



Ending Torture. Seeking Justice for Survivors

Universal Periodic Review, Sudan, 2016 Ensuring respect for the prohibition of torture in Sudan

September 2015

1. Introduction

This submission is based on REDRESS' work on torture in Sudan, including representing and assisting individual survivors of torture in proceedings before national, regional and international bodies, and advocating for legislative and institutional reforms.¹ The submission focuses on developments since 2011 and the urgent need to carry out thorough reforms of Sudan's legal and institutional framework and practice to ensure the effective prohibition of torture or other cruel, inhuman or degrading treatment (ill-treatment) or punishment.

2. Torture and other ill-treatment: 2011-2015

The period has been characterised by increased restrictions of the rights to freedom of expression, association and assembly, violent repression of protests and the intensification of armed conflicts.² Authorities, in particular the National Intelligence and Security Services (NISS), have used torture and other ill-treatment to suppress opposition, obtain confessions, and/or to discriminate against marginalised groups. In several instances, individuals are believed to have been tortured to death or tortured before being killed. Public protests against austerity measures, calls for regime change and student demonstrations in/ on the issue of Darfur have been met with excessive force leading to serious injuries and deaths. Several cases have been documented in which human rights defenders were arbitrarily arrested, detained and subject to inhuman, cruel or degrading treatment if not torture by the NISS.³

A number of serious violations, including torture and other ill-treatment, have been documented in the armed conflicts in Darfur, South Kordofan and Blue Nile.⁴ In addition, in several instances, the NISS is alleged to have subjected women to rape and other sexual assaults, including in the case of Ms Safia Ishaq, who brought a case before the African Commission on Human and Peoples' Rights (ACHPR),

¹ See www.redress.org/africa/sudan.

² This section draws on REDRESS and ACJPS, *Sudan's human rights crisis: high time to take article 2 of the covenant seriously*, June 2014, at www.redress.org/downloads/publications/140613SubmissionSudanHRC.pdf and REDRESS, ACJPS and Sudan Democracy First Group, *Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and Peoples' Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment*, April 2012, at www.pclrs.org/downloads/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf.

³ See further on cases filed on behalf of for instance Dr Amin Mekki Medani and Mr. Farouq Abu Eissa, Mr Abdel Monem Adam Mohammed, and Safia Ishaq Mohammed at <http://www.redress.org/international-jurisdictions/international-jurisdictions2>.

⁴ See submissions in the case of *Sudanese Civilians in South Kordofan and Blue Nile (represented by REDRESS, SDFG, HRW and Enough Project) v Sudan*, www.redress.org/case-docket/redress-sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta.

alleging that she had been subjected to rape, beatings and verbal abuse by three men belonging to the NISS in February 2011.⁵ There have also been concerns about the lack of protection, if not complicity of authorities in the abuse of trafficking victims in Eastern Sudan.⁶

The punishment of lashings is used frequently, particularly for public order offences⁷ and the death penalty by stoning has been imposed in several cases.⁸ In May 2014, Meriam Yahia Ibrahim, was convicted on charges of apostasy and adultery, and was sentenced to death and one hundred lashes. The sentence was overturned on appeal in June 2014 and Meriam Yahia Ibrahim and her family subsequently left the country.⁹

3. Legal Framework

3.1. Prohibition and definition of torture

Sudan has yet to address legislative shortcomings that have been repeatedly highlighted by regional and international bodies and civil society organisations alike.¹⁰ Sudan's Bill of Rights, contained in the 2005 Interim National Constitution (INC), prohibits torture and other cruel and inhuman treatment.¹¹ Article 115 (2) of Sudan's Criminal Act of 1991 mentions torture, without, however, defining it.¹² It limits the definition of torture to extorting information,¹³ which is considerably narrower than the internationally recognised definition of torture.¹⁴ In the absence of cases brought to trial, jurisprudence has not contributed to clarifying the definition of torture. The constitutional scope of the prohibition of torture is therefore undermined by the lack of adequate implementing legislation and application.

