



# **NATIONAL AND INTERNATIONAL REMEDIES FOR TORTURE**

## **A HANDBOOK FOR SUDANESE LAWYERS**

**MARCH 2005**

### **THE REDRESS TRUST (REDRESS)**

3rd Floor, 87 Vauxhall Walk, London SE11 5HJ  
Tel: +44 (0)20 7793 1777 Fax: +44 (0)20 7793 1719  
Email: [info@redress.org](mailto:info@redress.org) (general correspondence)  
Charity Registration No. 1015787

### **SUDANESE ORGANISATION AGAINST TORTURE (SOAT)**

Argo House, Kilburn Park Road, London, NW65LF, UK  
Tel: +44 (0) 20 7625 8055 Fax: +44 (0) 20 7372 2656  
Email: [info@soatsudan.org](mailto:info@soatsudan.org)  
Charity Registration No. 1040432

# INDEX

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>THE DEFINITION OF TORTURE AND ITS PRACTICE IN SUDAN.....</b>	<b>2</b>
	<i>WHAT IS TORTURE? .....</i>	<i>2</i>
	<i>WHAT IS SUDAN'S RECORD OF TORTURE? .....</i>	<i>3</i>
	<i>WHAT ARE THE METHODS OF TORTURE? .....</i>	<i>3</i>
	<i>WHO ARE THE VICTIMS OF TORTURE? .....</i>	<i>4</i>
	<i>WHAT ARE THE CONSEQUENCES FOR SURVIVORS? .....</i>	<i>4</i>
<b>III.</b>	<b>THE IMPORTANCE OF JUSTICE AND REPARATION FOR TORTURE .....</b>	<b>5</b>
	<i>WHAT IS JUSTICE AND REPARATION?.....</i>	<i>5</i>
	<i>WHY IS REPARATION IMPORTANT FOR TORTURE SURVIVORS? .....</i>	<i>5</i>
	<i>WHAT CAN BE DONE TO ENSURE JUSTICE FOR TORTURE SURVIVORS IN SUDAN? .....</i>	<i>6</i>
	<i>STEPS TO IMPROVE ADHERENCE TO AND IMPLEMENTATION OF INTERNATIONAL STANDARDS ON THE PROHIBITION OF TORTURE.....</i>	<i>7</i>
<b>IV.</b>	<b>SUDANESE LAW AND PRACTICE.....</b>	<b>9</b>
	<b><i>PRELIMINARY CONSIDERATIONS, INTERVIEWING TORTURE SURVIVORS AND DOCUMENTING TORTURE.....</i></b>	<b><i>9</i></b>
	i. How to conduct interviews .....	9
	ii. What information to collect? .....	10
	<b><i>PREVENTION OF TORTURE.....</i></b>	<b><i>11</i></b>
	i. Lack of effective safeguards .....	11
	ii. Custodial Safeguards .....	11
	iii. Judicial challenges regarding illegal detention and/or torture.....	16
	iv. Admissibility of confessions extracted under torture .....	18
	v. Additional measures where torture (including threat of torture) has already occurred .....	20
	vi. Law Reform .....	21
	<b><i>ACCOUNTABILITY OF PERPETRATORS OF TORTURE.....</i></b>	<b><i>22</i></b>
	i. Filing complaint about torture.....	23
	ii. Opening an Investigation .....	25
	iii. Ensuring effective investigations.....	29
	iv. Trials.....	31
	<b><i>REMEDIES AND REPARATION.....</i></b>	<b><i>33</i></b>
	i. Claiming reparation.....	35
	ii. National remedies .....	35
<b>V.</b>	<b>INTERNATIONAL REMEDIES.....</b>	<b>39</b>
	<b><i>OVERVIEW.....</i></b>	<b><i>39</i></b>
	<b><i>THE AFRICAN SYSTEM OF HUMAN RIGHTS.....</i></b>	<b><i>44</i></b>
	<b><i>UN CHARTER BODIES.....</i></b>	<b><i>52</i></b>
	<b><i>INTERNATIONAL CRIMINAL LAW AND THE INTERNATIONAL CRIMINAL COURT.....</i></b>	<b><i>58</i></b>

**ANNEX 1: LEGAL DOCUMENTATION ..... 61**

**ANNEX 2: SUMMARIES OF CASES DECIDED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS CONCERNING SUDAN..... 76**

**ANNEX 3: ONLINE RESOURCES AND BOOKS ON THE ISSUE OF TORTURE..... 79**



## I. INTRODUCTION

Torture survivors and those acting on their behalf face serious obstacles in accessing justice in Sudan. This has been recognised by reports issued by official bodies and nongovernmental organisations<sup>1</sup> and was affirmed in a October 2004 legal training workshop in Khartoum, co-organised by the Sudanese Organisation against Torture (SOAT), the Khartoum Centre for Human Rights and Economic Development and REDRESS. The workshop brought together lawyers, civil society representatives, human rights organisations from different regions of Sudan, as well as representatives from the Judiciary, Ministry of Justice, police and military to discuss strategies and options for improving access to justice for survivors of torture and other serious international crimes.<sup>2</sup>

Many Sudanese lawyers and nongovernmental organisations work tirelessly to facilitate torture survivors' pursuit of justice and reparation and to help them to be free from further torture. Yet the discussions in the training workshop demonstrated the need for lawyers and other advocates to obtain more detailed information on national and international standards in torture cases, including practical advice on how to apply them in their day-to-day work. As part of the conclusions and recommendations of this workshop, participants expressed the desire for continued information exchange and training, in order to further enhance their efforts to end impunity for torture in Sudan.

This Handbook has been developed in close coordination with lawyers working in Sudan. It suggests a series of practical ways in which lawyers and others may meet the numerous challenges within the local justice system to access civil and criminal remedies, including legal and practical obstacles in the investigation and prosecution of torture cases and other legal impediments to the resolution of torture cases. To this end, the Handbook draws on comparative best practice and international standards, and explores how international human rights law can be used to improve the opportunities for redress in the Sudanese context. This can be accomplished both by using existing remedies and by advocating for legal and institutional reforms in Sudan where required. On the international level, steps to be considered include having recourse to the African Commission on Human and Peoples' Rights and/or using the relevant UN mechanisms.

In line with its practical focus, the Handbook is based on Sudanese lawyers' actual experiences. In order to make the Handbook as concrete and user-friendly as possible, questions and answers, examples and step-by-step guidelines are used. The substantive parts are complemented by three Annexes with portions of key texts, summaries of decisions and a list of further documents that can be consulted for more detailed guidance and explanation.

The Handbook was written by Lutz Oette and Abdelsalam Hassan, and edited by Carla Ferstman. REDRESS and SOAT wish to acknowledge the invaluable contribution of all those who collaborated and assisted in this project, and in particular Ali Agab, Khartoum Centre for Human Rights and Economic Development, Judith Oder, Interights and Atef El-Marakby.

---

<sup>1</sup> See REDRESS, *Reparation for Torture, A Survey of Law and Practice in Thirty Countries, Country Study: Sudan* April 2003, which contains further references, at <http://www.redress.org/studies/Sudan.pdf>.

<sup>2</sup> See REDRESS/SOAT/KCHRD, *Improving Access to Justice in Sudan, Legal Training Workshop, 4-6 October 2004, Press Statement*, <http://www.redress.org/news/Press%20Release%20Sudan%20Oct%202004.pdf>

## **II. THE DEFINITION OF TORTURE AND ITS PRACTICE IN SUDAN**

### ***What is torture?***

Torture is a serious human rights violation and an international crime. Its use is prohibited under any circumstance as a matter of international law and the prohibition also figures in most national constitutions around the world. Of the various definitions of torture, the one contained in Article 1 of the United Nations Convention against Torture is the most widely recognised. It is commonly used when referring to relevant international legal standards.

Article 1 defines torture as an act by which:

- severe physical or mental pain or suffering is
- intentionally inflicted
- for a particular purpose, such as obtaining a confession, intimidation, coercion, punishment or discrimination of any kind,
- by or with some degree of participation of an official.<sup>3</sup>

Torture is recognised to be a reprehensible instrument of power used to weaken and break the will of the individual victim and to frighten whole communities into submission by creating a climate of fear.<sup>4</sup> As emphasised by the European Court of Human Rights, torture is an extreme form of cruel, inhuman or degrading treatment.<sup>5</sup> Where one of the elements of torture is missing, for example if there is a lack of intent, the treatment can still amount to inhuman or degrading treatment which is also prohibited under international law.

Bodily punishments may also constitute torture. While Article 1 of the UN Convention against Torture exempts “pain or suffering arising only from, inherent in or incidental to lawful sanctions” from the scope of torture, it is increasingly recognised that certain forms of punishment are of such cruelty that they amount to torture. This has been particularly controversial with regard to penalties prescribed by *Shari’a* law, such as amputations, cross-amputations, lashes and death by stoning or crucifixion. Although States that impose these forms of punishment, such as Sudan,<sup>6</sup> have claimed that these punishments are compatible with international instruments,<sup>7</sup> several international human rights bodies have held that punishments of such cruelty cross over the threshold of what can be considered to be a lawful sanction and therefore do fall within the definition of torture.<sup>8</sup>

---

<sup>3</sup> See text of Article 1 of the Convention against Torture in Annex 1.

<sup>4</sup> See *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘The Istanbul Protocol’*, Submitted to the United Nations High Commissioner for Human Rights 9 August 1999, and Article 2 of the Inter-American Convention to Prevent and Punish Torture: “... Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical or mental anguish...”

<sup>5</sup> See the judgment of the European Court of Human Rights in *Selmouni v. France* (25803/94) [1999] ECHR 66 (28 July 1999), paras. 91 et seq.

<sup>6</sup> See, on the carrying out of these punishments, the Annual Reports and Newsletters of SOAT as well as Human Rights Watch, *Sudan Justice: Stonings, Amputations; Emergency Courts violate Fair Trial Standards*, 1 February 2002.

<sup>7</sup> See, for example, comments by the representative of Sudan before the United Nations Committee on the Elimination of Racial Discrimination, in Concluding Observations of the Committee: Sudan, UN Doc. A/49/18, paras.444-478, 9 August 1994, para.458: “Replying to the question on the compatibility of Islamic law with international instruments, he said that there was no essential contradiction between the two.”

<sup>8</sup> See in relation to Sudan: Concluding Observations of the Human Rights Committee: Sudan, UN Doc. CCPR/C/79/Add.85, 19 November 1997, paras. 8 and 9; African Commission on Human and Peoples’ Rights, Case 236/2000, *Curtis Francis Doebbler v. Sudan*, see below,

## ***What is Sudan's record of torture?***

Various military regimes in Sudan's history have used torture to establish and maintain power. International bodies have repeatedly condemned the torture record of the present regime, headed by Hassan Omer al-Bashir and the Islamic Front, in power since June 1989.<sup>9</sup> Torture is said to be commonly used by the police and prison staff as a means of extracting confessions or extorting money and by the security forces to crush political dissent.<sup>10</sup> Conditions inside police stations and other detention facilities in Sudan are often so poor that the mere detention in such places is sometimes used as a tool of coercion or punishment.<sup>11</sup> Members of the army and paramilitary forces have also been implicated in torture, amongst other serious human rights violations, in the course of military campaigns in Southern Sudan, the Blue Nile region and Darfur.<sup>12</sup> Non-state actors, such as the Janjaweed, have reportedly committed serious human rights violations, including torture, with the support of the Government of Sudan.<sup>13</sup>

## ***What are the methods of torture?***

The methods of torture have been amply described by torture survivors and documented and reported by Sudanese lawyers, national and regional human rights groups as well as international bodies and organisations.<sup>14</sup> One of the most common methods is beatings, often with objects such as hoses, sticks, iron bars or guns, to sensitive areas of the body, such as the head and eyes or genitals. Other forms of torture that have been reported include forcing detainees to perform painful and degrading physical exercises, whipping, burning with hot metal poles or cigarettes, slashing of the skin with sharp blades, and electric shocks. Various methods of sexual torture have also been documented, such as rape, threat of rape, inserting solid metal objects or the mouth of a bottle into the anus and crushing of testicles. Mental forms of torture include prolonged solitary confinement, mock executions, forcible witnessing of the torture of others, death threats and withholding of medical treatment.

---

Annex 2. See for further pronouncements to this effect, the United Nations Human Rights Committee, General Comment 20 Concerning Prohibition of Torture And Cruel Treatment or Punishment (Art. 7), 10 Mar 1992, (44th sess., para.5, see below, Annex 1; Report of the Special Rapporteur on Torture, Sir Nigel Rodley, UN Doc. E/CN.4/2001/66, 25 January 2001, para.1024 and Conclusions and recommendations of the Committee against Torture: Saudi Arabia, UN Doc. CAT/C/CR/28/5, 12 June 2002, para.4 (b).

<sup>9</sup> See for example Concluding Observations of the Human Rights Committee: Sudan, 19 November 1997, UN Doc. CCPR/C/79/Add.85, para.12; Situation of Human Rights in the Sudan, Interim Report of the Special Rapporteur, Gerhart Baum, on the situation of Human Rights in the Sudan, UN Doc. E/CN.4/2002/46, 20 August 2002, paras 101 and 102.

<sup>10</sup> Ibid. See also FIDH (International Federation of Human Rights) and SOAT, *Alternative Report to Sudan's periodic report before the African Commission of Human and Peoples' Rights, Sudan: One step forward, many steps back*, May 2004, p.12 and for regular updates, the SOAT newsletters at [www.soatsudan.org](http://www.soatsudan.org).

<sup>11</sup> See FIDH and SOAT, *Alternative Report*, supra, pp.13 et seq.

<sup>12</sup> See Amin Mekki Medani, *Crimes Against International Humanitarian Law in Sudan: 1989-2000*, Cairo, 2001, pp.95 et seq.

<sup>13</sup> See Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights, Situation of human rights in the Darfur region of the Sudan, UN Doc. E/CN.4/2005/3, 7 May 2004 and Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004, Geneva, 25 January 2005, which also details the responsibility of other non-state actors, such as the rebel forces in Darfur.

<sup>14</sup> See reports by the UN Special Rapporteur on Sudan and SOAT referred to above, as well as the Al Nadeem Centre, *Torture in Sudan, Facts and Testimonies*, 2003 and Amel Center, *Annual Report*, April 2003-April 2004.

## ***Who are the victims of torture?***

There are a large number of torture victims both inside and outside of Sudan as many have fled the country. Genuine or alleged political opponents of the regime, such as members of political opposition parties, trade unions, student groups, human rights defenders and those belonging to or supporting the SPLA or other such movements have been specifically targeted. Members of ethnic groups, such as the various African groups in Southern Sudan, members of the Fur tribe, the Nuba or the Angasana of the Blue Nile River region, have also been targeted in the course of armed conflict and ensuing internal displacement. Many criminal suspects have also been tortured, with those belonging to marginalised groups at the greatest risk. Women, especially young women students have been subjected to rape and sexual harassment in custody. Furthermore, there are reports that children, especially street children, have been tortured and ill-treated in social care houses and other places of detention.

## ***What are the consequences for survivors?***

Torture often results in severe physical injuries, including physical disablement, or even death.<sup>15</sup> A representative study of Sudanese refugees in Egypt carried out by the Al Nadeem Centre found that most of the torture survivors experienced psychological after effects.<sup>16</sup> A compounding factor is the vulnerability and trauma resulting from displacement. Groups whose members have been targeted by the Government have at times experienced collective trauma, as has been the case in Southern Sudan, the Nuba mountains, the Blue Nile region and Darfur.

---

<sup>15</sup> See reports by the UN Special Rapporteur on Sudan, SOAT and the Al Nadeem Centre referred to above, the Report of the International Commission of Inquiry on Darfur, *supra*, paras.362 et seq. and the case decided by the African Human Rights Commission, *48/90 Amnesty International vs Sudan et al*, a summary of which can be found in Annex 2.

<sup>16</sup> These included psychosomatic disorders, such as chronic headaches, muscle and joint pain and disorders in the digestive and cardiac systems, behavioural disorders, manifesting themselves in changes in the survivor's personality, and mental and psychological disorders such as clinical depression, post-traumatic stress disorders with memory disturbance, flashbacks as well as visual and auditory hallucinations. See Al Nadeem Centre, *Torture in Sudan*, *supra*.



### III. THE IMPORTANCE OF JUSTICE AND REPARATION FOR TORTURE

#### ***What is justice and reparation?***

Justice is not simply an ideal but a basic principle common to all societies. Its' essential elements are equality, the protection of rights and the punishment and repair of wrongs. The dispensing of justice can be best guaranteed by a system that respects human rights and is based on the rule of law, and guarantees the right of the individual and of communities to be free from torture. Where this guarantee fails and torture occurs, justice demands that the wrongdoers are held accountable, that the victims obtain reparation and that steps are taken to prevent recurrence.

