ii)(d)

144 *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, Comm. No. 379/09 (2014), para. 142

145 *Ibid*.

146 *Ibid*.





## VI. WAY FORWARD: PRIORITIES FOR LEGAL DOMESTIC REFORMS

The 2019 Constitutional Declaration adopted several measures protecting basic human rights and freedoms and paving the way for institutional reforms. Chapter 14 of the Constitutional Declaration states that “All rights and freedoms contained in international human rights agreements, pacts, and charters ratified by the Republic of Sudan shall be considered an integral part of this document.”<sup>147</sup> It also provides for the prohibition of torture declaring that “No one may be subjected to torture or harsh, inhumane, or degrading treatment or punishment, or debasement of human dignity.” However, “torture” is not defined in the Constitutional Declaration, and the Criminal Act 1991 does not contain a criminal offence of torture. Instead, torture is limited only to circumstances influencing the course of justice and not as a violation in itself.<sup>148</sup>

Further, the NISS was renamed as the General Intelligence Service (GIS), and its powers of arrest appear to have been limited.<sup>149</sup> It is not clear whether the GIS will be subject to other reform programs outlined in the Constitutional Declaration.

<sup>147</sup> Constitutional Declaration 2019 (n 10), Article 41(2).

<sup>148</sup> *ibid*, Article 50.

<sup>149</sup> Sudan News Agency, ‘Sudan: Restructure of Security Service Was Fulfillment to Military Men’s Pledges - Experts’ *allAfrica.com* (26 August 2019) <<https://allafrica.com/stories/201908260189.html>> accessed 16 October 2019.



As outlined earlier in this report, these reforms are not sufficient to address decades of the pervasive use of torture, requiring additional reforms. This chapter will set out the priorities for reform regarding Sudan's existing domestic legal framework in order to make it compatible with Sudan's international obligations on the prohibition of torture. Where possible, we have taken into consideration the new Constitutional Declaration, which provides that "laws that contradict the provisions of this Constitutional Declaration shall be repealed or amended to the extent necessary to remove the contradiction",<sup>150</sup> and which mandates the repeal of "laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender."<sup>151</sup>

All the legislation included in the analysis below has been taken from the resources of the Project for Criminal Law Reform in Sudan.<sup>152</sup>

Priorities for reform are identified across three thematic areas: 1) prevention of torture; 2) accountability for torture; and 3) remedies and reparation for victims of torture.

## PREVENTION OF TORTURE

### The definition of torture

The Criminal Act 1991 does not contain a criminal offence of torture in line with the internationally recognised standard contained within Article 1 of UNCAT. Under Article 115 of the Criminal Act 1991, the offence of torture is limited to circumstances 'influencing the course of justice.' Therefore, torture is

<sup>150</sup> Constitutional Declaration 2019 (n 10), Article 4.

<sup>151</sup> *ibid*, Article 7(2).

<sup>152</sup> 'Bills & Laws in the Criminal Law Reform in Sudan Project' <<http://www.pclrs.com/english/bills-and-laws>> accessed 11 October 2019.

seen merely as an aspect of interference with proceedings and not as a violation of the basic rights of the survivor or victim.

### Recommendations

**Criminalize torture, including a definition of the crime that is in accordance with the UNCAT.**

### Safeguards

There are existing safeguards under the Criminal Procedure Act (CPA) 1991, including, *inter alia*, judicial review of detention, criminalization of unlawful detention, rights to legal representation, the right to inform family and friends, the right to be informed of charges,<sup>153</sup> and a range of other entitlements for detainees.<sup>154</sup> But these rights are often ignored.<sup>155</sup>

### Period of Detention without Judicial Review

Under the CPA 1991, police may hold a person in custody for twenty-four hours.<sup>156</sup> However, after twenty-four hours, the Prosecution Attorney may renew the detention for a period of up to three days.<sup>157</sup> Extension of the detention beyond this requires a Magistrate's approval, who may renew the detention for a period of two weeks.<sup>158</sup> The requirement to produce the detainee before an independent judge only four days after the initial arrest is too long a period of permissible detention without approval by a judge and violates international law standards that

<sup>153</sup> Criminal Procedure Act 1991, Art.72 <<http://www.pclrs.com/english/bills-and-laws>> accessed 17 October 2019

<sup>154</sup> *ibid*, Article 83

<sup>155</sup> 'Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan, Adopted at the 12th Extraordinary Session' (n 101).

