

THE REDRESS TRUST AND AFRICAN CENTRE FOR JUSTICE AND PEACE STUDIES
SUBMISSION TO THE ALL-PARTY PARLIAMENTARY GROUP ON SUDAN AND SOUTH SUDAN
ON THE PROHIBITION OF TORTURE AND ILL-TREATMENT IN SUDAN

31 AUGUST 2016

A. Abstract

1. The Redress Trust (REDRESS)¹ and the African Centre for Justice and Peace Studies (ACJPS)² welcome the opportunity to make this submission on the prohibition of torture and ill-treatment in Sudan to the UK All-Party Parliamentary Group (APPG) on Sudan and South Sudan.³ This submission is based on the Organisations' 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.
2. This submission focuses on how the UK Government can contribute to the Government of Sudan's compliance with its obligations pertaining to the absolute prohibition of torture, including accountability for torture by officials of the National Intelligence and Security Services (NISS) under the National Security Act of 2010.⁴ Due to the widespread use of torture and other forms of ill-treatment in Sudan, the Organisations urge the UK Government to develop a Sudan specific human rights strategy for its engagement with the Government of Sudan on the issues identified below and to make the respect for human rights generally, and accountability for torture and ill-treatment specifically, the key condition of any future engagement between the UK and Sudan.

B. Torture and ill-treatment in Sudan

3. The human rights situation in Sudan over recent years 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.⁵ Authorities, in particular

¹ REDRESS is an international, non-governmental human rights organisation based in London and The Hague that assists victims of torture and related international crimes to access to justice and reparation. REDRESS has been working with Sudanese survivors of torture and human rights defenders since the 1990s, to seek justice in individual cases and to address the legacy and prevailing practice of violations. For further information on REDRESS' work on Sudan see: <http://www.redress.org/africa/sudan>. REDRESS' London Office is at 87, Vauxhall Walk, SE11 5HJ London, United Kingdom.

² ACJPS is a non-profit, non-governmental organisation working to monitor and promote respect for human rights and legal reform in Sudan. It has offices in Uganda, the United Kingdom and United States of America. 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. For further information on ACJPS see <http://www.acjps.org/>. ACJPS Mailing Address is 1483 York Avenue, No.20463, New York, NY 10021, USA;

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⁴ Highlighted as an area of concern by the UK Government in its Statement on Sudan at the 25th Session of the Universal Periodic Review, Geneva, 2-3 May 2016, at <https://www.gov.uk/government/world-location-news/uk-statement-on-sudan-at-the-25th-session-of-the-universal-periodic-review-geneva-2-13-may-2016>.

⁵ In its report on Sudan, updated on 21 June 2016, the FCO finds that 'overall, there was no significant improvement in the human rights situation in Sudan during 2015,' see FCO, Corporate report – Sudan- Human Rights Priority Country, updated 21 June 2016, at

the NISS, have used torture and other ill-treatment to suppress political opposition, obtain confessions, and / or to discriminate against marginalised groups. Several cases have been documented in which human rights defenders were arbitrarily arrested, detained and subjected to torture and other ill-treatment by the NISS.⁶ Since the outbreak of the conflict in South Kordofan and Blue Nile in 2011, Sudanese Armed Forces (SAF) have carried out direct and indiscriminate attacks on civilian areas, including targeted aerial bombardment of civilians and civilian infrastructure.⁷ These attacks continue and cause mass forced displacement and unknown numbers of deaths in the conflict zones (South Kordofan, Blue Nile as well as Darfur), entrenching the humanitarian crisis in those areas.⁸

4. Impunity for the perpetration of the above violations remains the norm. There have been no known prosecutions for torture despite the documentation of numerous cases nor has there been accountability for the killing of at least 185 protestors in 2013.⁹
5. The African Commission on Human and Peoples' Rights (ACHPR) has repeatedly identified and recommended urgent and concerted steps for the Sudanese Government to take which it viewed as necessary to ensure the protection of rights, as well as accountability and justice for violations.¹⁰ However, to date, Sudan has failed to adhere to any of the ACHPR's recommendations and decisions. This increases the climate of impunity and exacerbates the denial of justice for victims.