Reparation is the act of restoring something to its previous state and to make amends for a wrong or loss. It is not only recognised as a fundamental principle but as a right of victims under international law, both treaty-based<sup>17</sup> and customary international law.<sup>18</sup>

The importance of the right to reparation has been affirmed in the draft *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*.<sup>19</sup> These principles and guidelines, which at the time of writing were still under discussion by the UN, have become a central reference point on the purposes and forms of reparation. The Basic Principles identify restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition as forms of reparation.<sup>20</sup>

#### ***Why is reparation important for torture survivors?***

Torture is a traumatic event designed to break the physical and psychological integrity of the victim with the aim of destroying his/her personality. For many torture survivors, the process of seeking justice and reparation is a vital part of their recovery in that it allows them to regain their dignity and sense of control. It can also be a means of overcoming stigmatisation and of restoring confidence and legitimacy in the fairness of the justice system. According to Theo van Boven, the former Special Rapporteur on Torture and the originator of the draft Basic Principles referred to above, reparation has “the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts.” For this reason “reparation should

<sup>17</sup> See, for example the Universal Declaration of Human Rights (Article 8); the International Covenant on Civil and Political Rights (Articles 2(3); 9(5) and 14(6)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); the Convention on the Rights of the Child (Article 39); the Convention against Torture (Article 14) and the Rome Statute for the International Criminal Court (Article 75). It also figures in regional instruments such as the European Convention on Human Rights (Article 5(5), 13 and 41); the American Convention of Human Rights (Articles 25, 63(1) and 68) and the African Charter on Human and Peoples' Rights (Article 21(2)).

<sup>18</sup> See on the status of victims' right to reparation under international law REDRESS, *Reparation, A Sourcebook for Victims of Torture and other Violations of Human Rights and International Humanitarian Law*, March 2003, pp.11 et seq., at <http://www.redress.org/publications/SourceBook.pdf>.

<sup>19</sup> 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 (rev. 5 August 2004), at <http://www.ohchr.org/english/events/meetings/docs/versionrev.doc>

<sup>20</sup> See below at IV, 'Remedies and Reparation'.

respond to the needs and wishes of the victim.”<sup>21</sup> Accountability of the perpetrators and public acknowledgment of the suffering and the wrong inflicted is not only important to the individual victims;<sup>22</sup> it also serves as a public record that a wrong has been committed and acts as deterrent against would-be perpetrators, thereby strengthening the rule of law.

### ***What can be done to ensure justice for torture survivors in Sudan?***

- Combating impunity for torture

Impunity signifies the failure of a State to comply with its international obligations to hold perpetrators of serious human rights violations accountable by investigating and, where sufficient evidence exists, prosecuting the accused and punishing those found guilty. It is also a denial of victims’ right to know, to justice and to an effective remedy and reparation.<sup>23</sup> Impunity is widely recognised as one of the main factors contributing to the perpetuation of torture. As observed by the Special Rapporteur on Torture “impunity continues to be the principal cause of the perpetuation and encouragement of human rights violations and, in particular, torture.”<sup>24</sup> Several studies by Special Rapporteurs and international experts to the United Nations have highlighted the vicious circle of impunity and further human rights violations.<sup>25</sup>

- Promoting the rule of law

Justice and reparation do not exist in a vacuum. As comparative experience shows, victims will only be able to effectively claim their rights in a system that is based on the rule of law. While the Sudanese constitution does recognise certain aspects of the rule of law, there are few if any effective remedies, and continuing concerns with the independence of the judiciary and the failure thus far to establish the National Human Rights Commission, envisaged by the 2004 Act.

The promotion of the rule of law in Sudan is therefore crucial for wider changes that may lead to better protection of individual rights in the long term. Lawyers and civil society play a critical role in this endeavour. While broader structural reforms may depend on political will, lawyers are well-placed to advocate for legal and institutional reforms, such as the establishment of an independent and effective National Human Rights Commission and to challenge laws that are incompatible with the rule of law before domestic courts, in particular before the Constitutional Court.

- Ensuring that Sudan complies with its international obligations

---

<sup>21</sup> Theo van Boven, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, Final Report, UN Doc. E/CN.4/Sub.2/1993, 2 July 1993, para.137.

<sup>22</sup> REDRESS, *Torture Survivors’ Perceptions of Reparation, Preliminary Survey*, 2001, pp. 60, 61.

<sup>23</sup> See *ibid.*

<sup>24</sup> Report by the Special Rapporteur on Torture Mr. Nigel Rodley to the UN General Assembly, UN Doc. A/54/426, 1 October 1999, para.48.

<sup>25</sup> See *Combating Impunity*, Report by Mr. Joinet on the Question of the impunity of perpetrators of human rights violations (civil and political); UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997, para. 17 and Diane Orentlicher, *Independent Study on Best Practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity* UN Doc. E/CN.4/2004/88, 27 February 2004.

Sudan has ratified or acceded to the following relevant human rights treaties:

- The Convention relating to the Status of Refugees (22 February 1974);
- International Covenant on Civil and Political Rights (18 March 1976);
- International Covenant on Economic, Social and Cultural Rights (18 March 1976);
- International Covenant on the Elimination of all Forms of Racial Discrimination (21 March 1977);
- African Charter on Human and People's Rights (11 March 1986) and
- Convention on the Right of the Child (3 August 1990).

Sudan has also ratified the four Geneva Conventions of 1949 (23 September 1957).

When Sudan ratified these treaties it signalled its agreement to comply with the obligations contained therein, including their implementation in domestic law. Neither the constitution of Sudan nor statutory law provides any guidance on the incorporation of international treaties into Sudanese law. As a matter of practice, Sudan follows the dualist tradition. Thus, any rights or obligations flowing from international law only become part of Sudanese law after being incorporated through a legislative act. However, Sudan has not adopted any legislation implementing the human rights instruments listed above and, as a result, existing legislation falls short of international standards in several respects.<sup>26</sup> This includes the failure of Sudanese courts to apply or take into account international standards where applicable.

### ***Steps to improve adherence to and implementation of international standards on the prohibition of torture***

- Raise awareness about international human rights standards, through dissemination of information and training;
- Document any violations and inform the Sudanese and international public about the nature and extent of violations as well as the responses by the Government, if any, for example in the form of shadow reports to international human rights bodies tasked with monitoring Sudan's treaty performance;
- Invoke international human rights standards when litigating torture cases, either directly where possible or use these standards in interpreting domestic laws, as appropriate;
- Lobby the Government and independent bodies, such as the National Human Rights Commission, once operational, to carry out law reform where necessary to bring Sudanese law in line with international standards.

Sudan signed but has not yet ratified the UN Convention against Torture, the main international treaty prohibiting torture. Given the crucial nature of this Convention, it is important to step up the ratification campaign in Sudan, for example by way of lobbying the Ministry of Justice and enlisting the support of the National Human Rights Commission once it becomes operational.

<sup>26</sup> See, e.g., concluding observations by the Human Rights Committee, *supra*, and findings of violations by the African Commission of Human and Peoples' Rights, *infra*, Annex 2.

Furthermore, Sudan has not yet become a party to the Rome Statute for the International Criminal Court.<sup>27</sup> Sudan has also not become party to the Additional Protocols to the Geneva Conventions of 1977. These Protocols are aimed at providing further protection for civilians not only in international but also in internal armed conflicts.

The ratification of these and other treaties would be a significant step by Sudan to enhance human rights protections. It would also give lawyers stronger grounds to invoke treaty provisions before domestic courts.

---

<sup>27</sup> See Chapter V below for further information on the International Criminal Court.

## IV. SUDANESE LAW AND PRACTICE

### ***Preliminary Considerations: Interviewing torture survivors and documenting torture***<sup>28</sup>

#### **i. How to conduct interviews**

Lawyers should interview torture survivors with a view to clarifying the facts, establishing the wishes and needs of victims and determining the best strategy of intervention.

While the objective of obtaining a valuable account of the facts is important, the interests and needs of the torture survivor need to be respected in conducting interviews. A lawyer should take all necessary precautions to ensure that the interview is conducted in such a way to preserve survivors' physical and psychological integrity. For example, interviews should be conducted out of range of officials and information should be kept confidential. At the beginning of an interview, the lawyer should explain the objectives of the interview and the possible use of the information gathered. He or she should provide assurances as appropriate, that no information will be divulged and no step will be taken without the survivor's explicit consent.

The interviewer should make the survivor feel at ease and should be sensitive to the fact that talking about experiences of torture may be difficult and traumatising. Notes should be taken during the interview or, should this not be possible, promptly thereafter.

Where an interpreter is used, the lawyer must ensure that the interpreter respects the confidentiality of the information provided. The lawyer should make sure that the interpreter is of the best possible professional standard, acceptable to the torture survivor in the circumstances and will not be put at risk as a result of the interview.

The interview itself should allow the survivor to tell his or her own story in as great a detail as possible. The interviewer should avoid the use of techniques that may undermine the reliability of information, such as leading questions or using multiple choice questions.<sup>29</sup> Be aware that there might be inconsistencies in the story and that this is normal. This may be due to the difficulties of understanding questions or because of the nature of the torture itself, especially where victims become disorientated or receive head injuries impairing their memories. The interviewer should seek to clarify any inconsistencies as much as possible.

<sup>28</sup> For a more in depth analysis of interview techniques, see Camille Giffard, *The Torture Reporting Handbook*, Human Rights Centre, University of Essex, 2000 and the 'The Istanbul Protocol', supra.

<sup>29</sup> Istanbul Protocol, supra, p.31: "...Non-leading questions do not make assumptions or conclusions and allow the person to offer the most complete and unbiased testimony. Non-leading questions would be, for example, "What happened to you and where?" rather than "Were you tortured in prison?" The latter question assumes that what happened to the witness was torture and limits the location of the actions to prison. Avoid asking questions with lists, as this can force the individual into giving inaccurate answers if what actually happened does not exactly match one of the opinions. Allow the person to tell his or her own story, but assist by asking questions that increase in specificity."

**ii. What information to collect?**

The main purpose of an interview is to obtain as much information as possible about the incident and the context. For example, is there a risk of further torture? Has the survivor already lodged a complaint? Has an official investigation into the allegations commenced? To this end, the interviewer should seek to obtain information on:

- the identity of the victim;<sup>30</sup>
- the identity of the perpetrator(s), especially whether they were acting in an official capacity or had any connection with the State;<sup>31</sup>
- circumstances leading up to the torture, including arrest or abduction and detention;<sup>32</sup>
- date, time and location of the torture;<sup>33</sup>
- conditions of detention;<sup>34</sup>
- facts of torture, including methods of torture used;<sup>35</sup>
- consequences, in particular injuries, sustained as a result of torture;<sup>36</sup>
- steps taken by the person alleging torture following the incident;<sup>37</sup>
- availability of other evidence;<sup>38</sup>
- official response, if any, to the alleged torture.<sup>39</sup>

Medical evidence is key to proving allegations of torture. Such evidence, which can consist in either physical or psychological evidence, or both, will not necessarily provide direct evidence of torture but may demonstrate that the physical injuries or psychological consequences of torture are consistent with what has been alleged. Ideally, medical evidence should be obtained from an independent medical professional shortly after the torture incident and without any officials being present during the examination. Medical examinations should be conducted by persons who are authorised to give expert testimony in court, or failing this, whose reports will be given credence in court.

Statements of the victims, other witnesses and the alleged perpetrators, where available, are further important pieces of evidence that lawyers should record thoroughly. Witnesses

---

<sup>30</sup> For example, does the survivor have an identification card? What is their name, gender, date of birth/age, occupation, address, appearance, photograph, state of health?

<sup>31</sup> Number, name, rank and unit or uniform/plain clothes where known; their appearance; any unusual features; language and accent; weapons; vehicles, marked or unmarked.

<sup>32</sup> Where and when was the person taken into custody? How did the arrest occur? Who was present? If this information is not available, where was the person last seen? What is the official or other possible reasons for the arrest? Name of location and duration of holding?

<sup>33</sup> Istanbul Protocol, supra, p.32: "...Establishing this information may not be easy, as there may be several places, and perpetrators (or groups of perpetrators) involved. Separate histories may have to be taken about the different places. Expect chronologies to be inaccurate and sometimes even confusing: notions of time are often hard to focus on for someone who has been tortured. Separate histories about different places may be useful when trying to get a global picture of the situation. Survivors will often not know exactly where they were taken to, having been blindfolded or semi-conscious. By putting together converging testimonies, it may be possible to "map out" specific places, methods and even perpetrators."

<sup>34</sup> This includes information about the location, such as the presence of any other detainees; whether they were in isolation; the room conditions; access to clothing, food and water, exercise, medical treatment; possibility for family visits. Also, whether they had access to a lawyer and were brought before a judge or magistrate, whether they were subjected to any bribes.

<sup>35</sup> Questions to be asked include: Where-What-How often? The interviewer should also seek a description of the instruments used and identify the parts of the body to which the treatment was applied.

<sup>36</sup> Has there been any medical treatment and if so, were medical reports prepared? What are the medical consequences that can be attributed to the torture?

<sup>37</sup> Was a complaint lodged or other steps taken? If so, with whom? What was the outcome of same?

<sup>38</sup> Such as medical reports, potential witnesses, prison records, etc.

<sup>39</sup> Has an official investigation been carried out, if so, what was the result? Were there threats or reprisals?

do not need to be limited to those present during the torture incident but could also include those who witnessed the taking into custody of the person alleging torture, such as other detainees who can provide information about torture practices and doctors that can provide information about the status of health of the person before arrest and detention and after the alleged incident of torture took place.

Other useful evidence consists in torture weapons or traces left at the scene of the torture. Although this will usually not be accessible to the private lawyer representing persons alleging torture, relevant information in this respect should be documented thoroughly. Finally, supporting evidence can consist in reports and statements made by the media, experts, officials and others that point to particular practices and patterns of torture.

## ***Prevention of Torture***

### **i. Lack of effective safeguards**

The prohibition of torture under international law obligates States to take effective legislative, administrative, judicial or other measures to prevent acts of torture.<sup>40</sup>

The routine practice of torture in Sudan signifies the failure of preventive mechanisms and safeguards. Although the criminal procedure law recognises at least some custodial safeguards, in practice the authorities commonly fail to inform detainees about their rights. Detainees are routinely held incommunicado, denied access to a lawyer of their choice, prevented from informing relatives or others about the fact of their detention and denied access to courts to challenge the legality of their detention and/or to lodge complaints about torture. Access to a lawyer is often difficult due to the poverty of most of those detained and the absence of an effective system of legal aid. Such aid is only obligatory upon the state in cases of crimes carrying the death penalty. Further aggravating factors are the illiteracy of many detainees and the inability of some to communicate in Arabic. In addition, detainees often do not have access to medical care, or even medical examinations in order for them to evidence the injuries suffered as a result of torture. While these deficiencies apply to some degree to all detainees, those in the hands of the security forces are particularly at risk, because security laws fail to safeguard their rights and to provide for effective judicial supervision.

It is extremely difficult for lawyers to gain access to detainees in order to defend their rights and to protect them from harm. This is compounded by the frequent practice of harassment of and threats to lawyers for their attempts to exercise their professional duties in respect of their clients.

### **ii. Custodial safeguards**

Custodial safeguards include the right to access:

- a lawyer of one's choice, to ensure that detainees enjoy legal representation and due process rights;

---

<sup>40</sup> See Human Rights Committee, General Comment 20, *supra*, para.8, and Article 2 (1) of the UN Convention against Torture.

- physicians, to ensure medical examination and the availability of medical records (and their possible use in subsequent proceedings against the alleged perpetrator(s)) acting as a deterrent for potential torturers;
- relatives and friends, to ensure that detainees are not held incommunicado and that third persons are made aware of the detention, and to reduce the possible risk of torture and ill-treatment;<sup>41</sup> and
- in case of foreign nationals, diplomatic and consular representatives who can intervene with the domestic authorities to uphold detainees' rights.<sup>42</sup>

### *Right to access a lawyer of one's choice*

International law recognises the right of any person deprived of his/her liberty, to have prompt, full and unrestricted access to a lawyer of their own choice.<sup>43</sup> The *UN Basic Principles on the Role of Lawyers (Basic Principles on Lawyers)*,<sup>44</sup> the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>45</sup> (*Body of Principles on Detention*) and the Special Rapporteur on Torture<sup>46</sup> have elucidated the following standards concerning the modalities of the right to access a lawyer according to which national authorities should:

- ensure effective and equal access to lawyers for all persons within their territory without exception;<sup>47</sup>
- ensure that all persons are immediately informed of their right to a lawyer of their own choice following arrest and detention and be granted prompt access to a lawyer, i.e. immediately and no later than 24 hours after the arrest;<sup>48</sup>
- ensure that detainees shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer. The right to consult and communicate should be exercised without delay, interception or censorship and in full confidentiality;<sup>49</sup>
- ensure that the lawyer be independent from the State apparatus;<sup>50</sup> and

---

<sup>41</sup> See Principle 16 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by General Assembly Resolution 43/173 of 9 December 1988, at <http://www.un.org/documents/ga/res/43/a43r173.htm> and Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, at [http://www.unhcr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhcr.ch/html/menu3/b/h_comp34.htm).

<sup>42</sup> Principle 16 (2) of the Body of Principles on Detention; Rule 38 of the Standard Minimum Rules for the Treatment of Prisoners. See also judgments by the International Court of Justice in the *LaGrand Case* (Germany v United States of America), ICJ Reports 2001, para.77 and the *Case Concerning Avena and other Mexican Nationals* (Mexico v. United States of America), Judgment of 31 March 2004.