<sup>156</sup> Criminal Procedure Act, Article 77 and 79(1).

<sup>157</sup> *ibid*, Article 79(2)

<sup>158</sup> *Ibid*, Article 79(3).

provides an arrested individual should be brought promptly before a competent judicial authority. Further, the 2010 National Security Act allows for detention of suspects up to a total of four and a half months without judicial review.<sup>159</sup>

### Recommendations

**Amend the CPA 1991 to comply with the standards of review under the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and other international standards.**

### Right to Habeas Corpus

Sudanese law lacks an effective remedy to challenge the legality of detention. The only remedy currently available is under Article 165 of the Criminal Act 1991, which criminalises unlawful detention. Under Article 165, a lawyer may petition a prosecutor to issue an order for immediate release of the person who has been illegally detained by the police and for the institution of criminal proceedings against the responsible official.<sup>160</sup> Furthermore, Article 16 (1) (c) of the Constitutional Court Act gives the Court the power to pass a writ of *habeas corpus* to anybody for the purpose of considering the constitutionality of the detention.

The right to challenge detention is a fundamental right of detainees under their right to liberty and security (recognised under Article 45 of the Constitutional Declaration). Accordingly, a right of *habeas corpus* must be explicitly recognised under the domestic law. Under the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, States are required to enact legislation, where it

<sup>159</sup> National Security Act 2010, Article 50(1).

<sup>160</sup> Criminal Act 1991, Art. 165; 'National and International Remedies for Torture' (n 45).

does not exist, to ensure the right to *habeas corpus*, *amparo* or similar procedures.<sup>161</sup>

### Recommendations

**Enact a right of *habeas corpus* in domestic legislation, in accordance with the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and other international instruments.**

### Right to Legal Representation

Article 51(6) of the Constitutional Declaration provides that:

The Accused shall have the right to defend himself personally or via an attorney he selects. He shall have the right to be provided legal assistance by the state when he is unable to defend himself in crimes of extreme gravity.<sup>162</sup>

Under Article 83(3) of the CPA 1991<sup>163</sup>, the arrested person has the right to contact an advocate.

However, neither law requires the presence of a lawyer during the initial interrogation and in practice, rarely are those arrested allowed access to a lawyer at this stage.<sup>164</sup>

Further, the Article 34 (6) of Sudan 2005 Constitution refers to legal aid only at the time of representation in trial, and only in cases involving 'crimes of extreme gravity'. It is necessary to ensure that suspects and individuals arrested have access to a lawyer at the time of arrest.<sup>165</sup> Implementing the right to a lawyer

<sup>161</sup> African Commission, 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' para 5 <<https://www.ach-pr.org/legalinstruments/detail?id=38>> accessed 17 October 2019.

<sup>162</sup> Constitutional Declaration 2019 (n 10), Article 51(6).

<sup>163</sup> Criminal Procedure Act, Article 83.

<sup>164</sup> National and International Remedies for Torture' (n 45).

<sup>165</sup> *ibid*.

at this stage allows the person arrested access to legal remedies against arbitrary detention, prevents enforced disappearance and torture and minimises the risk of harm being caused during the detention.

## Recommendations

**Amend Article 83 (3) of the CPA 1991 to specify the right to access legal representation at the initial stage of interrogation, access to legal aid if the arrested person cannot afford a lawyer and the right to be informed of this at the time of arrest.**

### *Right to Inform Family or Friends*

Article 83(5) of the CPA 1991 provides the arrested person with the right to inform their family or employer of their arrest, subject to the approval of the Prosecution Attorney or the Court. The requirement of permission under this right is problematic and should be removed. In practice, detainees are not allowed access to their relatives or friends.