Article 33 of the Bill of Rights does not prohibit corporal punishment. Sudan's criminal law prescribes *Shari'a* punishments such as stoning, amputation and cross-amputation, and lashings.¹⁵ Lashings are a common punishment for a range of criminal offences, both under the Criminal Act and Public Order laws.¹⁶ Recent reforms broadened the scope for corporal punishments, including by widening the crime of apostasy.¹⁷

⁵ See further, at www.redress.org/case-docket/safia-ishaq-mohammed-issa-v-sudan-.

⁶ See Human Rights Watch, *I wanted to lie down and die, Trafficking and torture of Eritreans in Sudan and Egypt*, 11 February 2014, at www.hrw.org/node/122899.

⁷ REDRESS, *No More Cracking of the Whip: Time to end corporal punishment in Sudan*, March 2012, at www.redress.org/downloads/publications/Corporal%20Punishment%20-%20English.pdf.

⁸ Cases of Ms Intisar Sharif Abdalla and Ms Laila Ibrahim Issa Jamool, both sentenced to death by stoning for adultery in 2012, in both cases overturned on appeal, see REDRESS and ACJPS, above note 2, paras. 38,39.

⁹ See case submitted by REDRESS and others to the ACHPR at www.redress.org/case-docket/meriam-yahia-ibrahim-daniel-wani-and-their-two-children-martin-wani-and-maya-wani-v-sudan.

¹⁰ See e.g. Human Rights Committee, Concluding Observations on the fourth periodic report of the Sudan, UN Doc. CCPR/C/SDN/CO/4, 19 August 2014, paras. 15-18.

¹¹ Article 33 of the 2005 INC.

¹² Torture is recognised as element of crimes against humanity and war crimes introduced into the criminal act by 2009 amendments but these provisions have not been applied in practice.

¹³ "Every person who, having public authority entices, or threatens, or tortures any witness, 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."

¹⁴ Article 1 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT).

¹⁵ REDRESS, above note 7, 9-12.

¹⁶ *Ibid.*

¹⁷ Legislative amendments of February 2012; see further Women Living under Muslim Laws, *Sudan's Revised Penal Code: A Mixed Picture for Women*, June 2015, www.wluml.org/sites/wluml.org/files/Sudans_Revised_Penal_Code_Mixed_Picture_WLUML_2015_0.pdf.

Recommendations:

- Insert a crime of torture into the Criminal Act of 1991, defining it in conformity with internationally recognised definitions, such as article 1 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT);
- Prohibit corporal punishment and repeal any laws prescribing such punishments.

3.2. Lack of adequate safeguards against torture

Sudan's legal system provides neither adequate custodial safeguards nor adequate monitoring mechanisms. Notwithstanding persistent demands for reforms, Sudan adopted the 2010 National Security Act, which provides extremely limited rights to access a lawyer or relatives, and allows detention without judicial review of up to four and a half months.¹⁸ The law has been frequently used in the arbitrary arrest, detention and torture of a range of victims.¹⁹ Sudan has persistently rejected calls to change the law,²⁰ and, instead, in January 2015, adopted constitutional amendments that gave the broad powers of the NISS constitutional status.²¹

Recommendation:

- Undertake a comprehensive reform of the 2010 National Security Act by removing law enforcement functions from the NISS.

3.3. Criminal accountability and remedies in cases of torture

Sudan's law does not provide adequate criminal accountability for acts of torture; Article 115 (2) of the Criminal Act provides for an inadequate punishment of three months imprisonment or fine. Suspected perpetrators of torture are granted immunity under Sudanese law,²² i.e. an official cannot be subject to sanctions without prior authorisation by the head of his or her respective forces.²³ The ACHPR considered the issue in a number of cases against Sudan, finding that immunities are incompatible with the right to an effective remedy under the African Charter on Human and Peoples' Rights (African Charter).²⁴ In addition, members of the various forces are subject to the jurisdiction of their own special courts, a system that undermines transparency and accountability. The lack of investigations and prosecutions of serious violations such as torture led the ACHPR to conclude that Sudan's legal system does not provide effective remedies for victims of human rights violations.²⁵

Recommendations

- Make torture a criminal offence subject to adequate punishments (custodial sentences);
- Repeal provisions providing immunity for any officials;
- Subject officials to the jurisdiction of ordinary courts;
- Pending further reforms of immunity laws and the system of special courts, instruct the respective forces not to grant any immunity in relation to alleged acts of torture or other ill-treatment and to make accused personnel subject to the jurisdiction of ordinary courts;

¹⁸ See Articles 50, 51 of the 2010 National Security Act.