<sup>43</sup> International treaties do not expressly recognise this right. However, most treaty bodies have recognised the right to have immediate access to a lawyer in their practice, see e.g. Human Rights Committee, General Comment 20, supra, para.11 and Resolution 1994/37 of the Commission on Human Rights which emphasised "[t]hat the right to have access to a lawyer is one of the basic rights of a person who is deprived of his liberty and that restrictions on this right should therefore be exceptional and always subject to judicial control."

<sup>44</sup> Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, at [http://www.unhcr.ch/html/menu3/b/h\\_comp44.htm](http://www.unhcr.ch/html/menu3/b/h_comp44.htm).

<sup>45</sup> The Body of Principles on Detention, supra.

<sup>46</sup> Report of the Special Rapporteur on Torture, Sir Nigel Rodley, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26, at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/160/49/PDF/G0216049.pdf?OpenElement>

<sup>47</sup> Principle 1 of the Basic Principles on Lawyers: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings" and Principle 17 (1) of the Body of Principles on Detention: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authorities promptly after arrest and shall be provided with reasonable facilities for exercising it."

<sup>48</sup> Report of the Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68, supra, para.26 (f).

<sup>49</sup> Principle 8 of the Basic Principles on Lawyers and Principle 18 (3) of the Body of Principles on Detention.

<sup>50</sup> Report of the Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68, supra, para.26 (f).



- allow "persons who exercise the functions of a lawyer without having the formal status of lawyers", such as members of human rights organisations, to provide assistance to persons deprived of their liberty, in applying the same principles that apply to lawyers.<sup>51</sup>

States should provide for a right to access a lawyer of one's choice in national law that is in line with the international standards outlined. Any restrictions on this right should be exceptional and subject to judicial review.<sup>52</sup>

Article 32 of the Sudanese Constitution stipulates "A suspect of a crime is innocent until convicted and has the right to a speedy and just trial and the right to defend himself and chose whoever may represent him in defence." Article 83(3) of the Criminal Procedure Code of 1991 (CPC) stipulates that the arrested person has the right to contact his/her lawyer. However, the law is not clear in respect of the presence of a lawyer during the investigation, especially during the initial questioning by the police. In practice, the police insist that the lawyer can appear only after the initial investigation is concluded and the summary of the police investigation is submitted to the prosecutor. The prosecutors and judges accept this practice and no cases are known in which applications by lawyers to have access to their clients during questioning have been successful. The practice of hindering or denying lawyers access to their clients, also by means of threats and harassment, constitutes a denial of the right to be defended and a violation of the lawyers' right to fulfil their professional duties, as laid down in Article 29 of the Advocacy Law.

In cases under the Public Order Act, persons are often transferred by the forces to custody in the evening and brought before the court in the early morning without the chance of accessing a lawyer. The lawyers are not informed about such trials. In practice, the courts often refuse to even give the prosecutor access to the file of the case. In such cases, the magistrate of the Special Public Court will continue trying the accused while the lawyer seeks transfer of the case in order to represent his/her client, commonly resulting in the de facto refusal of legal representation.

The National Security Forces Act of 1999 (hereinafter Security Act) contains no guarantees for immediate access to counsel. In practice, detainees in security detention centres are denied access to a lawyer for the duration of the investigations. When lawyers wish to request access to persons arrested by security forces, they are generally required in practice to make an application to the prosecutor's office responsible for dealing with crimes against the State. However, these applications tend to be drawn out and the applicant lawyers often do not receive replies. Moreover, lawyers are generally reluctant to appear before the responsible prosecutor because they run the risk of being arrested themselves. The authors know of no single case where a lawyer managed to secure access to his/her client held under the Security Act.

### **Practical steps to ensure access to a lawyer include:**

- Approach the competent prosecutor or special attorney's office where the detainee is in custody, to request:
  - access to the detainee;

<sup>51</sup> Preamble of the Basic Principles on Lawyers.

<sup>52</sup> As recognised by the UN Human Rights Committee, even when persons are under detention without charge or trial, authorised by administrative order rather than by judicial decree (normally applied by States in emergencies) the legality of the detention should be subject to judicial review. See e.g. Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993, *Hammel v Madagascar*, Communication No. 155/1983, UN Doc. CCPR/C/29/D/155/1983; at paras. 18.2 and 20.

- to know the charge against the accused and;
  - to ensure that the detainee be given the right to communicate with his/her family.
- In petitions seeking access or judicial review, challenge any contentions made by the police, security forces, or courts that lawyers should only be allowed access after the initial questioning, by arguing that the right to defend cannot be exercised fully without the right to have a lawyer of one's choice present during the questioning.
  - Inform the competent prosecutor or special attorney's office, judge, bar association and the National Human Rights Commission, once established, about any attempts by the authorities to interfere with the right of access to a lawyer, by means of threats and harassment or otherwise, and request them to take steps to uphold the detainee's right of access to a lawyer of their choice and the right of lawyers to exercise their profession without unwarranted interference.

### *Right to inform family members*

Article 83(5) of the CPC stresses that the arrested person has the right to inform his/her family or employer and the right to contact them with approval of the prosecutor or the court. Under the Treatment of Detainees Regulation of 1996, the security authorities are obliged to notify the family of the detainee or his/her employer, and the detainee has the right to communicate with his/her family.

Article 32(2) of the Security Act provides the detainee with the right to inform his/her family or employer of the arrest and the detainee is allowed to communicate with family "where such contact does not prejudice the progress of the interrogation, inquiry and investigation of the case". In practice, detainees are often not informed about this right and permission is normally refused in the few instances when it is sought. Only one case is known where the Security Forces allowed a detainee to meet family members, and in many cases families struggled to determine the whereabouts of the detainee.

### *Right to access a doctor (medical examination)*

International human rights bodies have recognised that the prompt medical examination upon entering (and leaving) detention facilities, and/or upon request is one of the elementary safeguards against torture.<sup>53</sup> Relevant international standards contained in the UN Standard Minimum Rules for the Treatment of Prisoners<sup>54</sup> (UN Rules for the Treatment of Prisoners), the UN Body of Principles on Detention, the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines),<sup>55</sup> and elaborated upon by the Special Rapporteur on Torture<sup>56</sup> and the European Committee for the Prevention of Torture<sup>57</sup> emphasise that States should:

---

<sup>53</sup> See report of the UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment to the UN Commission on Human Rights, UN Doc. E/CN.4/2004/56, 23 December 2003, para.36.

<sup>54</sup> Standard Minimum Rules for the Treatment of Prisoners, *supra*.

<sup>55</sup> Adopted by the African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002, see below, Annex 1.

<sup>56</sup> Report of the Special Rapporteur on Torture, Sir Nigel Rodley, UN Doc. E/CN.4/2003/68, *supra*.

<sup>57</sup> European Committee for the Prevention of Torture, The CPT Standards, "Substantive" Sections of the CPT's General Reports, CPT/Inf/E (2002), Rev. 2004, <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>.

- guarantee the right of detainees to be examined by a doctor, and, where necessary, to receive medical treatment;<sup>58</sup>
- offer a medical examination promptly after detention;<sup>59</sup>
- ensure that medical examinations of detainees are conducted out of the hearing of law enforcement officials and, unless the doctor conducting the examination requests otherwise, out of the sight of these officials;<sup>60</sup>
- grant the right of a detainee, or his/her lawyer, to petition a judicial or other competent national authority for a second medical examination or opinion;<sup>61</sup>
- ensure that the forensic medical services are not under the same governmental authority as the police and prison system but under judicial or an independent authority;<sup>62</sup>
- guarantee the right of detainees to access independent doctors.<sup>63</sup>

Article 48(c) of the CPC stipulates that where the crime is related to death or severe hurt, the officer in charge of the investigation should “make the necessary arrangement to summon a doctor to examine the corpse or the injured person, or transfer the corpse or the injured person to the nearest hospital and he should inform the deceased or the injured person’s next of kin and register any of their statements in the investigation’s diary.” This article should apply to persons who allege that they have been tortured. Article 83(1) of the CPC provides that an arrested person should be treated in a way that preserves his/her human dignity and he/she should not be harmed physically or psychologically and should be provided with suitable medical care. The Treatment of Detainees Regulation also imposes a duty on the authorities to provide medical care to detainees.

In practice, torture survivors that are still in detention are not granted an immediate medical examination. Where torture survivors obtain a medical examination, this is usually in the course of medical treatment only. The security forces often deny medical care and there have been instances in which detainees have died as a result, for example in the case of Abdel Momim Rahman in the mid 1990s. Nongovernmental organisations that treat torture victims, such as the Amel Center, have themselves faced harassment from the authorities.<sup>64</sup>

When the investigating authorities learn of allegations of torture, they often do not issue Form no. 8, which is required in order to obtain a medical examination. Medical examinations that are carried out subsequently (usually only after release from detention) are of lesser utility in that it is often only a considerable time after the alleged torture has occurred and visible signs of injuries may well have disappeared. When lawyers petition the prosecutor to order a medical examination, the prosecutor usually asks the police for the investigating file but such requests are often met with delays and do not necessarily produce results. Where the detainee is held by the security forces, applications to the competent prosecutor’s Office are denied as a matter of routine.

<sup>58</sup> Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners and Principle 24 of the Body of Principles on Detention.

<sup>59</sup> Human Rights Committee, General Comment 20, *supra*, para.11 and Principle 24 of Body of Principles on Detention.

<sup>60</sup> Principle 6 (a) of the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Protocol). See below, Annex 1.

<sup>61</sup> Principle 25 of Body of Principles of Detention.

<sup>62</sup> Report of the Special Rapporteur on Torture, Sir Nigel Rodley, UN Doc. E/CN.4/2003/68, *supra*, para.26, (j).

<sup>63</sup> *Ibid.*

<sup>64</sup> See Report by the Special Representative of the Secretary-General on the situation of human rights defenders, UN Doc. E/CN.4/2002/106, 27 February 2002, paras. 328 and 329, at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/111/22/PDF/G0211122.pdf?OpenElement>

One example of the absence of medical examination relates to the situation when there is no autopsy. In one such case, the family of a man who had died in custody refused to receive the body unless they were shown the medical certificate. This certificate, which stated malaria as the cause of death, had not been issued by a medically qualified person and ignored the evidence pointing to torture as the cause of death. The family subsequently initiated proceedings before a criminal court asking for a full investigation and immunity to be lifted but, after three more unsuccessful appeals, until now (at the time of writing) there has been no investigation into the allegations of torture more than ten years after the victim died.

Even when the medical evidence supports the allegation of torture, a full investigation is rarely carried out. For example, in one torture case, the Attorney General refused to open an investigation after receiving a report about torture at the hands of the Security Services. Several appeals have been lodged to the High Court since 2000, all of which have been unsuccessful whereby the authorities claim to have no papers concerning the case. In another case concerning torture by the police, the responsible police directors have since 2002 refused to lift the immunity of the officers concerned despite the availability of a medical report consistent with torture.

#### **Practical steps to ensure medical treatment include:**

- Approach the forces informally requesting medical care for the detainee, in particular on the grounds of his/her impaired health;
- Petition the competent prosecutor or Court to order the forces concerned to provide the detainee with medical treatment.

#### **iii. Judicial challenges regarding illegal detention and/or torture**

The right to complain about torture is an essential safeguard against further torture. The objective of complaints is to prompt the competent authorities to take the required steps to prevent further torture, e.g. suspend the perpetrator(s) or transfer the detainee, and to institute proceedings to hold those responsible accountable.

##### *Habeas corpus (Challenging the legality of detention)*

The right to challenge the legality of detention in *habeas corpus* proceedings is critical as it is often the first chance to raise such a complaint before a judge or indeed any official not related to the institution exercising control over the detainee.<sup>65</sup>

Article 30 of the Constitution outlaws arbitrary detention, stipulating that "A human being is free. He shall neither be arrested, detained, nor confined, save by such law that shall require stating the charge, the duration of detention, facilitation of release and respect for dignity in treatment."

---

<sup>65</sup> See on the role of habeas corpus the report of the Special Rapporteur, UN Doc.E/CN.4/2004/56, 23 December 2003, para.39: "Another key safeguard to prevent incidents of torture or other forms of ill-treatment is the prompt and effective access of individuals deprived of their liberty to a judicial or other competent authority. As the previous Special Rapporteur recalled in a report, prompt judicial intervention serves as guarantee that there will be no breach of the non-derogable right not to be subjected to torture or other forms of ill-treatment (see A/54/426, paragraph 42). This safeguard is reflected in article 9 of the ICCPR and principles 11, 32 and 37 of the Body of Principles on Detention. The judicial or other competent authority shall review the lawfulness of the detention as well as monitor that the detained individual is entitled to all his/her rights, including the right not to be subjected to torture or other forms of ill-treatment..."

The CPC does not provide for an express right to challenge the legality of detention. However, article 165 of the Penal Code of 1991 stipulates that "Whoever detains a person in a certain place without legal justification or continues the detention after knowing that an order of acquittal has been issued, will be deemed to have committed the crime of illegal detention and shall be punished with a term of imprisonment not exceeding one year or with fine and can be punished by both". In practice, it is recognised that a lawyer can 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.

The situation differs in respect of persons held under the Security Act, article 31 of which gives any member of the security forces the "power to detain any person for a period not to exceed three days for the purpose of questioning and investigation." The Director General can order the extension of the detention of a person for a period not exceeding 30 days if there is evidence or suspicion that he had committed a crime against the State, provided that he notify the competent prosecutor. The Director General can extend this again for another 30 days in cases which lead to the 'terror of society threatening the security and safety of citizens' and public stability, or the dissemination of destructive thoughts. (Section 31(a) of the amendment of the Security Forces Act, 2000). After this second 3 month period, the Director General may refer the matter to the National Security Council to take whatever steps the Council may deem necessary. This effectively provides the Council with the power to detain any person indefinitely.

#### **Practical steps that may be taken include:**

- Petition a magistrate or the prosecutor to issue an order of immediate release of a person who has been illegally detained and to institute a criminal complaint against the responsible official;
- Where the detention is at the hands of the Security Forces, petition the competent judge at the Constitutional Court arguing that there is no prima facie case justifying continued detention.

#### *Complaint and right to request transfer*

Article 83(3) of the CPC stipulates that the arrested person has the right to meet with a representative of the Attorney General or a judge to lodge a complaint and/or request a transfer. Such requests can also be made by their counsel. The right to transfer the arrested person falls within the discretion of the judge or the prosecutor. Article 83(4) of the CPC stipulates "The arrested person will be kept in the police custody in charge of the investigation or the arrest. He should not be kept or transferred to a different place except with the approval of the prosecutor or the court." In practice, no transfers have been ordered in torture cases.

Under Article 32(3) of the Security Act, an "apprehended, arrested or detained [person] should be treated in a way that preserves his human dignity and he should not be harmed physically or psychologically." Article 32(5) provides that "The competent district attorney should search the detainee's custody continuously to make sure that the detention safeguards are observed and in order to receive any complaints from any detainee in that regard." In practice, prosecutors fail to fulfil this role and, where such visits take place,

detainees often refrain from complaining and requesting transfers out of fear of further torture and ill-treatment.

*Asking the National Human Rights Commission to intervene*

The National Human Rights Commission, set up by the National Human Rights Commission Act, 2004, once operational, will have the power, under Article 4 (2) (g) of the Act to "receive complaints, from individuals and bodies, and recommend treatments." This should include steps to be taken to prevent further torture.

*Suspension of perpetrator(s) of torture*

The different Acts governing the conduct of the various forces grant superiors the right to suspend officials for wrongdoing. Article 59 of the Police Act of 1999 provides that: "The general director of the police or the officer in charge may suspend any lower ranking police officer if he was accused of violating the provisions of this Act or any other law or if he was subjected to criminal procedures which require that he stops performing his work. A written order should be issued in this case by a higher ranking officer. The suspension of any officer from the rank of brigadier and above is in the jurisdiction of the general director." Article 26 (1) of the Security Act stipulates that "If any member has been charged of violating the provisions of this Act or if a criminal procedure has been instigated against him, the director may issue a written order suspending him from work if this was in the interest of work. Suspension orders concerning officers from the rank of lieutenant, colonel and above should be issued by the director only. The member should be informed of the reasons for his suspension."

These provisions make clear that an official suspected of torture will only be suspended if permission to prosecute (see below) is granted. In practice, officials accused of torture and other serious crimes are rarely suspended, not least because permission to prosecute is commonly not given.

#### **iv. Admissibility of confessions extracted under torture**

The invalidation of confessions and statements extracted under torture is both a basic safeguard and a cardinal rule emanating from the prohibition of torture under international law.<sup>66</sup> It is closely connected with the right against self-incrimination.<sup>67</sup> Its rationale is to remove one of the main incentives for torture because in many if not most cases, in particular in respect of police torture, the purpose is to extract information with a view to securing a conviction. The rule places a duty on States to ensure that statements extracted under torture may not be invoked under any circumstances and have no legal value whatsoever in legal proceedings.<sup>68</sup> As recognised by international human rights bodies, States have an obligation to take measures, to implement the rule effectively.<sup>69</sup> Legislation and judicial procedures should not place undue emphasis on confessions and witness statements as the principal or even sole basis of convictions as this provides an

---

<sup>66</sup> Article 15 of the Convention against Torture and Human Rights Committee, General Comment 20, supra, para.12.