The right to have family or friends informed of the arrest is critical under international law: it ensures that the family is aware of where the person arrested is being detained. Furthermore, it allows the family to pursue legal remedies on behalf of the detainee, challenging the detention in question or the treatment being meted out to the person. The person arrested should also be informed of this right at the time of arrest.

## Recommendations

**Amend Article 83(5) of the CPA 1991 to remove the requirement of approval of the Prosecution Attorney or the Court before informing family or employer of the arrest and to require that the arrested person be informed of this right.**

### *Record of Interrogations*

Sudanese domestic law does not stipulate for a record of interrogations. The Robben Island Guidelines provide that States should:

28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio tape recordings of interrogations.<sup>166</sup>

Implementing such a measure would facilitate transparency in detention practices and the development of a culture of eliminating torture.

## Recommendations

**Enact domestic legislation ensuring that comprehensive written records of all interrogations are kept in line with the Robben Island Guidelines.**

### *Right to medical examination*

A major gap in the procedural safeguards provided under Sudanese domestic law is the lack of access to a doctor or medical examination. Article 83(1) of the CPA 1991 provides that the arrested person shall not be harmed, and that appropriate medical care shall be provided. However, there is no guidance on what constitutes appropriate care. In addition, Article 49, provides for medical examination only for the purposes of ascertaining the commission of an offence.

The UN Standard Minimum Rules for the Treatment of Prisoners require a medical examination as soon

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<sup>166</sup> 'Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)' (n 126) para 28.

as possible after detention.<sup>167</sup> A mandatory medical examination of all arrested persons would help to curtail unchecked torture practices. Furthermore, it would address the problems of lack of proof survivors face when attempting to prosecute cases of torture.

## Recommendations

**Amend the CPA 1991 to ensure that proper medical examinations are conducted following detention in line with the UN Standard Minimum Rules for the Treatment of Prisoners and other applicable instruments.**

### The National Security Act 2010

As set out in detail above, the Constitutional Declaration renamed the NISS to GIS, limited its powers of arrest and detention, and called for legal reform in line with human rights obligations.

The NSA 2010, in its current form, has further diluted the already inadequate protections set out above under the CPA 1991. Under the NSA 2010, judicial review of an arrest can be delayed up to four and a half months. The procedure for detention of a person is specified under Article 50 of the Act.

In brief, the NSA 2010 provides for an initial detention not exceeding more than 30 days, providing that the immediate relatives of the arrested person are informed.<sup>168</sup> The NSA Director may then extend the detention for no more than 15 days with the purpose to complete and investigation, and in certain cases for a further three months on approval of the

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<sup>167</sup> 'UN Standard Minimum Rules for the Treatment of Prisoners (SMR)' para 24 <<https://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/>> accessed 21 October 2019.

<sup>168</sup> National Security Act 2010, Article 50 (1) (f).

Council.<sup>169</sup> Extraordinarily, there is no right to appear before a judge in this period. Given that there is no right of habeas corpus, this is a serious infringement of the right to personal liberty of a detainee.<sup>170</sup>

Article 51 of the NSA 2010 specifies the rights of the detainee in custody. Under Article 51(2), the right of the detainee to communicate with their family or advocate is conditional on the communication not prejudicing the progress of interrogation, enquiry or investigation. This condition is highly problematic and is a major derogation of basic rights of detainees under international law.

As is the case with the CPA 1991, a mandatory medical examination of the arrested person must be conducted as soon as possible after the person is detained, to serve as a check against torture.

## Recommendations

**In line with the commitment to reform the NISS under the Constitutional Declaration, the NSA 2010 should be amended to:**

**Ensure that the arrested person be brought before an independent magistrate within 24 hours of arrest.**

**Remove any conditions on the right of the arrested person to communicate with the family or an advocate.**

**Ensure medical examination of all detainees in line with the UN Standard Minimum Rules for the Treatment of Prisoners and other applicable instruments.**

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<sup>169</sup> *ibid*, Article 50 (1) (g) and (h).

<sup>170</sup> *ibid*, Article 51 lists the rights of arrest, detained and persons in custody and provides no right to appear before the judge to challenge the detention.