¹⁹ See above at 2.

²⁰ Report of the Working Group on the Universal Periodic Review, Sudan, UNHRC Doc. A/HRC/18/16/Add.1, 16 September 2011, at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.16.ADD.1_en.pdf.

²¹ See further below at 4.

²² Articles 42(2) of the 2007 Armed Forces Act, 45(1) of the 2008 Police Act and 52 of the 2010 National Security Act.

²³ For an overview, see REDRESS and Sudanese Human Rights Monitor, *Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives, A compilation of Sudan Law Reform Advocacy Briefings*, February 2014, 6-13.

²⁴ See in particular ACHPR, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication 368/10, 2013, paras. 47-49; and *Osman Hummaida, Monim ElJak and Amir Suliman v Sudan*, Communication 379/09, 2014, paras. 66-70.

²⁵ See further below, 5.2.

- Provide effective access to justice and adequate reparation to victims of torture.

3.4. Sexual violence

In response to long-standing concerns, Sudan adopted several changes in its criminal law on sexual violence in February 2015. This includes separation of the definition of rape from adultery in Article 149 of the Criminal Act of 1991 and inserting an offence of sexual harassment in Article 151(3). Prior to these amendments, Article 149 defined rape as a form of *zina* (sex outside of marriage; adultery). The implications of this definition have been that a woman who had been a victim of rape or sexual violence could be tried for the crime of *zina* if she was unable to “prove” her lack of consent to the sexual act.²⁶

These reforms constitute important steps, although gaps remain. The revised Article 149 does not set out aggravating factors, such as rape in detention or resulting from abuse of office, and further, the definition of sexual harassment remains rather vague.²⁷ Article 151 (3), if applied in a similar fashion as public order offences, may have the result of criminalising women for what is considered inappropriate conduct, thus raising concerns about the right to privacy and non-discrimination. In addition, where any of these acts is alleged to have been committed by or with the involvement of a public official, the latter would benefit from immunity and the system of special courts,²⁸ thereby significantly reducing the likelihood of criminal accountability of the perpetrators.

Recommendations:

- Amend Article 149 of the Criminal Act of 1991 to set out aggravating factors, particularly for officials who abuse their position to commit the offence;
- Amend Article 151 (3) by removing text that may result in prosecution of women for what is considered morally inappropriate conduct;
- Pending further reforms of immunity laws and the system of special courts, instruct the respective forces not to grant any immunity in relation to alleged offences of rape and/or sexual harassment and to make accused personnel subject to the jurisdiction of ordinary courts.

3.5. Reparation for massive and widespread violations

Massive and serious human rights violations, including torture, have been documented in the armed conflicts in Darfur, South Kordofan and Blue Nile.²⁹ Beside a limited programme to provide a measure of reparation in the Darfur context, Sudan has not taken any steps to address the legacy of violations. It has not put in place measures designed to ensure criminal accountability and provide reparation to victims in conformity with recognised standards, such as those embodied in the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

²⁶ See WLUML, above note 17.

²⁷ “(3) There shall be deemed to commit the offence of sexual harassment, whoever commits any act, or speech or behavior or conduct that constitutes a temptation or an invitation to another person to engage in illegitimate sex or by conduct of horrendous or inappropriate or improper behaviour of sexual nature that leads to harm the victim psychologically or give him a sense of insecurity, shall be punished with imprisonment for a term not exceeding three years and with lashing” (informal translation).

²⁸ See above at 3.3.

²⁹ See e.g. REDRESS et al., above note 4.