<sup>67</sup> Article 14 (3) (g) ICCPR.

<sup>68</sup> The only exception is that a statement extracted under torture may be used in proceedings against the alleged perpetrator(s) of torture as evidence that the statement was made as stipulated in Article 15 of the Convention against Torture.

<sup>69</sup> Human Rights Committee, General Comment 20, para.12; Concluding Observations of the Committee against Torture: Yugoslavia, UN Doc. A/54/44, 16 November 1998, paras.35-52, para. 45 and Concluding observations of the Committee against Torture: Brazil, UN Doc. A/56/44, 16 May 2001, paras.115-120, para. 119 (g).

incentive to force such statements by illegal means such as torture.<sup>70</sup> When a credible allegation is raised that a confession or a statement was made under torture, the burden of proof that the confession or statement was obtained without the use of torture should be on the prosecuting authorities rather than on the person(s), i.e. commonly the defendant in criminal proceedings, raising such an allegation.<sup>71</sup> Where an allegation that evidence was obtained by torture is raised before it, for example in *habeas corpus* proceedings, a court must promptly proceed to establish the legality of such evidence.<sup>72</sup>

According to article 9(a) of the Evidence Act 1993, a confession extracted under torture is inadmissible "if it violates the provisions of *Shari'a*, law, justice or public order." Article 20 of the Evidence Act appears to confirm this, seemingly ruling out confessions extracted under torture: "(1) The confession will be deemed incorrect if it was contrary to the appeared reality; (2) confession in criminal matters will not be correct if it was the result of coercion or temptation; (3) despite the provision of Article (2) the temptation will not influence the correctness of the confession in the transactions." However, Article 20 has to be seen in the light of Article 10 of the same law that opens the door to a different interpretation, giving judges discretion to admit evidence even though it may have been obtained through torture if judged acceptable, in particular where corroborated by other evidence (Article 10): "(1) With adherence to provisions of confession and the inadmissible evidence, the evidence will not be inadmissible just because it was obtained through incorrect procedure provided that the court is confident that it is independent and acceptable; (2) The court may, when it considers it suitable for justice, refrain from granting conviction on the basis of the evidence mentioned in part (1) unless it is corroborated by another evidence."

It could be argued that this article applies only to evidence obtained by illegal means other than torture. However the law of evidence in Sudan has always considered as evidence a retracted confession, if it was corroborated by other evidence (including circumstantial evidence). The practice of courts has been inconsistent and judges often fail to rule out confessions extracted under torture and to issue appropriate orders to the authorities to open investigations in cases where defendants raise allegations of torture. Although judges are entitled to make such orders, lawyers raising this issue with them have been told by judges that this is not the judges' concern and that persons alleging torture should make a complaint to the responsible authorities instead.

Courts have imposed stern punishments relying on confessions even though there was evidence that these were extracted by means of torture. In the "Explosives Case" of 1994, which concerned an alleged attempt to overthrow the Government, ample evidence of torture was put forward and the court ordered a medical examination and called witnesses who corroborated that torture had taken place in the "ghost houses". In spite of this, the Court did not rule out the confessions of the defendants, holding that the torture had not influenced the confessions. This was apparently the first case where a confession extracted under torture was found to be admissible. The Court took no further steps to open a criminal investigation and it is not known what steps, if any, Sudan Security took after having been asked by the Minister of Justice and the Attorney General to investigate the case.<sup>73</sup>

<sup>70</sup> See Report of the Special Rapporteur on Torture on his mission to Uzbekistan, UN Doc. E/CN.4/2003/68/Add.2, 3 February 2003, para.27.

<sup>71</sup> See Report of the Special Rapporteur on Torture on his mission to Brazil, UN Doc. E/CN.4/2001/66/Add.2, 30 March 2001, para.169 (i).

<sup>72</sup> Activities of the Committee against Torture pursuant to article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Inquiry under Article 20): Turkey, UN Doc. A/48/44/Add.1, 15 November 1993, para.28.

<sup>73</sup> See for further information Human Rights Watch, Africa, *Behind the Red Line, Political Repression in Sudan*, May 1996, at <http://www.hrw.org/reports/1996/Sudan.htm>.

Moreover, under several of the emergency Laws, such as the 2003 Decrees of the Chief Justice establishing the Specialised Courts in West, North and South Darfur, confessions extracted under torture are not excluded. In practice, Security Courts have reportedly summarily declined requests to invalidate confessions obtained through torture and failed to take steps to investigate allegations of torture.<sup>74</sup>

**Practical steps to avoid use of evidence obtained through torture:**

- Accompany the torture survivor to the hearing before the judge to ensure that the judge is made aware that the confession was procured through torture;
- Challenge the admissibility of confessions in habeas corpus proceedings or during trial, invoking constitutional rights, the provisions of the Evidence Act and using arguments derived from international standards;
- Request the judge to order the opening of an investigation where there is a prima facie case of torture.

**v. Additional measures where torture (including threat of torture) has already occurred**

**- Documenting torture**

- Establish the facts about torture, through interviewing the torture survivor and obtaining additional evidence, as outlined above, in order to make out a prima facie case with a view to using the information in later proceedings, both before national and international bodies, and publicising the information through national and international organisations and media.

**- Filing a complaint and requesting transfer to another detention facility**

- File a complaint about the torture with a judge or prosecutor;
- Petition the judge or the prosecutor to transfer the torture survivor to another detention facility on the grounds that there is the risk of further torture, invoking the protection of fundamental rights and the rights set out in the Criminal Procedure Code;
- Appeal the refusal by the judge or prosecutor to a higher level up to the Constitutional Court.

**- Informing the National Human Rights Commission of the violation**

Inform the National Human Rights Commission, once operational, about the violation and ask the Commission to intervene with the authorities to ensure protection against further torture.

**- Requesting suspension of the alleged perpetrator(s)**

---

<sup>74</sup> See Report of the International Commission of Inquiry on Darfur, *supra*, para.445.



- Petition the director of the responsible organ to suspend the alleged perpetrator, after filing a complaint about torture with the judge or prosecutor;
- Request the court or other competent body to order the suspension of the alleged perpetrator(s) where case is pending.

#### - Requesting a medical examination

- Request authorities to issue a 'form 8' promptly so that the medical examination can be carried out without delay;
- Petition the competent prosecutor to order the medical examination of the detainee (as necessary in relation to both physical and psychological injuries). The order should specify that the examination is to be carried out promptly and out of hearing and sight of the forces concerned so as to ensure the impartiality of the medical examination and report;
- Where the prosecutor fails to reply within a reasonable time, appeal to the competent court to order an immediate medical examination, up to the Constitutional Court arguing that the failure to carry out a prompt medical examination violates the prohibition against torture;
- Ask the torture survivor to undergo a private medical examination, for example with the assistance of the Amel centre, following release from custody where no meaningful medical examination has been carried out before.

### **vi. Law Reform**

The following reforms could be advocated for by lawyers as measures to lessen the risk of torture:

#### - Right to access a lawyer

- An express right of detainees to request the presence of lawyers from the very beginning of an investigation, in particular during questioning, and an obligation of any official responsible for an arrest, to inform the arrested person about his/her right to request a lawyer. The law should specify that investigations should not begin before the suspect has had the chance to contact his/her lawyer unless he/she expressly waives this right.
- A specific obligation on authorities to provide an appropriate meeting space in those facilities used for detention purposes, in which detainees can meet their lawyers in private.

#### - Habeas corpus

- Granting an express right of habeas corpus to all detainees irrespective of the forces responsible for arrest and detention.
- The abolishment or amendment of the Security Forces Act to reduce significantly the time of detention without charge. All the executive powers such as arrest, search and investigation should be confined to the police under the supervision of the prosecutor and the courts.

#### - Suspension of alleged perpetrators of torture

- Amending Acts of the respective forces so as to impose a duty on the directors concerned to suspend alleged perpetrators where there are serious grounds to believe that a member of the forces is implicated in acts of torture and other serious human rights violations.

- Right to medical examination

- An express right and corresponding duty of the authorities to examine a detainee upon entering and leaving a detention facility.
- An express right of a detainee to request a medical examination at any time, to be conducted out of hearing of officials and out of their sight, unless requested by the examining doctor.

- Legality of confessions extracted under torture

- Clarifying the Evidence Act, expressly declaring that confessions extracted under torture are inadmissible, even where there is corroborating evidence to support the confession.
- Obliging judges to ask the accused whether he/she wants a lawyer to be present before making a judicial confession.
- Abolishing Decrees for Special Courts or bringing them into conformity with international standards according to which confessions made under torture are inadmissible.

- Guarantees of proper treatment in all detention facilities: Establishing a supervisory mechanism

- Establishing, by law, a supervisory mechanism consisting of independent experts with a mandate to visit all detention facilities at regular intervals and to hear complaints about torture and to recommend both structural reforms and remedial measures in individual cases.

- Removing punishments prescribed by law that may amount to torture

- Abolishing the use of capital and corporal punishment.

## ***Accountability of Perpetrators of Torture***

Hardly any of those accused of the large number of torture cases in Sudan have been brought to justice and held accountable. The prevailing culture of impunity has facilitated a practice of torture in which those accused are above the law and the victims of torture are denied justice. There are several factors contributing to this lack of accountability, such as ineffective complaints procedures; the absence of effective protection mechanisms for victims and witnesses in the light of threats and harassment, and also of lawyers and human rights defenders; the immunity granted to officials by law; the lack of effective investigations; inadequate punishments prescribed by law and the absence of institutions vigorously seeking to hold perpetrators of torture accountable. These absences can be said to reflect a lack of political will to ensure accountability and justice for the victims of torture.

## i. Filing complaint about torture

*What is the status and content of the right to complain about torture under international law?*

The right to complain about torture and have one's complaint investigated is well-established in international law.<sup>75</sup> It derives from the absolute prohibition of torture and the right to an effective remedy and has been affirmed and elaborated upon in a series of resolutions and declarations as well as in jurisprudence.<sup>76</sup>

Any individual who alleges that he/she has been subjected to torture has the right to complain. The *UN Rules for the Treatment of Prisoners* provide that "every prisoner shall have the opportunity each week day to make requests or complaints to the director of the institution or the officer authorized to represent him."<sup>77</sup> The *Body of Principles* provides that counsel or family members or indeed any other person should have the right to report torture and other violations of the *Principles* to the appropriate authorities.<sup>78</sup>

Complaints about torture can be lodged with "competent authorities," which include detention and prison authorities, prosecuting authorities, the judiciary and independent bodies tasked with investigating complaints of this kind.<sup>79</sup>

There is no requirement that a formal complaint be lodged. It is sufficient for the victim simply to bring the facts to the attention of a competent authority for the latter to be obliged to consider that act as a tacit, but unequivocal expression of the victim's wish that the facts be promptly and impartially investigated.<sup>80</sup> As torture allegations must be investigated 'promptly,' in order to secure evidence and protect victims from further torture, victims should be entitled to lodge complaints without delay or obstacle.

*What is the status and content of the right to protection for victims under international law?*

Complainants have a right to protection.<sup>81</sup> Neither the detained/imprisoned person nor any complainant should suffer prejudice for making a request or a complaint and States should take measures to protect complainants and witnesses from intimidation.<sup>82</sup> To this end, as

<sup>75</sup> See Article 13 of the UN Convention against Torture; Article 8 of the Inter-American Convention to Prevent and Punish Torture; Human Rights Committee, General Comment 20, *supra*, para.14 and Report of the Special Rapporteur on Torture, Sir Nigel Rodley, UN Doc. E/CN.4/2003/68, *supra*, para.26 (j).

<sup>76</sup> See e.g. decision of the Human Rights Committee in the case of *Rodriguez v. Uruguay* (Communication No.332/1988), UN Doc. CCPR/C/51/D/322/1988, para.14; Judgment of the European Court of Human Rights in *Assenov and Others v. Bulgaria* (1999) 28 E.H.R.R. 652 ECHR, para.102; Judgment of the Inter-American Court of Human Rights in the *Velásquez Rodríguez* Case, Judgment of July 29, 1988, Series C No. 4. I/A Court H.R., para. 166 and decision by the African Commission on Human and Peoples' Rights, *Commission Nationale Des Droits De L'Homme et Des Libertés v Chad*, Communication 74/92, [1995] IJHRL 64 (2 October 1995), para.22.

<sup>77</sup> Rules for the Treatment of Prisoners, *supra*, Rule 36 (1).

<sup>78</sup> Body of Principles on Detention, *supra*, Principle 7 (3).

<sup>79</sup> *Ibid.*, Principle 33 (1) and (4).

<sup>80</sup> See for example decision by the Committee against Torture in *E. A. v. Switzerland*, Communication No. 28/1995, UN Doc. CAT/C/19/D28/1995.

<sup>81</sup> This right is expressly provided for in Article 13 of the Convention against Torture. Principle 3 (b) of the Istanbul Protocol Principles emphasises the duty to provide protection to victims, witnesses, those conducting the investigation and their families from violence, threats and intimidation.

<sup>82</sup> Principle 33 (4) of the Body of Principles on Detention, *supra*.

recommended by the United Nations Committee against Torture and the Special Rapporteur on Torture, a number of States have set up victim and witness protection services or programmes.<sup>83</sup> A further protective measure consists in the suspension of the alleged perpetrators pending the results of investigations provided the allegation of torture is not manifestly ill-founded.<sup>84</sup>

### *The Sudanese Practice*

The majority of torture survivors or relatives of victims refrain from lodging complaints about torture. There are a number of reasons for this:

- Authorities have failed to provide clear information about the right to complain about torture. This is compounded by a general lack of awareness amongst the public about rights and how to exercise them. In the case of detainees, this is made worse because access to a lawyer is usually denied in the earliest phases of detention;
- It is difficult for torture survivors and/or relatives of victims to prove a torture allegation as they rarely have access to sufficient evidence;
- Few members of the public believe that the legal system has the capacity to hold the perpetrators accountable and therefore do not bother to resort to it; and
- There is a fear of threats and harassment, especially when the victims remain in detention.

There is no specific legislation to ensure the protection of victims and witnesses<sup>85</sup> nor any programmes or measures designed to ensure the safety of detainees. The work of human rights defenders is hampered by threats and harassment against which they enjoy no effective protection.<sup>86</sup> Such defenders face the challenge of getting to know about torture cases in the first place and being accessible to torture survivors and informing them about their rights and, in those cases where torture survivors wish to pursue matters further, enabling them to lodge complaints without suffering adverse consequences.

A victim of a crime or his/her lawyer has the right to lodge a complaint.<sup>87</sup> Such a complaint may be lodged to a police officer or, if the complainant is a detainee, either to the competent prosecutor's office or to the Director of National Security.<sup>88</sup> In practice, torture survivors only rarely lodge complaints for the reasons outlined above. Where complaints have been lodged, the authorities have subsequently denied in several cases that they have ever received the complaint.

A torture survivor or any member of the public might in future also submit a complaint to the National Human Rights Commission but it remains to be seen what role the Commission will play in ensuring accountability once it becomes operational.<sup>89</sup>

---

<sup>83</sup> See, for example, Concluding Observation of CAT, Lithuania, UN Doc. CAT/C/CR/31/5, February 2004, para. 4(j).

<sup>84</sup> See Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/56/156, 3 July 2001, para 39(j).

<sup>85</sup> However, Article 4 (e) CPC provides that witnesses should not be subject to any injury or ill-treatment.

<sup>86</sup> See the cases reported by the UN Special Representative of the Secretary General on the situation of human rights defenders, Ms. Hina Jilani, for example in her most recent report, UN Doc. E/CN.4/2004/94/Add.3, 23 March 2004, paras. 397 et seq., at <http://daccessdds.un.org/doc/UNDOC/GEN/G04/122/69/PDF/G0412269.pdf?OpenElement> The Special Representative stated that she is "deeply concerned at the reported practice of illegally detaining defenders to obstruct their human rights activities."

<sup>87</sup> See on lodging complaints, Chapter II of the CPC, in particular Article 34.

<sup>88</sup> See also Article 15 of the Treatment of Detainees Bylaw of 1996.

<sup>89</sup> Supra, Article 4 (2) (g) of the National Human Rights Commission Act.

Victims, their relatives, guardians or legal representatives may launch a private prosecution in respect of 'qisas' crimes or offences that involve private interests. However, such private prosecutions require the approval of the Attorney General<sup>90</sup> and investigations remain the sole prerogative of the police and the competent prosecutor. In practice, private prosecutions in torture cases are also subject to the prior permission of the head of the relevant force to allow criminal action to be taken against a member of their forces. Consequently, such prosecutions have little prospect of reaching the trial stage.

### **What steps can Sudanese lawyers take to improve the chances for successful complaints about torture?**

#### **(i) Practical steps**

- Thoroughly document torture with a view to establishing a prima facie case. Where medical evidence is not available at the beginning of an investigation, obtain an affidavit from the torture survivor and witness testimonies, which confirm that acts of torture have been committed.
- Lodge a complaint with the judge or the local prosecutor as quickly as possible, which should include all supporting evidence, such as affidavits, medical records etc.
- Send a complaint to the National Human Rights Commission, once operational, requesting it to call for a full investigation to be carried out.
- Obtain official confirmation that the complaint has been lodged, including date and place, and keep copies of all relevant correspondence and evidence.
- Petition the court or local prosecutor to ensure the protection of the complainant, his/her family and any witnesses through appropriate orders.