**Guarantee that comprehensive written records of all interrogations be kept, including possible video and audio recordings.**

### Evidence obtained by torture

Evidence obtained by torture must be inadmissible under international law. The underlying purpose of this is to disincentivise torture.

Article 20(2) of the 1994 Evidence Act states that a confession will not be valid if it “was the result of coercion or inducement”.<sup>171</sup> However Article 20(3) goes on to state that “despite the provision of clause (2), inducement does not affect the validity of confession in matters of transactions.”<sup>172</sup>

Further, Article 10 of the 1994 Act affords the court discretion in determining whether the confessions can be admitted, if other evidence corroborates it. In practice, the courts have repeatedly admitted confessions obtained under torture.<sup>173</sup> The former Constitutional Court repeatedly rejected allegations by defendants that the confessions had been extracted under duress.<sup>174</sup> Article 10 states that:

(1) Bearing in mind the provisions of confession and inadmissible evidence, the evidence shall not be ruled inadmissible solely because it was obtained through an invalid procedure provided that the court is satisfied that it is independent and acceptable;

<sup>171</sup> The Evidence Act 1994, Article 20.

<sup>172</sup> *ibid.*

<sup>173</sup> ‘National and International Remedies for Torture’ (n 45).

<sup>174</sup> Ahmed (n 22); *Paul John Kaw and others v (1) Ministry of Justice; (2) Next of kin of Elreashhed Mudawee, Case No MD/QD/51/2008, Judgment of 13 October 2009* (Constitutional Court).

(2) The court may, when it considers it appropriate for the realisation of justice, refrain from convicting on the basis of the evidence mentioned in paragraph (1) unless it is corroborated by other evidence.<sup>175</sup>

### Recommendations

**Amend Article 10 of the 1994 Act to clearly specify that confessions extracted under torture are inadmissible and ensure that the prosecution bears the burden of proving that an impugned confession was not obtained by torture.**

## ACCOUNTABILITY FOR TORTURE

### The criminalization of torture

The Criminal Act 1991 restricts the criminal offence of torture to situations of interrogation in relation to the provision of information.

Article 155(2) of the Criminal Act 1991 states:

*Every person who, having public authority entices, or threatens, or tortures any witness (sic), or accused, or opponent to give, or refrain from giving any information in any action, shall be punished, with imprisonment, for a term, not exceeding three months, or with fine, or with both.*

Under Article 115 of the Criminal Act 1991, the offence of torture is limited to circumstances “influencing the course of justice.” Therefore, torture is seen merely as an aspect of interference with proceedings and not as a violation of the basic rights of the survivor or victim.

<sup>175</sup> The Evidence Act 1994, Article 10.

The punishment for torture is extremely lenient and thus is not an effective deterrent against inflicting torture. Moreover, allowing a fine to be imposed in lieu of punishment is wholly inadequate and non-compliant with international law.

There are other Articles in the Criminal Act 1991 that could potentially be used to hold accountable officials responsible for torture. These include offences for:

- causing intentional wounds;<sup>176</sup>
- causing hurt with the intention of drawing a confession;<sup>177</sup>
- against criminal force;<sup>178</sup> and,
- against intimidation.<sup>179</sup> (Article 144) which would punish the use of force or the threat of use of force.<sup>180</sup>

The punishment for these crimes ranges from six months to five years.<sup>181</sup> Since the maximum sentence is five years (and only for intentional infliction of specific types of wounds), these punishments are likely to not be proportional to the gravity of the conduct and have a weak deterrent effect.

### Recommendations

**Amend the Criminal Act 1991 to define torture in line with the internationally recognised definition contained in Article 1 of UNCAT.**

<sup>176</sup> Criminal Act 1991, Articles 138 and 139.

<sup>177</sup> *ibid.*, Article 142.

<sup>178</sup> *ibid.*, Article 143.

<sup>179</sup> *ibid.*, Article 144.

<sup>180</sup> *ibid.*, Articles 138, 139, 142, 143, 144.