C. Legal Framework

C.1. Prohibition and definition of torture

6. 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

<https://www.gov.uk/government/publications/sudan-human-rights-priority-country/sudan-human-rights-priority-country-taken-from-the-fco-s-2015-human-rights-and-democracy-report>. See further ACJPS, FIDH and IRRI, 'Submission to the Universal Periodic Review of Sudan 2016,' 22 September 2015, ('ACJPS et al, 'UPR Submission 2016') at <http://www.acjps.org/acjps-fidh-and-irri-submission-to-the-universal-periodic-review-of-sudan-2016/>; REDRESS, 'Universal Periodic Review, Sudan 2016- Ensuring respect for the prohibition of torture in Sudan', September 2015, at <http://www.redress.org/downloads/country-reports/UPR%20Sudan%202015.pdf>.

⁶ 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>.

⁷ See for instance ACJPS et al, UPR Submission 2016.

⁸ See ACJPS and others, 'Open Letter to Member States of the International Conference on the Great Lakes Region regarding the ongoing security and humanitarian situation in Sudan', 14 June 2016, at <http://www.acjps.org/wp-content/uploads/2016/06/ICGLR-heads-of-state-summit-final.pdf>; see also a case pending before the ACHPR in relation to the ongoing conflict in South Kordofan and Blue Nile: *Sudanese civilians in South Kordofan and Blue Nile (represented by REDRESS, SDFG, HRW and the Enough Project) v Sudan* at <http://www.redress.org/case-docket/redress-sdfg-hrw-and-interights-request-for-provisional-measures-in-regards-to-southern-kordofan-sta>.

⁹ See further ACJPS et al, UPR Submission 2016.

¹⁰ See for instance the ACHPR's recommendations to, inter alia, expressly criminalise torture and ill-treatment; abolish laws that allow corporal punishment; hold perpetrators of human rights violations, including torture, accountable; investigate thoroughly and expeditiously all cases of gender based violence, including sexual and domestic violence; in 'Report of the Joint Promotional Mission to the Republic of The Sudan,' published 22 August 2016, at <http://www.achpr.org/news/2016/08/d227/>. These and other recommendations are similarly included in ACHPR's Concluding Observations and Recommendations on the 4th and 5th Periodic Report of the Republic of Sudan, adopted at the 12th Extraordinary Session of the ACHPR held from 29 July to 4 August 2012, Algiers, Algeria, at http://www.achpr.org/files/sessions/12th-EO/conc-obs/4thand5th-2008-2012/concluding_observation_.pdf.

¹¹ Interim National Constitution of 2005, Article 33.

¹² Torture is recognised as an element of crimes against humanity and war crimes and introduced into the Criminal Act of 1991 by the 2009 amendments but these provisions have not been applied in practice.

extorting information,¹³ which is considerably narrower than the internationally recognised definition of torture.¹⁴

7. 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 The punishment of lashings is used frequently, particularly for public order offences¹⁶ and the death penalty by stoning has been imposed in several cases.¹⁷ Recent reforms broadened the scope for corporal punishments and application of the death penalty including by widening the crime of apostasy and a new crime of trafficking that both carry the death penalty.¹⁸

C.2. Criminal Accountability and remedies in cases of torture

8. Sudan's legal framework does not provide for adequate criminal accountability for acts of torture. Article 115 (2) of the 1991 Criminal Act provides for an inadequate punishment of three months imprisonment or fine. Furthermore, suspected perpetrators of torture are granted immunity under Sudanese law,¹⁹ i.e. an official cannot be subject to sanctions without prior authorisation by the head of his or her respective forces.²⁰ 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 and concluding that Sudan's legal system does not provide effective remedies for victims of human rights violations.²¹ The FCO similarly expressed its deep concern 'about the mandate and powers that the National Security Act of 2010 gives the NISS. Accountability of security forces is imperative to ensure that the human rights are respected.'²²

C.3. Sexual violence

9. In response to long-standing concerns, Sudan adopted several changes in its criminal law on sexual violence in February 2015. These include 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

¹³ The provision reads: '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 or Punishment of 10 December 1984.