#### **(ii) Law Reform**

- Lobby for an express right of victims and witnesses to effective protection at all stages of criminal proceedings through specific protection measures.
- Judges should be obliged to open formal investigations upon hearing complaints of torture.

#### **ii. Opening an Investigation**

As already mentioned, victims of torture have the right to complain and have their complaint investigated promptly and impartially. States are under a corresponding duty to investigate the substance of such complaints, and, in addition, to proceed with investigations *ex officio*, i.e. even if there is no complaint, where credible information about alleged torture is brought to their attention.<sup>91</sup>

<sup>90</sup> Article 136 (2) CPC.

<sup>91</sup> Principle 2 of the Istanbul Protocol Principles; Principle 7 of the Body of Principles on Detention; Decision by the Committee against Torture *Encarnacion Blanco Abad v. Spain*, Communication No.59/1996, UN Doc. CAT/C/20/D/59/1996, para.8.2; Judgment by the European Court of Human Rights *Aktas v. Turkey* (2004) 38 E.H.R.R. 18, para.299 and *Velasquez Rodriguez v. Honduras*, supra, para.177.

International law obligates State authorities to investigate complaints and/or reports about torture promptly.<sup>92</sup> There is no definition of what constitutes “prompt” investigations as promptness will depend on the circumstances of the individual case but it is normally understood literally, i.e. without undue delay. This relates not only to the time it takes to begin an investigation but also the expediency with which it is carried out. Accordingly, upon hearing about torture, the competent officials have to proceed as a matter of routine to establish the substance of the allegation by taking the necessary steps, which are described in more detail below.<sup>93</sup>

Investigations must be effective and thorough,<sup>94</sup> and must seek to ascertain the facts and establish the identity of any alleged perpetrator(s).<sup>95</sup> For an investigation to be effective in practice and law, it should be capable of resulting in the punishment of those responsible. It also comprises effective access for the complainant and relatives to the investigative procedure.<sup>96</sup> The full investigation of torture shall not be unjustifiably obstructed by either legislation or acts of State authorities. Amnesty and immunity laws stipulating that acts of torture or certain persons are exempt from investigations and prosecutions violate the right to an effective investigation.<sup>97</sup> This includes procedures that make the investigation of alleged acts of torture and/or subsequent prosecution of the perpetrator(s) subject to the permission of executive bodies, thereby providing quasi-immunity.<sup>98</sup> Allowing executive bodies responsible for the conduct of the respective forces to decide as to whether or not an investigation and/or prosecutions should proceed is also incompatible with the requirement, considered in more detail below, that investigations should be impartial.

### **1. Failure to proceed with investigations, in particular because permission to open investigation has not been granted**

#### **- The Problem: Immunity laws block full investigations of torture cases**

The investigation and prosecution of officials for the crime of torture is subject to an executive decision by their superiors to grant permission to proceed to the Attorney-General. This rule allows the respective forces to shield their personnel from any criminal proceedings. It has been repeatedly criticised by national and international organisations as

---

<sup>92</sup> Articles 12 and 13 of the Convention against Torture; Article 8 of the Inter-American Convention to Prevent and Punish Torture; Human Rights Committee, General Comment 20, *supra*, para.14; Report of the Special Rapporteur on Torture, Sir Nigel Rodley, UN Doc. E/CN.4/2003/68, *supra*, para.26, (i); Principle 2 of the Istanbul Protocol; Principle 33 (4) of the Body of Principles on Detention and Rule 36 (4) of the Standard Minimum Rules for the Treatment of Prisoners.

<sup>93</sup> See practice by human rights bodies and courts, e.g. decisions by Committee against Torture in *Halimi-Nedzibi v. Austria*, Communication No.8/1991 and *Encarnacion Blanco Abad v. Spain*, *supra*; by the Human Rights Committee in *Stephens v. Jamaica*, Communication No.373/1989, UN Doc. CCPR/C/55/D/373/1989 (1995), para.9.2., and judgments by the European Court of Human Rights in *Timurtas v. Turkey* (2001) E.H.R.R. 6 ECHR, para.89 and the Inter-American Court of Human Rights in *Cantoral Benavides v. Peru*, Judgement of 18 August 2000, Inter-Am. Ct. H.R., (Ser.C) No.69 (2000).

<sup>94</sup> Decision by the Committee against Torture in *Radivoje v Yugoslavia*, Communication 113/1998, UN Doc. CAT/C/26/D/113/1998, para 9.6.

<sup>95</sup> Decisions by the Committee against Torture in *Encarnacion Blanco Abad v Spain*, *supra*, para 8.8.and *Hajrizi Dzemajl v Yugoslavia*, *supra*, para 9.4 .

<sup>96</sup> Judgment by the European Court of Human Rights in *Aksoy v. Turkey*, (1997) 23 E.H.R.R. 553, paras.95 and 98.

<sup>97</sup> See for an analysis REDRESS' Amicus Brief on the Legality of Amnesties under International Law, <http://www.redress.org/casework/AmicusCuriaeBrief-SCSL1.pdf>.

<sup>98</sup> See Concluding Observations of the Human Rights Committee on India's country report, where the Committee noted “with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant,” UN Doc. CCCPR/C/79/Add.81, 4 August 1997, para.21 and Concluding Observations of the Committee against Torture on Turkey's country report where it welcomed “... the elimination of the requirement to obtain administrative permission to prosecute a civil servant or public official!” see UN Doc. CAT/C/CR/30/5, 27 May 2003, para.4 (c).

one of the key factors contributing to impunity for torture in Sudan, given that permission is regularly refused in practice and that judicial review of such decisions have not been successful.<sup>99</sup> Preliminary investigations in torture cases are drawn out even where a strong prima facie case is readily available. Requests by the prosecutor to the Director of the forces concerned to withdraw immunity of the officials concerned, often meet with no response whatsoever or are rejected. This applies in particular to the security forces whereas the police forces have withdrawn immunity of their personnel in some cases where a prima facie case had been made out.

As a result of this practice, numerous cases have been pending for several years without any investigations being undertaken despite the repeated calls of lawyers. In several cases in which lawyers have inquired about the status of their petitions, the investigating authorities claimed that they could not find the investigation files, or any evidence of the complaint lodged.

### Sudanese Law and Practice

Any criminal proceedings against members of the national security forces and the police are subject to the permission of the respective director or head of staff.<sup>100</sup> The director of the forces concerned can only grant such permission where the act in question is not related to official functions. This means that there is a seemingly absolute immunity for any acts committed in the course of work.

If the investigation of an allegation of torture establishes a prima facie case on the basis of witness statements or a medical report, the Attorney General should contact the director of the respective forces with a request to withdraw immunity. The Supreme Court held in 1993 that permission is not required in cases concerning torture.<sup>101</sup> The case concerned three police officers who were charged with committing the criminal offences laid down in Article 115 (2) and 142 (2) of the Penal Code<sup>102</sup> for torturing a woman in order to extract a confession for the crime of theft. The Juba Criminal Court held that no permission to prosecute was necessary and found the accused guilty and sentenced them to imprisonment of one year and a fine, a judgment upheld by the Court of Appeal. The three Supreme Court judges were unanimous in their finding that the absence of a prior permission to prosecute under Article 61 of the Police Forces Act did not result in the invalidity of the procedure and judgment that had been issued by the Juba Criminal Court. Justice Mohammed Ahmed Abu-Şin referred to Circular Nr. 139 issued by the General Director of Police in 1989 and a similar Circular Nr.140 issued in 1992, according to which such permission is only needed if the act in question was required by law.<sup>103</sup> He concluded that, as the use of torture to extract confessions is prohibited by law, there was no need to obtain a permission to prosecute. However, the 1993

<sup>99</sup> See Concluding Observations of the Human Rights Committee: Sudan, 19 November 1997, UN Doc. CCPR/C/79/Add.85, para.17 and Report of the International Commission of Inquiry on Darfur, *supra*, paras.451 et seq.

<sup>100</sup> See Article 33 of the National Security Forces Act and Article 61 of the Police Forces Act respectively.

<sup>101</sup> Supreme Court judgment in case 875/1993, Judgment of 28 November 1993.

<sup>102</sup> Article 115 Penal Code: "1. Whoever intentionally does any act which tends to influence the fairness of judicial proceedings relating thereto, shall be punished with imprisonment for a term not exceeding three years or with fine or with both. 2. Every person who, having public authority entice or threaten or torture any witness or accused or opponent shall be punished with imprisonment for a term not exceeding three months or with fine or with both." Article 142 (1) Penal Code: "There shall be deemed to commit the offence of hurt whoever causes any pain or disease to another person and shall be punished with imprisonment for a term not exceeding six months or with fine or with both" (2) "Where hurt occurred by dangerous means such as poison or intoxicating drugs or where hurt is caused with the intention of drawing a confession from another or compelling that other to do an act contrary to the law, the offender shall be punished with imprisonment for a term not exceeding two years and may also be punished with fine."

<sup>103</sup> "We conclude that any act which is imposed by laws and by-laws for official work deserves to be treated according to Article 58 (i.e. of the former Police Forces Act). In any other case, legal procedures should be taken directly without the need to obtain permission." (Unofficial translation).

judgment has subsequently not been followed as precedent.<sup>104</sup> Most cases remain pending with the Attorney without the immunity being lifted. But even where cases reach them, courts have refused to follow arguments for the lifting of immunity based on the 1993 judgment. One example is case Nr. 2181/2001, decided by the Dueim Criminal Court on 25 March 2002, in which the Court denied a request by the defence to grant permission to open a case against members of a security organ, including its director, for the offences laid down in Articles 115, 144, 164 and 165 of the Penal Code.<sup>105</sup> The Court did not provide any reasons for this decision and the general practice is to defer to the decision of the responsible authorities as to whether or not to lift immunity.

### **What steps can Sudanese lawyers take to have cases of torture investigated promptly?**

#### **(i) Practical steps**

- Seek direct authorisation from authorities to open investigations
- Petition headquarter of the forces concerned directly, in particular in cases against police officers, requesting the director of forces to institute criminal and disciplinary investigations into the allegation of torture, which means lifting of the immunity of the officials allegedly responsible, as an alternative and potentially more effective way than compelling the authorities to grant permission to investigate.
- Compel authorities to grant permission to investigate
- Petition the prosecutor and courts, up to the Constitutional Court, to allow criminal investigations against officials to proceed in a torture case. As part of the case strategy, bring a challenge in respect of a case with the strongest and most compelling evidence. In such proceedings, it could be argued that permission to proceed with criminal proceedings should not be refused because torture is not an act that can possibly relate to the duties of an official as this should only encompass the legal performance of duties and not illegal acts such as torture. In making the argument against the necessity of prior permission to take criminal action against officials, lawyers can invoke the 1993 precedent of the Supreme Court, the constitutional prohibition of torture, the right to equality in proceedings and the right to litigate and use arguments based on international standards as appropriate.
- Seek to bring cases against perpetrator(s) not acting in an official capacity
- As a short term strategy, consider filing complaints against persons responsible for torture where there is no applicable immunity. For example, torture may in some circumstances be perpetrated by doctors and/or non-state actors acting in collusion with officials, and such persons will not have the benefit of the official immunities afforded to state actors. As with other cases, ensure that responsible authorities take the necessary steps to investigate such complaints promptly. Petition the prosecutor or court to order the required steps to be taken.

---

<sup>104</sup> Supreme Court judgment in case 875/1993.

<sup>105</sup> The respective offences proscribe the torturing of a witness, intimidation, illegal arrest and illegal detention.



## ii) Law Reform

A key law reform strategy would be to enhance debate on the immunity provisions and to encourage the Government to consider abolishing such provisions, or, alternatively, for an express exception in so far the alleged acts concern torture and other serious human rights violations.

## iii. Ensuring effective investigations

Investigations into acts of torture should be conducted promptly, impartially and effectively. This means that authorities having reasonable institutional independence from the alleged perpetrator(s) are obligated to take all required steps, as promptly as possible throughout the duration of the investigation, to establish the truth of what happened.

### *When is an investigation “impartial”?*

For an investigation to be “impartial”, it needs to be free from undue bias. “Impartiality” has both procedural and institutional elements. It may relate to the proceedings of the investigating body, or to any apparent bias that may be due to a conflict of interest.<sup>106</sup> The investigation should not be the responsibility of authorities or persons who have close links with the alleged perpetrators.<sup>107</sup> Independence not only means a lack of hierarchical or institutional connection, but also practical independence. International treaty bodies have criticised the absence of independent bodies to investigate torture, particular in respect of torture by the police, the institution that ordinarily would be tasked with investigating torture and have urged States parties to establish independent bodies competent to receive, investigate and adjudicate all complaints on torture and ill-treatment.<sup>108</sup>

### *When is an investigation effective?*

Investigations should be capable of leading to the identification and punishment of those responsible for any ill treatment and must be effective in practice as well as in law.<sup>109</sup> They should be of reasonable scope and duration in relation to the allegations.<sup>110</sup> States have a duty to adopt any legislation required to facilitate the identification and punishment of those responsible.<sup>111</sup> In practical terms, steps that the authorities must take when gathering evidence in torture cases include timely questioning of victims, witnesses and alleged perpetrators; seeking evidence at the scene, e.g. by searching detention areas; checking custody records; carrying out objective medical examinations by qualified doctors; use of medical reports, and, in death in custody cases, obtaining forensic evidence and carrying out an autopsy.

<sup>106</sup> See decisions by the Committee against Torture in the Encarnacion case, supra, and *Khaled Ben M'Barek v Tunisia*, Communication 60/1996, UN Doc. CAT/C/23/D/60/1996.

<sup>107</sup> See the final report of Mr. L.M. Singhvi, then Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers, to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1985 (E/CN.4/Sub.2/1985/18 and Add.1-6), para.79.

<sup>108</sup> See, for examples, Concluding Observations of HRC, Lithuania, UN. Doc. CCPR/CO/80/LTU, 15 April 2004 and Concluding Observations of HRC, Yemen, UN. Doc. CCPR/CO/75/YEM, 26 July 2002.

<sup>109</sup> See for example the jurisprudence of the European Court of Human Rights following the case of *Askoy v. Turkey*, supra, para. 95.

<sup>110</sup> Judgment of the European Court of Human Rights in *Akkoç v. Turkey*, (2002) 34 E.H.R.R. 51, supra, para.99.

<sup>111</sup> *Blake case*, Interpretation of the Judgment of Reparations (art. 67 American Convention on Human Rights), Judgment of October 1, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 57 (1999), Para.65.

*What are victims' rights during investigations?*

The element of effectiveness also imposes a duty on States to grant victims full access and capacity to act at all stages of the investigation.<sup>112</sup> International standards recognise the rights of torture victims to take part in investigations, for example by submitting evidence and making statements, and to receive information about the progress and outcome of investigations and prosecutions.<sup>113</sup>

The Human Rights Committee has urged States to provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.<sup>114</sup>

**The Problem: The absence of thorough investigations in torture cases**

Due to the lack of transparency, it is often not clear what steps, if any, are taken by the Sudanese authorities to investigate cases of torture. The record shows that hardly any investigations have been carried out in torture cases, in particular because of the immunity granted to officials. But even if such permission were granted, there are obvious shortcomings in relation to the available evidence. Lawyers representing torture survivors encounter difficulties in obtaining medical records because prompt medical examinations are commonly not ordered and police officers usually will not testify against each other. Moreover, victims and witnesses are often reluctant to give evidence in the absence of guarantees for their safety.

By law, the investigating authorities should take the following steps when investigating crimes in respect of offences resulting in bodily injury or the death of the victim: a) inspecting the scene of the crime immediately; b) taking all steps to find and arrest the suspect; c) taking necessary measures to summon a competent doctor to examine the corpse in case of death or to transfer the victim to the nearest hospital for medical examination and to inform the relatives of the deceased or the victim; d) writing down any statement by the victim in the investigation record.<sup>115</sup>

There is hardly any practice of investigations being carried out in torture cases and the record of investigating authorities, which have in several cases, such as the one described earlier that has been pending since 2000, claimed that they have misplaced documents, suggests that commonly no steps are taken to ensure effective investigations. On the contrary, witnesses have received death threats in cases concerning the security forces, and lawyers have been subjected to harassment for taking up cases.<sup>116</sup> Moreover, in the course of investigations, lawyers are usually not given access to investigating files that are only open to them once a case reaches the trial stage.

---

<sup>112</sup> See *Paniagua Morales et al. Case*, Judgment of March 8, 1998, Inter-Am. Ct. H.R. (Ser. C) No. 37 (1998), para.117.

<sup>113</sup> See Principle 4 of the Istanbul Protocol, *supra*, and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

<sup>114</sup> Human Rights Committee, General Comment 20, *supra*, para.14.

<sup>115</sup> Article 48 (1) CPC.

<sup>116</sup> See on the reported death threats against the witnesses in a case against six members of the security forces accused of killing a friend and business partner of the witness, the report by the Special Representative on human rights defenders, UN Doc. E/CN.4/2004/94/33, *supra*, paras.401 and 403.