<sup>181</sup> *ibid.*, Article 139-144

**Include adequate and proportionate punishments for the offence of torture.**

### Statute of Limitations

The two-year limitation period to commence judicial proceedings attached to Article 115 of the Criminal Act 1991 is another cause for concern. Considering the fear that any survivor would experience when complaining against a state official, this limitation must be removed, in recognition of the absolute prohibition of torture under international law.

Period of limitation of the criminal suit

38. (1) No criminal suit shall be initiated in offences having ta’zir penalties, where the period of limitation has elapsed, commencing from the date of occurrence of the offence, namely:

(a) ten years in any offence the commission of which is punishable with death, or imprisonment for ten years, or more;

(b) five years in any offence the commission of which is punishable with imprisonment for more than one year;

(c) two years in any other offence.

(2) The running of the limitation period shall cease whenever the criminal suit is initiated.<sup>182</sup>

### Recommendations

**Remove any statutes of limitations for the offence of torture.**

<sup>182</sup> Criminal Procedure Act, 1991, Article 38.

## Immunities

In practice, immunities are the main obstacle to accountability of law enforcement officials. Police officers, as well as members of the NISS (GIS, under the 2019 Constitutional Declaration) and the armed forces are granted conditional immunity for any act done in the course of their duties, which can only be lifted by the respective head of the forces. These immunity provisions largely equate with impunity and are contrary to international law.<sup>183</sup>

Under the 2019 Constitutional Declaration, immunity is provided from criminal procedures against “any members of the Sovereignty Council, Cabinet, Transitional Legislative Council or governors of provinces/heads of regions without receiving permission to lift immunity from the Legislative Council.”<sup>184</sup> This confers immunity on Mohamed Hamdan Dagalo, or “Hemeti,” who is the head of the Rapid Support Forces (RSF) and General Burhan’s deputy. By all accounts, the RSF has led most of the attacks on protesters since April 2019. Immunity can be waived by a simple majority of members of the Legislative Council.<sup>185</sup>

In Sudan’s domestic legislation, under Article 35(c) of the Criminal Procedure Act, no criminal suit can be initiated against any person enjoying procedural or substantive immunity, save in accordance with the provisions of such law as may provide therefore.<sup>186</sup>

Immunities are provided for police officers under the Police Forces Act 2008; for the military under the Armed Forces Act 2007 and for the National Security Services under the NSA2010.

183 ‘Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives - A Compilation of Sudan Law Reform Advocacy Briefings’ (n 34).

184 Constitutional Declaration (n 10), Article 21(1).

185 *ibid* Article 21(b).

186 Criminal Procedure Act 1991, Article 35.

### *Police Forces Act 2008*

Under the Police Forces Act 2008, Article 45 provides protection for actions taken by police officers in good faith as part of their job functions. Remarkably, any action against a police officer requires the permission of the Minister or a person delegated by the Minister. Therefore, even if the scope of the substantive immunity is small, the procedural barrier remains in clause 2 (mandating authorisation before any action is taken).

### *Armed Forces Act 2007*

Similarly, under Article 42 of the Armed Forces Act 2007, action against officers of the Military can be taken only with the approval of the Commander in Chief.

### *National Security Act 2010*

The NSA 2010, under Article 52, asserts that any civil or criminal proceedings against any member or associate of the NISS require the permission of the director. This approval may be granted if the subject of accountability is not related to official business. Clause 3 provides that such proceedings take place before a closed criminal court.

These laws do not prohibit action against an official for inflicting torture. However, in procedural terms, they require the permission of the head officer in each institution to sanction proceedings against the official responsible. It is this procedural barrier that creates problems in initiating actions against officials responsible for torture. Notwithstanding its application in practice, the law itself should not be read to provide immunity as torture is not a part of the official duty of these officers.<sup>187</sup> Indeed, the Sudanese domestic courts themselves have in rare occasions,

187 ‘National and International Remedies for Torture’ (n 45).

as discussed above<sup>188</sup>, dismissed the need for authorisation to prosecute for that same reason.

The problem of immunities is exacerbated by the lack of regulation of the authorisation process. There is no procedure to determine when and how the authorisation can be given; no criteria that the head official can consider in lifting immunities; and, no timeframe, procedure or standards for judicial review of the exercise of discretion in such cases.