¹⁵ REDRESS, *No More Cracking of the Whip: Time to end corporal punishment in Sudan*, March 2012, p.9-12, at www.redress.org/downloads/publications/Corporal%20Punishment%20-%20English.pdf.

¹⁶ Ibid.

¹⁷ 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. REDRESS and ACJPS, *Sudan's human rights crisis: high time to take article 2 of the covenant seriously*, June 2014, paras.38-39, at www.redress.org/downloads/publications/140613SubmissionSudanHRC.pdf.

¹⁸ 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. 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. REDRESS, ACJPS and others are currently assisting the family with a complaint pending before the ACHPR, see <http://www.redress.org/case-docket/meriam-yahia-ibrahim-daniel-wani-and-their-two-children-martin-wani-and-maya-wani-v-sudan>.

¹⁹ Articles 42(2) of the 2007 Armed Forces Act, 45(1) of the 2008 Police Act and 52 of the 2010 National Security Act.

²⁰ 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.

²¹ See in particular ACHPR, *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication 368/10, 2013, paras. 47-49 and *Osman Hummaida, Monim Elgak and Amir Suliman v Sudan*, Communication 379/09, 2014, paras. 66-70.

²² UK Statement on Sudan at the 25th Session of the Universal Periodic Review, Geneva, 2-3 May 2016, at <https://www.gov.uk/government/world-location-news/uk-statement-on-sudan-at-the-25th-session-of-the-universal-periodic-review-geneva-2-13-may-2016>.

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.²³

10. These reforms constitute important steps, although gaps remain. The revised Article 149 created further legal uncertainty relating to the possible continuing conflation of the offence of rape with the offences of ‘adultery’ and ‘sodomy’ as the penalty for rape (set out under Article 149 (2)) remained unchanged and still refers to rape by way of those acts. This uncertainty exposes complainants to a risk of prosecution for the offence of adultery if they fail to prove rape.²⁴ The definition of sexual harassment under Article 151 remains vague.²⁵ 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, thereby significantly reducing the likelihood of criminal accountability of the perpetrators.

D. Recommendations to the UK Government

11. The above concerns regarding Sudan’s non-compliance with its international obligations, impunity for perpetrators of torture and shortcomings of its institutional and legal framework are reflected in the FCO’s human rights report on Sudan. According to the report, ‘the government [of Sudan] has demonstrated little commitment to reform.’ We strongly support the FCO’s designation of Sudan as a ‘human rights priority country’ and urge the UK Government to ensure that respect for human rights and compliance with international and regional obligations form part and parcel of any engagement with the Government of Sudan. We also commend the UK Government for its engagement on human rights issues in Sudan, including in particular:

- i. attending trials and raising cases of concern with the Government of Sudan;
- ii. expressing concern about the excessive use of force by security services;
- iii. raising concerns about the detention of students, lawyers and civil society advocates.²⁶

12. We urge the UK Government to increase its engagement on human rights in Sudan, and in light of the concerns highlighted above, recommend that the UK Government develop a Sudan specific human rights strategy for its engagement with the Government on the issues identified above. This should take into consideration the following:

²³ 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.

²⁴ The revised provision also does not set out aggravating factors, such as rape in detention or resulting from abuse of office.

²⁵ This reads as: “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).

²⁶ FCO, Corporate report – Sudan- Human Rights Priority Country, updated 21 June 2016.