**What steps can Sudanese lawyers take to ensure that the authorities carry out effective investigations in torture cases?**

**(i) Practical steps**

- If permission to investigate is granted or where allegations concern a person who is not an official, petition the court or prosecutor to compel investigating authorities to carry out steps as required by law, including obtaining permission to question officials. Legal action to be taken should include appeals against decisions to suspend or close investigations on the grounds of lack of evidence.

**(ii) Law Reform**

- Right of lawyers to be informed about the progress of investigations.
- Abolition of Article 33 of the National Security Forces Act or amend provision so that it does not apply in relation to alleged acts of torture.

**iv. Trials**

The prohibition of torture under international law requires that torture be made an offence that carries a punishment commensurate with the gravity of the crime, which would usually be a substantial term of imprisonment.<sup>117</sup> International law establishes a clear obligation for States to prosecute and punish the perpetrators of torture when found guilty even where such acts have been committed abroad.<sup>118</sup> This obligation applies without exception.<sup>119</sup> Where the investigation yields sufficient evidence, State authorities must ensure that the suspected perpetrator(s) are prosecuted. Prosecutions should for this reason not depend on prior authorisation by executive bodies, especially where these bodies are related to the suspected perpetrator(s).<sup>120</sup> In criminal proceedings relating to torture, judges should enjoy independence and victims should have the right to participate in proceedings.<sup>121</sup>

**The Problem: The absence of trials against suspected perpetrators of torture**

There is almost complete impunity in Sudan because hardly any cases reach trial due to immunity laws.

<sup>117</sup> See Human Rights Committee, General Comment 20, supra, para.13 and Article 4 (1) of the Convention against Torture.

<sup>118</sup> Ibid., Articles 5-8 and Human Rights Committee, General Comment 20, supra, para.13.

<sup>119</sup> Such as statutes of limitations barring prosecutions. However, it is generally accepted that statutes of limitation only apply where effective remedies have been available and that statutes of limitation do not apply to serious violations of human rights and international humanitarian law that constitute crimes under international law (see Principle 6 of the UN Draft Basic Principles on the Right to a Remedy and Reparation for Gross Violations of Human Rights and Serious Violations of Humanitarian Law, Rev\_05 August 2004).

<sup>120</sup> Supra.

<sup>121</sup> The independence of the judiciary is an elementary fair trial right, see for example Article 14 of the ICCPR and the Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. See on the rights of victims during trials, supra and UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, supra.

## Sudanese Law and Practice

Sudanese legislation recognises no specific offence of torture in line with the definition accepted under international law. Although there are several offences that can be used when prosecution perpetrator(s) of torture, the scope of the definitions are limited, for example not explicitly including forms of mental torture. Furthermore, there are short statutes of limitation and the punishments provided for by law are clearly inadequate.<sup>122</sup> In practice, in spite of the principle of legality recognised in Sudanese law, hardly any torture cases reach the stage of trial.

There are few cases in which perpetrators of torture have been convicted and sentenced. The first case, already mentioned above, dates back to 1993. It concerned three police officers who were in the final instance sentenced to six months imprisonment and a fine by the Supreme Court after having been found guilty of committing the criminal offences laid down in Article 115 (2) and 142 (2) of the Penal Code for torturing a woman in order to extract a confession for the crime of theft.<sup>123</sup> In a case decided by a Military Court in 2004, several officers from the national security forces were found guilty of torture committed in 2003, and were sentenced to one year imprisonment, discharged from their jobs and made to pay 3000,000 Sudanese Dinars as compensation to the torture survivor.<sup>124</sup> The judgments demonstrate that existing sentences for torture are disproportionately low and that the judges failed to impose a sentence that reflects the seriousness of the crime. There are concerns as to whether judges would be willing to impose adequate punishments in any torture cases that might reach them given that the independence of the judiciary is not ensured. Moreover, the Attorney-General has the right to halt proceedings at any stage before judgment is entered. Even though the Attorney General has not used these powers in torture cases, it could be used as an instrument to protect especially higher officials from being tried for torture or related crimes.

While issues relating to trials seem largely academic at present, there are also shortcomings in Sudanese legislation that are to be considered in relation to any future trials.

### **What steps can Sudanese lawyers take to ensure punishment of perpetrators where a case reaches trial?**

#### **(i) Practical steps**

- Submit as much supporting evidence as possible in adversarial proceedings.
- Challenge possible decision by Attorney-General not to prosecute.
- Submit a victims' impact statement as a factor to be taken into account in sentencing.

---

<sup>122</sup> See REDRESS, Sudan country study, supra, pp.6 et seq.

<sup>123</sup> In the first instance, the Juba Criminal Court had found the accused guilty and sentenced them to imprisonment of one year and a 10,000 (ca. \$63) Sudanese Pounds fine for the violation of Article 142 (2) of the Penal Code and 1,000 Sudanese Pounds for violation of Article 115 (2) of the Penal Code. The Court ordered the payment of 8,000 out of the 10,000 Sudanese Pounds to the complainant as compensation. The decision was upheld by the Appeal Court. However, the Supreme Court, in a judgment of 28 November 1993, held that the sentence imposed was disproportionate and should be reduced in the light of the sentences prescribed for such an offence (Article 142), the level of harm caused and the absence of any previous convictions of the accused. It imposed a final punishment for each of the three police officers of six months imprisonment and 5,000 Sudanese Pounds out of which 3,000 Pounds were to be paid to the complainant as compensation. (Arabic copy of the Supreme Court judgment in case 875/1993 on file with REDRESS).

<sup>124</sup> The case concerned the torture, in May 2003, of a labourer from the Nuba mountains in Dongola/North State who was suspected of engaging in political activity against the State. He was beaten, had hydrochloric acid poured over parts of his body, was kept in solitary confinement, verbally abused, threatened and denied medical care in order to make him confess to his alleged crimes.

- Appeal an acquittal or a punishment that is not commensurate with the gravity of the crime.

### **(ii) Law Reform**

- Insertion of a specific offence of torture into the Sudanese Penal Code in conformity with the definition found in Article 1 of the United Nations Convention against Torture. The offence should carry appropriate punishments of imprisonment and should not be subject to any statutes of limitations.
- Abolition of the Special Courts for the Police and Security Forces.
- Prescription of a specific duty of judges in law to protect vulnerable victims and witnesses.

## **Remedies and Reparation**

*What is the status and content of the right to reparation under international law?*

It is a general principle of law that the breach of an obligation gives rise to an obligation to remedy the violation.<sup>125</sup> Under international law, the violation of the prohibition of torture results in State responsibility to provide reparation.<sup>126</sup> Victims of torture have a corresponding right to reparation. This right comprises the right to effective procedural remedies and to substantive reparation.<sup>127</sup>

*What are effective remedies?*

In torture cases, procedural remedies must be judicial as the seriousness of the human rights violation demands that the remedies are not solely of an administrative nature.<sup>128</sup> As part of an effective remedy, the State must enable victims of torture to initiate a criminal investigation capable of resulting in the prosecution and punishment of the perpetrator(s) and to claim reparation before a judicial body. Even in a case where a victim of torture prefers to use administrative remedies, he/she should still have a right to access judicial bodies.<sup>129</sup>

Remedies available at the national level may include fundamental rights proceedings, in particular constitutional remedies, criminal and civil proceedings, recourse to national human rights institutions and/or ombudsman institutions as well as administrative and disciplinary proceedings. It is not sufficient that a remedy exists in theory but it must be effective in practice as well as in law. This means that it is accessible, capable of redressing the violation and that its exercise is not unjustifiably impeded by national authorities.<sup>130</sup>

<sup>125</sup> See Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, 1999 (second edition due in 2005).

<sup>126</sup> See Permanent Court of International Justice, *Chorzow Factory Case* (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17, at 47 (September 13); International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), Merits 1986 ICJ Report, 14, 114 (June 27); and Article 1 of the draft Articles on State Responsibility adopted by the International Law Commission in 2001: UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001 ("ILC draft Articles on State Responsibility").

<sup>127</sup> See e.g. Article 14 of the Convention against Torture and Article 2 (3) in conjunction with Article 7 of the ICCPR. See for an overview of universal and national human rights instruments recognising the right to an effective remedy REDRESS, *A Sourcebook for Victims of Torture and Other Violations of Human Rights and International Humanitarian Law*, March 2003.

<sup>128</sup> See e.g. decision by the Human Rights Committee of 13 November 1995, Communication 563/1993, *Nydia Erika Bautista* (Colombia), UN Doc. CCPR/C/55/D/563/1993, para.8.2.

<sup>129</sup> See *Albert Wilson v. Philippines*, Communication No.868/1999, UN Doc. CCPR/C/79/D/868/1999 (2003).

<sup>130</sup> See e.g. *Aksoy v. Turkey*, supra.

### *What are the forms of reparation?*

The right to substantive reparation means that the State has to provide adequate forms of reparation that are proportional to the harm suffered and restore, as much as possible, the life and dignity of the torture survivor. The recognised forms of reparation comprise restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition:<sup>131</sup>

Restitution is aimed at re-establishing the situation, to the greatest extent possible, as it was before the violation. Although it is not possible to undo the consequences of torture, restitution may be provided for other violations that accompanied torture, such as restoring a person's liberty for unlawful arrest or convictions secured by means of torture and restoring legal rights to those who have been stripped of these rights.<sup>132</sup>

Compensation is meant to compensate, to the extent possible, for the loss suffered. In torture cases, compensation comprises awards for physical or mental harm, including pain, suffering and emotional distress (which is usually quantified on the basis of an equitable assessment).<sup>133</sup>

Rehabilitation for torture includes medical and psychological care and other services as well as legal and social services. These services may be provided "in kind" or the costs may form part of a monetary award. In the latter case, it does not form part of compensation for losses suffered but is specifically provided for rehabilitation purposes.

Satisfaction denotes a range of steps that should be taken with a view to restoration, both on the individual and public level, including public acknowledgment of the wrong and accountability for the perpetrators.<sup>134</sup>

Guarantees of non-repetition are aimed at broader structural reforms that address the causes of torture, raise awareness and introduce safeguards against further torture.<sup>135</sup>

---

<sup>131</sup> See 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 (rev. 5 August 2004), at <http://www.ohchr.org/english/events/meetings/docs/versionrev.doc>

<sup>132</sup> Other forms of restitution recognised in the Draft Basic Principles on Reparation include: restoration of social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

<sup>133</sup> Heads of damages include Material damages and loss of earnings, including loss of earning potential; Lost opportunities, including education; Harm to reputation or dignity; and Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

<sup>134</sup> Satisfaction comprises the following main components: Cessation of continuing violations; Establishing the facts (recognised as the victims' right to know); Apology, including public acknowledgement of the facts and acceptance of responsibility; Judicial or administrative sanctions against persons responsible for the violations (i.e. no impunity); Commemorations and tributes to the victims; Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels (in other words, to establish a public historical record of torture).

<sup>135</sup> Measures falling in this category include: Ensuring effective civilian control of military and security forces and restricting the jurisdiction of military tribunals; Strengthening the independence of the judiciary; Protecting persons in the legal, medical and health-care professions, the media, and other related professions, and human rights defenders; Conducting and strengthening, on a priority and continued basis, human rights training; Promoting the observance of codes of conduct and ethical norms, in particular international standards; Creating mechanisms for monitoring inter-social conflict resolution and preventive social intervention; Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

## **i. Claiming reparation**

### **The Problem: Lack of Reparation for Torture Survivors**

There has been an almost complete lack of reparation for victims of torture, with the exception of the few cases mentioned above.

The Sudanese legal system does not acknowledge the serious nature of the crime of torture and the corresponding rights of torture survivors to reparation. There is no specific offence of torture for which a victim of such crime could claim reparation and torture survivors cannot directly avail themselves of the Constitutional Court to claim reparation for a fundamental rights violations. Moreover, legal avenues available for torture survivors are limited by the immunity from proceedings granted to officials, which is the single biggest obstacle in practice.

There are, however, a number of additional factors impairing effective access to justice:

- Torture survivors, in particular those living in remote areas, often lack awareness of their right to claim compensation against the perpetrators or the state.
- People have insufficient resources, which applies to the majority of torture survivors who often belong to marginalised communities, and experience difficulties in accessing justice as court fees are prohibitive in the absence of a satisfactory legal aid system. While NGOs have provided some support for torture survivors, they have not been able to offer the comprehensive assistance needed.
- Many torture survivors do not seek compensation from the State as they view it as going against their honour and allowing the government to “pay off” victims.
- Torture survivors have refrained from taking legal action in the light of the history of threats and harassment of victims and human rights defenders who have brought cases against torturers and the state.
- The prospect of a successful outcome of a case is considerably diminished by the difficulty of presenting sufficient evidence to prove the case. In the absence of adequate criminal investigations, torture survivors face immense difficulties in proving that they have been tortured and identifying the perpetrators of these acts.
- Finally, the independence of courts is not ensured and judges are often seen as deferential to state authorities.

## **ii. National remedies**

### *What remedies are available in proceedings?*

There are three mutually exclusive ways in which a victim of a crime involving bodily injury may receive compensation in criminal proceedings: as compensation awarded as part of a supplementary civil suit; as *día* (blood-money) or in the form of a fine designated for that purpose. In civil proceedings, a torture survivor or relatives of a torture victim can claim damages for tort, i.e. trespass against the person, under civil law.<sup>136</sup>

In practice, where lawyers have brought civil claims before criminal courts they have on some occasions been asked to bring a separate civil suit before civil courts instead. However, such civil proceedings take a long time by which the amount of compensation

<sup>136</sup> Article 153 (1) Civil Transaction Act of 1984 (hereinafter CTA).

awarded, which is commonly low in any case, might lose its value due to continuous devaluation of the Sudanese currency. As a result, lawyers do not view it as worthwhile to pursue this avenue even if it were to result in a successful outcome.

*Who can be sued?*

The state is vicariously liable on the grounds of employers' liability.<sup>137</sup> Members of the security forces and the police can only be sued with the permission of the competent director. The considerations relating to the lifting of immunity for criminal proceedings apply in equal measure to the withdrawal of immunity for civil proceedings. Where the permission is refused or not granted, the torture survivor cannot take separate legal action against the state because the liability is vicarious and therefore not independent of the liability of the responsible perpetrator(s). Consequently, in most cases, where requests for the lifting of immunity and subsequent legal petitions to this effect have been unsuccessful, no claim for compensation or other forms of reparation can be brought against the individual perpetrators or the State authorities.

*What does it take for a claim to be successful?*

As a general rule, the CPC stipulates that any private loss caused by crime should be compensated.<sup>138</sup> A torture survivor may bring a civil claim as part of criminal proceedings pending before a Court. The plaintiff has to pay a fixed percentage of the damages claimed as court fees unless he sues as a pauper. The Court seized with the case hears the evidence related to the compensation claim. It may, upon conviction of the accused or on application by the victim or his/her relatives, order compensation for any injury resulting from the offence, in accordance with the provisions of the Civil Transactions Act and Procedures Act.<sup>139</sup> A court may order the payment of a fine either in whole or in part as compensation for any person aggrieved of an offence unless an independent judgment for compensation is issued.<sup>140</sup> In cases of murder, involuntary manslaughter and bodily injury, a torture survivor, or in case of death, his or her relatives, has the right to demand *dia*.<sup>141</sup> If a victim of a *qisa* crime opts for *dia*, the courts can still impose a criminal punishment as *tazir* but such punishment will be lesser than the one provided for as *qisa*.

A torture survivor or his/her lawyer on his/her behalf may bring a suit before the competent civil courts<sup>142</sup> either within five years from the date the plaintiff knew the harm and the person responsible or, if this is not the case, within fifteen years.<sup>143</sup> The plaintiff has to pay a fixed percentage of the damages claimed as court fees unless he sues as a pauper. He/she may claim legal aid, which is provided according to the Attorney Law 1983.<sup>144</sup> Lawyers can also offer their services pro bono, i.e. without charging fees, or on a no win no fee basis where the plaintiffs do not have sufficient means of their own. The plaintiff carries the burden of proof. He/She has to prove by all means of evidence that the torture resulted in harm and the damages claimed. The award of damages is not dependent on a criminal

---

<sup>137</sup> Article 146 (1) CTA.

<sup>138</sup> Article 4 (g) CPC.

<sup>139</sup> Article 46 Penal Code.

<sup>140</sup> Article 34 (2) *ibid*.

<sup>141</sup> Articles 43 and 44 *ibid*.

<sup>142</sup> Articles 33-36 of the Civil Procedure Code of 1983.

<sup>143</sup> Article 159 CTA.

<sup>144</sup> However, this is problematic because the plaintiff would be represented by a State attorney acting against other state officials or authorities, giving rise to the possibility of a conflict of interest.



conviction and a compensation claim can be brought independent of a criminal claim. However, if a criminal case is pending, the Courts generally suspend the civil proceedings until the conclusion of criminal proceedings.

*What kind of reparation can be (has been) awarded?*

A court may award compensation for pecuniary and non-pecuniary harm but has no express powers to order other forms of reparation. It should make clear whether the compensation is independent or is awarded as part of a fine.<sup>145</sup> Such a fine can be imposed alongside any other punishment provided for the offence in question. In assessing the amount of the fine, the court should take into account the nature of the offence committed, the amount of wrongful gain obtained thereby, the degree of the offender's participation and his or her financial status.<sup>146</sup> In practice, there have only been few cases in which courts have awarded a fine as compensation. The amount of compensation awarded in the two cases referred to above was very low (9,000 Sudanese Pounds and 3000,000 Sudanese Dinars) and inadequate in light of the seriousness of the torture inflicted.