In practice, most cases involve either the authorisation being refused or the file remaining pending with the head official in question.<sup>189</sup> Since there is no timeframe for the decision to be made, these cases remain indefinitely delayed with no recourse against this. Indeed, the greatest difficulty lies in even commencing the investigation against any official of the state.

## Recommendations

**Remove immunity for officials accused of serious human rights violations by repealing the provisions concerned. Such step would pave the way for Sudan’s authorities to effectively investigate allegations of torture and other serious human rights violations past and present, and to prosecute those against whom sufficient evidence is available.**

**Overhaul the current system of immunities to ensure they are compatible with Sudan’s obligations under international law and the 2019 Constitutional Declaration. New laws should require no prior authorisation to investigate and prosecute torture. In other cases, an independent judicial body, as opposed to the head officer of the forces, should make the determination of whether the action fell**

188 See pages 14-15 above

189 *ibid*.

**within official duty. Measures must be established to manage the discretion: providing a time limit within which the decision must be taken; outlining the criteria on the basis of which such a decision must be made; providing reasons for approval or refusal; providing a procedure for judicial review of such a decision; and defining the judicial standard in cases of such review.**<sup>190</sup>

## REMEDIES AND REPARATION FOR VICTIMS OF TORTURE

### Compensation

Under Sudanese domestic law there are three mechanisms that a victim of torture could theoretically use to receive compensation:

- Through civil litigation – the survivor of torture (or the family of the victim) can claim compensation in a civil proceeding under tort law, as damages for trespass against the person under Article 153(1) of the Civil Transaction Act of 1984.<sup>191</sup> However, immunities also apply in civil proceedings – the suit against the officials can proceed only after acquiring the requisite permission of the head official;
- Through a fine under criminal law – the Criminal Act 1991 incorporates the right of compensation within criminal proceedings. Article 34 of the Criminal Act 1991 details the imposition of a fine, which may be paid in whole or part as compensation for a person aggrieved of the offence;<sup>192</sup> and

190 ‘Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives - A Compilation of Sudan Law Reform Advocacy Briefings’ ss I–III.

191 The Civil Transaction Act 1984, Article 153. <<http://www.pclrs.com/Civil%20Transaction%20Act%201984.pdf>> (Original in Arabic) accessed 17 October 2019

192 Criminal Act 1991, Article 34.



- Through *diya* under Islamic law – *diya* is compensation that may be paid in financial or material terms in cases of death or injury to the survivor or the family of the victim.<sup>193</sup> However, because of the lack of prosecutions and the procedural hurdles engendered by immunities provisions, there have been very few successful claims for compensation. Within the few prosecutions that have been documented,<sup>194</sup> the amount of compensation has been low. In other cases, there have been out of court settlements. Often, the survivors or families prefer receiving money, instead of facing the uncertainty and difficulty of trial.

Unfortunately, the current system on compensation fails to meet international standards as it prevents accountability of the perpetrators and fails to serve as a deterrent against future instances of torture. The payment in such settlements is usually done by the state, and thus there is no deterrent impact on the individual officers responsible for the torture in question.

Even attempting to launch a civil proceeding for compensation can cause great adversity for the survivors or families. They are at a disadvantage in producing the evidence required, especially in the absence of any criminal investigation. In addition, they often face threats and harassment, with no protection provided by the state to guard against these risks.<sup>195</sup>

<sup>193</sup> Criminal Act 1991: Judgment of diya:

43. The court shall pass judgment of diya in accordance with the Schedule II hereto, in any of the following cases:

(a) in murder and intentional wounds, if retribution (qisas) is remitted;  
 (b) in semi-murder and semi intentional wounds;  
 (c) in homicide and wounds caused by negligence;  
 (d) in homicide and wounds caused by a minor, or indiscriminate person.

<sup>194</sup> See pages 14-15 above.

<sup>195</sup> 'National and International Remedies for Torture' (n 45).

This raises a related problem in ensuring accountability. Article 115(2) of the Criminal Act 1991 provides for protection of witnesses from harm.<sup>196</sup> Article 4(e) of the CPA 1991 states that a guiding principle of the Act is the prohibition of prejudice to witnesses.<sup>197</sup> However, there is no program designed to protect survivors, families of victims or witnesses.