Recommendations:

- Refrain from any acts resulting in violations of international standards during the ongoing armed conflicts;
- Develop, in close consultation with victims and their representatives, a programme designed to, and capable of holding those responsible for torture and other serious human rights violations to account, and to provide adequate reparation to victims of such acts.

4. Institutional framework: Security services and police, with particular reference to recent constitutional changes

In January 2015, Sudan enacted a series of constitutional amendments characterised by a centralisation of powers and institutional reforms.³⁰ In particular, the amendments repealed Article 151 (2) and (3) of the 2005 INC, which stipulates that the NISS carries out intelligence functions only. The amendments entrench the NISS' powers and are seen as recognising the military role of the NISS in the Rapid Support Forces in Darfur, and signal a further shift in power towards the NISS. This goes hand in hand with a lack of accountability and transparency, as the NISS continues to retain immunity and, according to amended Article 151 (4) INC, has the power to adopt its own rules and exercise jurisdiction over its members.

The amendments also repealed Article 148 (1) INC, according to which the police service reflects "...the diversity and multiplicity of the Sudanese society; it shall discharge its duties with impartiality and integrity in compliance with the law and the nationally and internationally accepted standards." Instead, under the new Article 148(1), the Police is given broad powers, being "charged with serving the security of the home land and the citizens, fighting crime, property protection, disaster management as well as preserving society's moral standards, ethics and maintaining public order." These broad powers, enacted without reference to international and rule of law standards, are highly problematic, particularly in view of allegations of torture and other ill-treatment against members of the riot police and public order police.³¹

Recommendations:

- Repeal the constitutional amendments of January 2015 pertaining to the NISS and the police;
- Undertake thorough institutional reforms of the NISS and the police, particularly by confining the NISS to an intelligence service.

5. Anti-torture policy and international commitments

5.1. Need for a clear anti-torture policy

Sudan has not developed a clear anti-torture policy. Such a policy would need to identify the necessary legislative and institutional reforms, set up independent complaints bodies, and strengthen the role of the judiciary and the national human rights commission. It would also require an environment in which civil society organisations and the media are able to exercise their freedom of expression, assembly and association, particularly with a view to the promotion and protection of human rights. This entails

³⁰ Ahmed Younis, 'Sudan: Constitutional amendments give Bashir New Powers', *Asharq Al-Aswat*, 5 January 2015, <http://english.aawsat.com/2015/01/article55340104/sudan-constitutional-amendments-give-bashir-new-powers>.

³¹ See above at 3.5.

an immediate end to the repression of civil society.³² An anti-torture policy would further need to set out how to provide accountability and reparation for victims of torture.³³

Recommendation:

- Develop, in consultation with civil society organisations and relevant regional and international bodies, a comprehensive anti-torture policy subject to regular review.

5.2. International commitments

Sudan accepted the recommendation to become a party to the UNCAT but has not done so to date. This is also the situation with Sudan becoming a party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In order to strengthen safeguards against torture and benefit from cooperation with the Subcommittee on Prevention of Torture, Sudan should also consider becoming a party to the Optional Protocol to UNCAT (OPCAT).

Access to individual complaints procedures provides an important avenue for victims and means of supervision, which enable states to address any shortcomings that become apparent. Sudan has not accepted any supervisory mechanism, other than the ACHPR under the African Charter. While at least seven cases are pending against Sudan before it, the ACHPR has to date found violations of the African Charter, including of Article 5 (prohibition of torture and other ill-treatment) in seven cases and recommended reparation to victims.³⁴ Sudan has yet to comply with the ACHPR's recommendations in those cases.

Recommendations:

- Expedite steps towards becoming party to UNCAT and CEDAW;
- Consider becoming party to OPCAT;
- Accept the competence of regional and international human rights courts and bodies to consider individual complaints brought against it;
- Implement promptly and comprehensively all recommendations of the ACHPR.

³² See further REDRESS and ACJPS, above note 2.

³³ See above at 3.

³⁴ See further at www.redress.org/international-jurisdictions/international-jurisdictions2; (not all cases filed are available publicly), and Institute for Human Rights and Democracy in Africa at <http://caselaw.ihrda.org/country/sudan/>.