The amount of *dia*, which is the debt of the offender and his/her clan, is fixed by law.<sup>147</sup> If the death or bodily injury has been inflicted negligently, the amount of *dia* is decreased proportionately to the offenders' participation in causing the offence.<sup>148</sup> There have been no precedents where torture survivors have been able to claim *dia* from the perpetrators, given the lack of successful prosecutions.

Compensation in civil cases is awarded for pecuniary and non-pecuniary harm. Pecuniary damages include financial loss suffered as a result of the wrongdoing, including costs incurred and lost earnings.<sup>149</sup> Moral damages will be assessed by taking into account the circumstances of each individual case.<sup>150</sup> In case of death, the right to compensation becomes the right of the inheritors.<sup>151</sup> Judges have the power to order other measures than compensation in relation to the wrongdoing.<sup>152</sup> No cases are known in which a torture survivor has successfully claimed reparation before a civil court.

*How are judgments enforced?*

The Court that issued the judgment is responsible for its enforcement, following the presentation of a writ.<sup>153</sup> A special procedure applies to the enforcement of judgments issued against the Government.<sup>154</sup>

<sup>145</sup> See Article 204 CPC for details and Article 198 CPC for enforcement of awards.

<sup>146</sup> Article 34 (1) CTA.

<sup>147</sup> Article 42 (1) CA: "Dia (blood money) is one hundred camels of different ages or its equivalent value in money as the Chief Justice may determine from time to time after consultation with the competent bodies," 2): "Dia of wounds (arsh) and "ghura" are determined as set out in the second Schedule attached to this Act."

<sup>148</sup> Article 42 (5) CA.

<sup>149</sup> Article 156 CTA.

<sup>150</sup> Article 153 (1) CTA.

<sup>151</sup> Article 153 (2) CTA.

<sup>152</sup> Article 154 (2) CTA.

<sup>153</sup> See Articles 223 et seq. Civil Procedure Code.

<sup>154</sup> Article 231 Civil Procedure Code: "(1) If a judgement is issued against the government [or against a civil servant for doing any of the actions mentioned in Article 33 (4)] then the judgement must specify the deadline for its payment. If payment of the judgement does not take place by the prescribed deadline, then the Court must report to the Chief of the Superior Court with a copy to the Public Prosecutor; (2) A judgement like this may not be executed unless it has continued to be unpaid for a period of three months from the date of the aforementioned last report (to Chief of Superior Court); (3) As soon as the time period stipulated in clause (2) transpires, the Court must take the measures necessary to execute the judgement without writing to any other authority."

**What steps can Sudanese lawyers take to claim reparation on behalf of torture survivors?**

**(i) Practical steps**

- Use criminal proceedings to establish the criminal liability of perpetrators of torture to pave the way for civil claims.
- Petition the prosecutor or Court, up to the Constitutional Court, to allow civil claims against alleged perpetrator(s) of torture to proceed, either in the course of criminal or civil proceedings, invoking the 1993 precedent, constitutional prohibition of torture and the constitutional right to litigate.
- Use arguments derived from international standards, such as that remedies have to be effective and that reparation should include compensation for both physical and mental harm, rehabilitation, and public acknowledgement, including apologies and sanctions for the perpetrators, as well as preventative measures to prevent further torture.
- Petition the National Human Rights Commission once it is operational, asking it to recommend reparation against the individual perpetrator(s) and responsible authorities.

**(ii) Legal and institutional reforms to provide remedies and reparation for torture survivors**

- The adoption of a clear constitutional principle determining the status of international law in the Sudanese legal system. Treaties to which Sudan is party should be directly enforceable or incorporated into Sudanese law.
- The adoption of an express right to reparation for torture in the Constitution and in statutory legislation.
- The abolishment of immunity laws for public officials in relation to criminal and civil proceedings.
- The abolishment of any statutes of limitation for torture cases, in particular on the grounds that international law stipulates that the crime of torture does not prescribe, and that torture survivors have had no effective access to courts in the past because of the immunity law.
- The setting up of a reparation commission(s) for torture and other serious human rights violations committed in the past, calling for commissions to be set up on a regional basis, especially where there have been serious violations, such as in Southern Sudan, the Nuba Mountains, the Blue Nile region and Darfur.

## V. INTERNATIONAL REMEDIES

### ***Overview***

Certain international remedies allow individuals who allege a violation of their human rights to bring a complaint before the competent body with the view to holding the State accountable and seeking redress. Such remedies come into play where domestic protection of human rights have failed, having either been exhausted or considered to be ineffective. The function of such international mechanisms is to provide victims with additional protection and to provide a measure of supervision of state conduct by international bodies. Remedies are principally available on the regional level, where individuals may have the right to bring their case before a Commission, such as the African Human Rights Commission or directly before a court, and on the international level, such as before the United Nations Human Rights Committee monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR) or the Committee against Torture monitoring the UN Convention against Torture. Normally, cases can only be brought where the State party has specifically accepted the individual complaints procedure. The human rights treaty bodies have the power to find a violation and to recommend measures to redress the violation, including provision of reparation and carrying out of effective investigations, which States are bound to comply with under the relevant treaty. International courts have the power to issue binding judgments.

### ***What international mechanisms can be used in case of violations committed by Sudan?***

Sudan has not accepted any individual complaints mechanism with the exception of recourse to the African Commission on Human and Peoples' Rights that is discussed in more detail below. While this mechanism constitutes an important avenue, acceptance of other international remedies would significantly enhance protection.

#### *UN Treaty Body Reporting system*

Human rights treaty bodies fulfil another function, namely monitoring States' compliance with their treaty obligations by examining State party reports. Although the reporting system does not provide an individual remedy to victims it is still an important mechanism to highlight shortcomings of State parties' performance and to exert public pressure on the State concerned to improve human rights protection and remedy violations. NGOs are increasingly involved in the process of scrutinising State parties' reports by providing information about the law and practice to treaty bodies, in particular in form of alternative or shadow reports.<sup>155</sup> In the case of Sudan, the Human Rights Committee, the Committee on the Elimination of all Forms of Racial Discrimination and the Committee on the Right of the Child examine State party reports that deal, *inter alia*, with torture or other forms of inhuman or degrading treatment. Sudan has submitted reports to all three committees albeit with considerable delays in some instances.<sup>156</sup> All three Committees that have

<sup>155</sup> See e.g. Alternative Report submitted by FIDH and SOAT to the African Commission on Human and Peoples' Rights in 2004, *supra*.

<sup>156</sup> See State Party report submitted to the: Human Rights Committee, UN Doc. CCPR/C/75/Add.2, 13 March 1997; Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/334/2, 30 May 2000 and the Committee on the Rights of the Child, UN Doc. CRC/C/65/Add.17, 6 December 2001.

examined Sudan's reports raised serious concerns with regard to torture and recommended a wide range of measures to improve the situation.<sup>157</sup>

### *UN Charter Bodies*

In a broader sense, international remedies include recourse to UN bodies. These bodies, such as the Human Rights Commission or the Special Rapporteur on Torture, can examine State parties' human rights performance, pass resolutions and urge governments to protect human rights. Individuals can provide these bodies with information and trigger examinations of situations concerning serious human rights violations. However, there are no individual complaints procedures and the UN Charter bodies have no power to recommend or award any redress. Sudan's human rights record has been the focus of several UN bodies, and the relevant practice is examined in more detail below.

### **What steps can Sudanese lawyers take to improve access to international remedies?**

Sudanese lawyers could advocate for greater human rights protection at the international level and access to remedies, urging the Government to:

- Ratify the Optional Protocol to the ICCPR, which would allow victims of torture to bring cases before the UN Human Rights Committee.
- When lobbying for the ratification of the Convention against Torture, to call for acceptance of Article 22 that gives victims the right to bring complaints before the Committee against Torture.
- Ratify the Protocol establishing the African Court of Human Rights and recognising the right to bring petitions directly before the Court.
- Publicly endorse the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).<sup>158</sup>

### **Taking a case before a regional or international body**

#### **- General considerations**

There are potential pitfalls in taking cases before regional or international bodies. It is important to keep the obstacles and limitations in mind so as to avoid frustrated hopes and a waste of time and energy. When considering the use of international remedies, lawyers representing torture survivors or NGOs acting in the interest of torture survivors need to clarify whether the mechanism can fulfil the expectations of the torture survivor(s) or, where cases can be brought by lawyers or NGOs themselves, is conducive to the broader goal of combating torture.

---

<sup>157</sup> Concluding Observations of the Human Rights Committee: Sudan, UN Doc. CCPR/C/79/Add.85, 19 November 1997, Concluding observations of the Committee on the Elimination of Racial Discrimination: Sudan, UN Doc. CERD/C/304/Add.16, 27 April 2001 and Consideration of Reports submitted by State Parties to the Committee on the Rights of the Child, Concluding observations: the Sudan, UN Doc. CRC/C/15/Add.190, 9 October 2002.

<sup>158</sup> The Guidelines were adopted at the 32<sup>nd</sup> session of the African Commission in October 2002. Besides encouraging ratification of regional and international instruments that prohibit torture, the Guidelines urge States to cooperate with the African Commission on Human and Peoples' Rights and UN bodies and procedures. The Guidelines specify a wide range of practical measures for States to implement covering the prohibition of torture, including combating impunity of alleged perpetrators, prevention of torture and responding to the needs of victims. See Annex 1 for the full text of the Guidelines.

As a first step, the lawyer should establish what the torture survivor expects from taking the case to an international body. In discussing the option of proceeding to an international level, it should be made clear that remedies are often drawn-out proceedings lasting several years that mainly rely on written submissions and are decided in “far-away countries”. There is thus commonly little direct involvement of the torture survivor. Even where the human rights body concerned finds a violation and recommends measures to redress the wrong, the record of State parties in complying with decisions of international bodies is weak and their enforcement in the domestic sphere is often extremely difficult.

On the other hand, international remedies are often, in the absence of effective domestic remedies, the only available option to pursue a case further and to address individual cases in a public forum (with little or no cost for torture survivors if assisted by pro bono lawyers or human rights organisations). In the course of their proceedings, the body seized with the case may inquire into the human rights practices of the State concerned, possibly also by means of fact-finding and investigation in addition to examining the submissions by the parties to the case (whereby there is no need to appear in person). A further advantage of the use of international remedies is that they result in decisions that are either directly or indirectly binding on the State concerned. The finding of a violation by an international body can in itself serve as an important public acknowledgment of wrongdoing. The body may also request a State to carry out investigations into torture and/or award reparation.

International remedies are also important tools in addressing generalised problems. A large number of findings against a country in relation to particular violations can provide a valuable officially recognised record of torture practices in a given country. The use of international remedies can therefore contribute to putting pressure on a State to improve its human rights record. Within the limitations outlined, international remedies play an important role in monitoring States’ human rights records where domestic remedies fail.

#### What are the various stages of individual complaints procedures?

Proceedings under international complaints procedures consist of two elements, admissibility and merits. Complaints have to be admissible before the body in question will consider the merits, i.e. the substance of a case. Lawyers representing torture survivors or bringing public interest type cases need to consider the following questions:

##### *Will the case pass the admissibility test?*

Admissibility concerns the competence of the body in question to consider the substance of the case. It is mainly concerned with procedural matters rather than the facts of the case itself which are dealt with in the merits. While admissibility may seem to be simply a burdensome first step of the case, it is of great importance because many cases fail at this initial hurdle. It is therefore essential that lawyers make sure that every single admissibility criterion is complied with so as not to endanger the success of the case.

The admissibility criteria vary depending on the body in question but there are some common features, namely that complaints (also referred to as applications or communications) should not be anonymous; the complainant, if he/she is not the victim, must have authorisation to submit a complaint (unless, exceptionally, a complaint may be submitted not only by victims but others as well, such as NGOs); the violation complained about has to fall within the scope of the treaty in question and should relate to incidents that took place before the treaty concerned came into effect (unless the violation is ongoing); domestic remedies have been exhausted (unless remedies are non-existent or

ineffective); complaints are brought within the specified time limit or within a reasonable time after exhaustion of domestic remedies or after the violation occurred where domestic remedies are ineffective; the complaint is not under consideration or has been dealt with by another treaty body (the admissibility criteria of the various bodies differ considerably in this regard); and the complaint is not manifestly ill-founded.

*In particular, have domestic remedies been exhausted?*

The exhaustion of domestic remedies is in practice the most important admissibility criterion and the main hurdle responsible for the failure of many applications at the admissibility stage. The rationale of the rule in international human rights instruments is "to ensure that before proceedings are brought before an international body, the State concerned must have had the opportunity to remedy the matters through its own local system. This prevents the Commission from acting as a court of first instance rather than a body of last resort."<sup>159</sup>

Domestic remedies must be available, i.e. if the petitioner can pursue it without impediment, effective, i.e. it offers the prospect of success, and sufficient, i.e. capable of redressing the complaint.<sup>160</sup>

The complainant therefore has to demonstrate that there are no remedies<sup>161</sup> or that existing remedies are ineffective or inadequate in the concrete circumstances.<sup>162</sup> An example would be immunity laws that block criminal accountability and/or reparation in torture cases and whose validity has been upheld by the highest courts in the country concerned. In cases of serious and massive violations, as held by the African Commission in its first case on Sudan (see Annex 2) "... the requirement of exhaustion of domestic remedies ...[does not] apply literally, especially in cases where it is 'impractical or undesirable' for the complainants or victims to seize the domestic courts. The seriousness of the human rights situation in Sudan and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the Charter, their procedure would probably be 'unduly prolonged'." The absence of an independent judiciary, a pervading climate of fear and the lack of access to legal representation are further factors that may absolve the complainant from exhausting domestic remedies, as, for example, held by the African Commission in the case of *236/2000- Curtis Francis Doebller/Sudan* "[I]n order to exhaust the local remedies within the spirit of Article 56(5) of the Charter, one needs to have access to those remedies but if victims have no legal representation it would be difficult to access domestic remedies." (see Annex 2). In case of doubt, the complainant should try to exhaust existing remedies so as to ensure that his or her application does not fail on the grounds of non-exhaustion of domestic remedies.<sup>163</sup> Where effective and adequate remedies exist, they will only be considered to have been exhausted if the complainant has raised the subject-matter of the international remedy in the course of domestic proceedings up to the highest court, including the Constitutional Court.

---

<sup>159</sup> African Commission on Human and Peoples' Rights, 147/95 and 149/96- *Sir Dawda K Jawara/The Gambia*, Thirteenth Annual Activity Report, Annex V, p.96, para.31. See on the meaning of exhaustion of domestic remedies also Giffard, *Torture Reporting Handbook*, supra, pp.79 et seq.

<sup>160</sup> *Sir Dawda K Jawara/The Gambia*, supra, para.32. Terminology used is that of the African Commission.

<sup>161</sup> *Ibid.*, para.35: "The existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of generalised fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him."

<sup>162</sup> *Ibid.*, para.38: "According to the established case law of the Commission, a remedy that has no prospect of success does not constitute an effective remedy."

<sup>163</sup> See, by way of example, as a case that failed on these grounds: *220/98 The Law Offices of Ghazi Suleiman/Sudan*, 15th Annual Activity Report of the African Commission for Human and Peoples' Rights, 2001-2002, Annex V, p.45.

*Is there sufficient evidence to prove the case?*

Once a case is declared admissible, the treaty body or court will consider the merits of the case on the basis of the balance of probabilities as the standard of proof. The burden of proof is principally on the claimant but there are important exceptions. Where the State party fails to respond to the allegations, the case will be decided on the basis of the information provided by the claimant. Strictly speaking, such a situation eases rather than removes the burden of proof. In case of doubt, the human rights body may still inquire into the facts independently.<sup>164</sup>

Most treaty bodies and courts now apply the rule that the burden of proof shifts where the complainant shows that his/her injuries were sustained while in official custody.<sup>165</sup> This can be shown, for example, by having witness testimonies stating that the torture survivor was in good health before an arrest was made and producing a medical report that documents injuries following release from custody. In such a case, it is for the State authorities to explain satisfactorily how the injuries were sustained while the individual was in their control. The rule has been developed to ease the burden of proof on the individual in recognition of the difficulty of proving actual torture in custody.

The degree of sufficient evidence depends on the form of violation that is claimed. In relation to torture, a complaint that the prohibition of torture has been violated by the State can consist in an allegation that:

- (i) the State was responsible for torture<sup>166</sup>
- (ii) and/or that the State failed to investigate allegations of torture<sup>167</sup>
- (iii) and/or failed to provide other effective remedies<sup>168</sup>

<sup>164</sup> See, for example, the procedure followed by the African Commission for Human and People's Rights described in more detail below under 'The African System of Human Rights'.

<sup>165</sup> See for example decision of the Human Rights Committee in *Bleier v. Uruguay*, Complaint 30/1978, A/37/40 (1982), Annex, p.130, ¶13.3.