An important remedy would be ensuring a specific right to reparation for being subjected to torture under the law. This should exclude statute of limitations for allegations made as well. It should also consider the difficulties in providing evidence of torture when developing the standard of proof necessary to be successful.

### Recommendations

**Enact legislation including a specific right to reparation for being subjected to torture, and make any other legal and policy reforms needed to realize the right of victims to effective reparations.**

<sup>196</sup> Criminal Act 1991, Article 115.

<sup>197</sup> Criminal Procedure Act 1991, Article 4.

## VII. SUMMARY OF RECOMMENDATIONS

This section summarizes the key recommendations made throughout this report for Sudan to comply with its international obligations to prevent torture, investigate and prosecute instances of torture and realize the victims' right to effective reparations.

### 1. Sudan must ratify the following treaties:

- The UNCAT, and its Optional Protocol.
- The 1<sup>st</sup> and 2<sup>nd</sup> Protocols to the International Covenant on Civil and Political Rights.
- The UN Convention for the Protection of All Persons from Enforced Disappearance.
- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
- The UN Convention on the Elimination of All Forms of Discrimination Against Women.
- Maputo Protocol on the Rights of Women in Africa.-
- The Rome Statute of the International Criminal Court.

### 2. Sudan must engage with institutional prevention and monitoring processes as set out in the Option Protocol to the UNCAT and the Robben Island Guidelines.

### 3. Sudan must reform the following domestic laws to bring them in line with its international obligations, as well as to address the rights of torture survivors.

#### a. The Constitution of Sudan

- The Constitution of Sudan should include a definition of torture in line with the UNCAT.
- It should include a right of habeas corpus, in accordance with the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

#### b. The Criminal Act 1991

- Amend Article 115 clause 2 to define torture in line with the definition under the UNCAT;
- Provide proportional punishments for torture and ill-treatment, including in general provisions under the Penal Code (Articles 138, 139, 142, 143, 144, 164 and 165).
- Amend Article 115 to remove the statute of limitations to initiate a criminal complaint in cases of torture.

#### c. The Criminal Procedure Act, 1991

- Amend Articles 77 and 79(2) to ensure that the judicial review is conducted by a judge.
- Include the standards of review under the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
- Amend Article 83(3) to specify the right to access legal representation at the initial stage of interrogation, access to legal aid if the arrested person cannot afford a lawyer and the right to be informed of this at the time of arrest.
- Amend Article 83(5) to remove the requirement of approval of the Prosecution Attorney or the Court before informing family of

- the arrest, and to require that the arrested person be informed of this right.
- Include a mandatory medical examination of the arrested person within 24 hours of the arrest.
  - Include procedures for recording interrogations, either written or in taped audio/video recordings.
- d. Police Forces Act 2008
- Delete clause 2 of Article 45 in order to remove the immunities provided to members of the police forces.
- e. Armed Forces Act 2007
- Delete clause 2 of Article 42 in order to remove the immunities provided to members of the military.
- f. National Security Act 2010
- Delete clauses 1, 3, 4, 5 and 6 of Article 52 in order to remove the immunities provided to members of the NISS.
  - Amend Article 50 to require that the arrested person be brought before an independent magistrate within 24 hours of arrest.
  - Amend Article 51 Clause 2 to remove any conditions on the right of the arrested person to communicate with the family or an advocate.
  - Include a mandatory medical examination within 24 hours of arrest.
- g. Evidence Act 1994:
- Amend Article 10 to clearly specify that confessions extracted under torture are inadmissible.
4. Finally, Sudan should conduct the following institutional reforms:
- Ensure the independence of the judiciary.
  - Ensure the independence of the National Human Rights Commission.
  - Spread awareness of the right to complain against violations by state officials.
  - Provide legal representation to those who cannot afford the services of a lawyer.
  - Develop a comprehensive programme of protection for victims and witnesses.
  - Adopt all other legal and policy reforms needed to realize the right to reparations for torture survivors.



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