Law Reform

- Considering the UK Government's concerns regarding Sudan's legal framework, the UK Government should provide funding to and support civil society engagement on law reform projects in Sudan;
- In its engagement with the Government of Sudan, the UK Government should make law reform a priority issue, with an emphasis on:
 - o The insertion of a crime of torture into the Criminal Act of 1991, defining it in conformity with internationally recognised definitions;
 - o The prohibition of corporal punishment and repealing any laws prescribing such punishments;
 - o Repealing all provisions granting immunity from prosecution for human rights violations committed by State officials, including the police, NISS, armed forces and the Rapid Support Forces, and subject officials to the jurisdiction of ordinary courts. Pending such reform, an instruction of all officials concerned not to grant any immunity in relation to alleged human rights violations, including acts of torture or other ill-treatment;
 - o A comprehensive review of the National Security Act of 2010 which, in addition to the removal of Article 52, should include removing law enforcement functions from the NISS;
- Further revise Articles 149 and 151 of the 1991 Criminal Act, in addition to other laws pertinent to the prosecution of sexual offences such as the Evidence Act of 1994.

Accountability & Redress

Victims of torture and ill-treatment as well as of other international crimes currently have no prospects of justice including accountability and redress in Sudan. We therefore recommend that the UK Government:

- Supports civil society organisations working with lawyers, victims and others to help ensure redress for victims and accountability of perpetrators of torture and ill-treatment;
- Ensures that UK authorities, in particular the Metropolitan Police and Crown Prosecution Service, are in a position to effectively exercise universal jurisdiction in cases where suspects of torture are present in the UK in accordance with s. 134 of the Criminal Justice Act;
- Coordinates and cooperates with other countries to ensure that the ICC Arrest Warrants are implemented²⁷ and to publicly condemn instances where States fail to implement these warrants of arrest.

Ongoing conflicts in Darfur, South Kordofan and Blue Nile

In its human rights report on Sudan, the FCO notes that the majority of human rights violations / abuses and international humanitarian law violations in Sudan are committed by the Government of Sudan. We urge the UK Government to make the Government of Sudan's compliance with international human rights and international humanitarian law a key condition in the pursuit of its

²⁷ See further, International Criminal Court, 'Situation in Darfur, Sudan, ICC-02/05,' at <https://www.icc-cpi.int/darfur>.

economic, political and security agenda, including in the framework of the Khartoum Process.²⁸ In particular, we recommend that the UK Government:

- Reviews its provision of assistance and training to Sudanese Armed Forces in the margins of the UK's Overseas Security and Justice Assistance (OSJA) Policy. Such training and assistance must not serve to enhance the military capacity of the SAF. If it is provided at all, it should exclusively be provided to contribute to and in compliance with human rights and international humanitarian law standards;
- Allows for full external scrutiny of its application of the OSJA Guidance so as to provide for greater oversight and accountability particularly in countries with problematic human rights records such as Sudan;
- Ensures that all engagement with Sudan in the context of the Khartoum Process is founded on the principle objective to promote Sudan's adherence to international human rights law and international humanitarian law. Technical and other assistance to Sudanese authorities that may be used to increase the armed and technical capacity of Sudan's various armed forces should be avoided.

Implementation of ACHPR decisions

In light of Sudan's failure to comply with recommendations and decisions of the ACHPR, we urge the UK Government to:

- Make implementation of such decisions a standing item on the dialogue with the Government of Sudan;
- Raise individual cases such as that of British citizen Osman Hummeida, Monim Elgak and Amir Suliman²⁹ with the Government of Sudan;
- Encourage the Government of Sudan to establish a mechanism responsible for the implementation of decisions;
- Fund and support civil society organisations advocating for the implementation of ACHPR decisions and recommendations in Sudan;
- Support the Sudan National Human Rights Commission to work with civil society in implementation of decisions.

²⁸ The UK Government also announced that it plans to retain the chairmanship of the Khartoum process, in spite of its planned withdrawal from the EU. See, Hansard HL Deb, vol.773, 13 July 2016, available at <https://hansard.parliament.uk/Lords/2016-07-06/debates/16070651000276/Sudan#contribution-16070651000003>.

²⁹ ACHPR, Communication 379/09- *Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan* at http://www.achpr.org/files/sessions/14th-ao/communications/379.09/achpr14eos_decis_379_09_sudan_eng.pdf.