<sup>166</sup> In order to prove torture, the complainant has to demonstrate State responsibility. He/she has to show that there was an infliction of severe physical or mental pain or suffering for a specific purpose and that pain or suffering was inflicted by or with the acquiescence of an official. Supporting evidence may consist of affidavits, witness statements or police records confirming arrest and/or detention and duration of it, medical reports, and findings of any investigations that may have been conducted. Establishing prima facie evidence of torture may be sufficient where the State party fails to explain satisfactorily how injuries of the victim were sustained in custody. Where the torture results in the death of the victim, the case raises a violation of the right to life as well. It would need to be proved that the death occurred as a result of torture but there would be a presumption of State responsibility where the death occurred in custody. A finding of a violation will not only publicly establish state responsibility but will usually be accompanied by recommendations how to remedy the torture inflicted, such as paying compensation to the victim(s).

<sup>167</sup> The prohibition of torture contains an obligation of States to investigate cases of torture promptly, impartially and effectively. In practice, it will often be difficult for a torture survivor to prove the actual torture. As borne out by the practice and jurisprudence of human rights bodies and courts (see for an overview and analysis of relevant international standards REDRESS, *Taking Complaints of Torture Seriously, Rights of Victims and Responsibilities of Authorities*, September 2004, pp.4 et seq., at <http://www.redress.org/publications/PoliceComplaints.pdf>), many cases have succeeded in establishing state responsibility for failure to investigate torture although the responsibility for the torture itself could not be proven. It is therefore an important claim with the objective to compel the responsible state authorities to undertake an investigation in line with international standards. The key elements of the failure to investigate torture, which need to be shown by using appropriate supporting evidence, in particular official correspondence, are as follows: The authorities were aware or made aware of information indicating that acts of torture have been committed; the responsible authorities have, upon receiving an allegation or becoming aware of the possibility of torture, not acted promptly to take steps investigating the truth of the allegation/information; or the responsible authorities have acted promptly at the initial stages but have failed to investigate the case thoroughly and effectively thereafter, i.e. not taking some or all of the required steps or taking the necessary measures after unwarranted delays only; and/or the responsible authorities lack impartiality, which means that they are either not sufficiently independent of the body whose personnel is implicated in torture or conduct the investigation in a biased way, for example solely relying on statements by police officials accused of torture in its decision to close investigations. Against this background, it needs to be shown, using appropriate supporting evidence, in particular official correspondence, that the authorities were aware or made aware of allegations of torture and that the authorities have: not taken any steps at all; or acted with delays; and/or carried out inadequate investigations by failing to undertake all necessary steps to establish the truth of the allegations; and/or have not been impartial.

<sup>168</sup> The obligation to provide effective remedies and reparation in case of a breach implies that anyone who alleges to have been subjected to torture has access to judicial remedies. Where no such remedies exist or there are bars to bringing cases before the judiciary, which may include short statutes of limitations, amnesties and immunities, a State may be held responsible for the failure to provide

(iv) and/or fails to provide safeguards against torture, either in law and/or practice.<sup>169</sup>

The purpose of the claim may, depending on the facts and the submission, consist in the finding of a violation, the award of compensation and other forms of reparation, in particular non-repetition, requesting the State to undertake a full investigation in line with international standards or putting in place safeguards against torture.

*Is it the “best case” to be brought before a human rights treaty body?*

A lawyer who has been asked to take a case before an international human rights body represents first and foremost the interests of the client, as is the general rule for any kind of legal representation. There are, however, other considerations as well. The broader purpose of bringing cases before international human rights treaty bodies is not only to obtain remedies in individual cases but to change the law and practice of the country concerned. This can be done by targeting systematic obstacles, such as immunity laws, with a view to setting precedents that such laws, or particular practices, violate international obligations and need to be abolished or changed. Affirmative decisions or judgments would have a wider beneficial impact than individual cases whose particular circumstances may not allow for any generalisation. The task for lawyers and human rights group is therefore to select cases that are suitable to bring about the desired changes. This requires a prior analysis of the aspects of the law and practice that need to be challenged, in the case of Sudan for example the requirement of administrative permission to investigate and prosecute (see above).

## ***The African System of Human Rights***

### The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (hereinafter the African Commission) was established by the African Charter on Human and Peoples' Rights in 1981 and took up its work in 1987. The African Commission is composed of eleven independent experts and based in Banjul. It meets twice a year for its sessions, one of which is normally held in Banjul and the other in any state which agrees to host it. The main objective of the Commission is to promote and ensure the protection of human and peoples' rights in Africa. To this end, it performs a range of tasks, such as the examination of State Reports,

---

effective remedies. With regard to reparation, a State will be in breach of its obligations if it, whether in law or practice or both, fails to provide adequate reparation, including compensation for psychological torture and rehabilitation amongst others. A finding to this effect may expose shortcomings in both law and practice, prompting the international body concerned to urge the State party to introduce the required legal changes and to provide remedies and redress to the victims. A claim alleging lack of effective remedies for torture may succeed where the claimant shows that in torture cases: he/she has no judicial remedy to claim any form of reparation; there are impediments that adversely impact on the likelihood of a successful outcome, such as lack of access to justice, immunities, amnesties, delays, concerns about the independence of the judiciary as manifested in its jurisprudence etc.; and/or the existing law provides no comprehensive right to reparation; the judiciary, either in general or in a concrete case, has failed to award reparation in line with international standards. These issues commonly form part of the admissibility considerations with regard to the exhaustion of domestic remedies. However, they may also be raised in the merits to show that the State party has failed in its substantive obligations to provide effective remedies and reparation.

<sup>169</sup> States have a general obligation to introduce safeguards against torture, such as provide access to a lawyer of one's choice, which are often dealt with separately as violations of due process rights, and specific obligations, such as not allowing statements extracted under torture to be used as evidence. Where there is legislation and/or a practice according to which confessions or statements extracted by means of torture can be used as evidence, a case can be brought with a view to a finding that the legislation and/or practice violates international obligations and should be declared invalid or ceased. A further objective is to seek a retrial or the release of a person convicted on the basis of a confession or statements extracted under torture. The complainant would have to show that the confession or statement was extracted under torture. To this end, he/she would need supporting evidence to prove that a confession or statement has been made, preferably a copy of the confession or statement where available and the fact of torture as a means to extract the statement (see above). Circumstantial evidence, such as later withdrawal of the confession, overly reliance on the confession, inconsistencies in the investigations etc. should also be furnished.



monitoring, fact-finding and considering communications (complaints), both from states and from individuals.<sup>170</sup>

To date, the African Commission has carried out a fact-finding mission to Sudan in 1996<sup>171</sup> and in 2004 (Darfur), it considered Sudan's country report submitted in 1997,<sup>172</sup> and issued decisions in five cases, declaring one of them inadmissible<sup>173</sup> and finding violations in the four others (see case summaries in Annex 2). Although the African Commission has only dealt with a small number of reported torture incidents in Sudan, it has found a violation of the prohibition of torture in all relevant cases, emphasising repeatedly that steps taken by the Government of Sudan to comply with its obligations under the African Charter have been inadequate. The Commission has also unequivocally ruled that corporal punishments are incompatible with Sudan's international human rights obligations under the African Charter.

### How to bring a case before the African Commission on Human and Peoples' Rights<sup>174</sup>

#### Deciding to bring a case before the African Commission

The procedure of bringing a case before the African Commission has several practical advantages for complainants. It can be brought by anyone, not only the victim, as long as the complaint is not solely based on reports issued by the mass media. There is no need for legal representation but it is permitted. Lawyers, either on their own or for human rights groups, may also submit complaints in their own right. Authors of complaints can, while including their addresses, request the Commission to respect the confidentiality of their identity. This recognises the fact that bringing a case can put the author at risk.<sup>175</sup> The Commission generally respects this request.

A lawyer or NGO wishing to bring a case relating to torture before the African Commission should answer the following question in the affirmative before proceeding, taking into consideration the factors outlined above:

- Does the case raise an issue relating to the prohibition of torture under Article 5 of the African Charter on Human and Peoples' Rights?
- Do the torture survivor (s) wish to pursue the case before the African Commission?
- Where no contact with the victims has been made or where such contact is impossible, would it be in the best interest of victims to bring a case?
- In both scenarios, is there a potential threat to the safety of victims and witnesses, and if so, what steps can be taken to minimise such threats?
- Have domestic remedies been exhausted or, if not, can it be shown that there are no remedies or that existing remedies are ineffective?

<sup>170</sup> Articles 45 et seq. of the African Charter on Human and Peoples' Rights.

<sup>171</sup> See *48/90 Amnesty International vs Sudan*; *50/91 Comite Loosli Bachelard vs Sudan*; *52/91 Lawyers Committee for Human Rights vs Sudan* and *89/93 Association of Members of the Episcopal Conference of East Africa vs Sudan*, 13th Annual Activity Report of the African Commission for Human and Peoples' Rights, 1999-2000, Annex V, p.124, para.26. The Annual Activity Reports are available from the website of the African Commission [www.achpr.org](http://www.achpr.org).

<sup>172</sup> The Commission considered the report during its 21<sup>st</sup> Ordinary Session in April 1997.

<sup>173</sup> *220/98 The Law Offices of Ghazi Suleiman/Sudan*, 15th Annual Activity Report of the African Commission for Human and Peoples' Rights, 2001-2002, Annex V, p.45.

<sup>174</sup> This part draws on the Information Sheets No.2 and 3 published by the African Commission on Human and Peoples' Rights.

<sup>175</sup> See on the procedure The African Commission on Human and Peoples' Rights, Information Sheet No.2, *Guidelines of the Submission of Communications*, Organisation of African Unity and Information Sheet No.3, *Communication Procedure*, Organisation of African Unity, available at [www.achpr.org](http://www.achpr.org) under Communications.

- Does the case relate to recent events or could and should it have been brought before the Commission a considerable time ago, and, if the latter is the case, can the delay be excused?
- Is there sufficient evidence to prove the case?
- Is the case suitable in terms of the litigation strategy pursued, such as removing structural obstacles to torture and setting precedents for particular situations?

### Preparing a case

Lawyers should use the guidelines developed by the African Commission on how to submit complaints when preparing a complaint. The guidelines for individual communications give an indication of the relevant information to be submitted.

#### (i) *Admissibility*

The complaint needs to meet the admissibility criteria and contain sufficient substantive information to allow the finding of a violation of the prohibition of torture. The criteria for admissibility of communications to the African Commission are laid down in Article 56 of the African Charter. Lawyers or NGOs submitting a complaint to the African Commission should use the text of Article 56, in conjunction with the guidelines of the Commission. The complaint needs to conform to the requirements and, in case of doubt, lawyers or NGOs should consult the jurisprudence of the African Commission on individual admissibility criteria.<sup>176</sup>

Article 56 reads as follows (comments in brackets are not part of the official text):

“Communications relating to human and peoples’ rights referred to in Article 55 received by the Commission, shall be considered if they:

1. [NAME] Indicate their authors even if the latter request anonymity (any person or NGO: no reasons need to be given for requesting anonymity) In 57/97 *Tango Bariga v. Nigeria*, the Commission declared the communication inadmissible because the author had failed to indicate their address;
2. [SCOPE OF AFRICAN UNION/CHARTER] Are compatible with the Charter of the Organization of African Unity or with the present Charter (The complaint should invoke the provisions of the African Charter alleged to have been violated and/or the principles enshrined in the AU Charter);
3. [NO INSULTING LANGUAGE] Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity. In 65/ 92 *Ligue Camerounise des Droits de l’Homme v. Cameroon*, the Commission considered ‘regime of torturers’, ‘government barbarisms’ insulting language;
4. [NOT SIMPLY NEWS] Are not based exclusively on news disseminated through the mass media. In 104/93 *Centre pour l’indépendance des magistrats et des Avocats v. Algeria*

---

<sup>176</sup> See *African Human Rights Law Reports, 2000*, published by the Centre for Human Rights, University of Pretoria in 2004, which contains the jurisprudence of the African Committee from its inception until the end of 2000 [http://www.chr.up.ac.za/centre\\_publications/ahrlr/ahrlr-text.pdf](http://www.chr.up.ac.za/centre_publications/ahrlr/ahrlr-text.pdf) and for judgments after this date the Annual Activity Reports of the African Commission on Human and Peoples’ Rights.

the Commission declared inadmissible a communication based exclusively on information disseminated by the press;

5. [EXHAUSTION OF LOCAL REMEDIES] Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged. (Case will be declared inadmissible if it still pending in national courts.) However in cases of serious and massive human rights violations, the Commission does not require the exhaustion of local remedies 25/89 *Free Legal Assistance Group v. Zaire*;
6. [REASONABLE TIME] Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter. In 97/93 *John Modise v. Botswana* the Commission declared admissible a communication submitted 16 years after unfruitful efforts at the national level;
7. [NO DUPLICATION] Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter. 69/92 *Amnesty International v. Tunisia* was declared inadmissible for having been submitted to the UN Commission on Human Rights' 1503 procedure.

With regard to the exhaustion of domestic remedies, the complaint needs to explain in detail what steps have been taken following the alleged violation, i.e.:

- has a complaint been lodged,
- what steps have been taken by the authorities following receipt of the complaint, if any,
- has the victim lodged an appeal against any decisions during investigations,
- has he/she brought a case before any court regarding the same subject-matter and, if so, what has been the outcome.

In cases against Sudan, lawyers will have to challenge adverse legislation all the way up to the Constitutional Court, lodge complaints, take legal action against adverse decisions not to investigate or prosecute before the courts and seek reparation before domestic courts. Lawyers should also show massive human rights violations where applicable.

Documentary proof needs to be supplied in relation to every single step where possible, e.g. copy of the complaint, acknowledgement of receipt of complaint where available, relevant correspondence during investigations, court judgments and so on. Where no domestic remedies have been used, the complainant has to show that remedies are either non-existent or ineffective, for example by referring to immunity laws or the settled jurisprudence of courts regarding the subject-matter.

## (ii) Merits

### • FACTS

The complaint needs to contain a narrative of the facts constituting the alleged violation. The alleged incident of torture should be explained in as much detail as possible, including context, e.g. why victim was targeted, circumstances of arrest, place, time and date of the torture. The method and duration of torture should be described in detail, including its physical and psychological consequences. The name(s) of the perpetrator(s) and/or their function, e.g. member of security services, should be provided. If it is not possible to describe

the exact circumstances and location, including identity of perpetrator(s), it should be explained why the victim could not provide this information, for example, he/she was blindfolded, driven from place to place, forced to keep awake for long hours so that he/she lost the sense of time etc. It is also important to ensure that there are no inconsistencies in the description of facts, or, where there are, to explain the reasons for such inconsistencies, for example impaired memory as a result of torture (which can be backed up by medical testimonies).

Where the alleged violation consists in a lack of effective investigations or remedies, the narrative should contain a chronological description of when the alleged torture occurred and what steps the State authorities took or failed to take after the alleged torture came to their attention. The same applies to cases challenging the use of confessions or statements extracted under torture as evidence.

## DOCUMENTARY PROOF

The allegations need to be supported by documentary proof. Such proof may consist in letters, custody records, legal documents, photos, forensic reports, autopsies, tape recordings etc. The documents should be well arranged and explained if necessary. The most common technique is to refer to the documentary proof in the description of facts and include proof as annexes, for example "On ...(date), officials on duty at the station (location), whom Mr. ... could not identify because he was blindfolded at the time, repeatedly beat him on his back and head with a wooden club until he lost consciousness (see medical report issued by Dr. ..., Annex ..., page ...)."

### (iii) *Explaining urgency of case where applicable*

In urgent cases where provisional measures may be sought, the complaint needs to describe the likely serious consequences if the case is not addressed immediately, such as loss of life/lives or serious bodily harm, the threat of imposition of corporal punishments, the threat of ongoing torture or threatened removal to a third countries where there is a risk of torture. The complainant needs to provide detailed information on the nature of the case and convincing arguments why it deserves immediate attention by the Commission and cannot wait to be processed in the normal procedure.

### Submitting a case

Once the case is prepared and all the supporting evidence is available, the complaint should be sent in writing, i.e. by registered post, fax or email, to the African Commission on Human and Peoples' Rights, PO Box 673, Banjul, The Gambia; Fax: + 220 390 764; Email: achpr@achpr.org.

The communication should be based on the guidelines issued by the African Commission.

### *Registration*

Upon receipt, the case is registered by the Secretariat of the Commission, given a file number and receipt is acknowledged to the author of the complaint. The author will be informed if more information is needed to proceed with the case.

### *Seizure of Commission*

The Commission is officially seized with the case when at least seven of the eleven members indicate that they have received the communication and approved seizure or when at least six commissioners make such a decision at the Commission's next session. Following seizure, the Commission requests the Secretariat to inform both parties. The correspondence includes an indication that the admissibility of the communication will be considered at the next session of the Commission and that both parties have a 3 months time limit, which may be extended, to submit comments on admissibility.

### *Admissibility*

The decision on admissibility is made on the basis of submissions received by the author and the corresponding state, if any. A decision of the Commission declaring the communication inadmissible is final but can be reviewed at a later date if the complainant can show that the grounds for inadmissibility no longer exist. If the Commission finds the communication admissible, it informs both parties and requests them to send their observations on the merits within the time limit specified.

### *Bid to secure friendly settlement*

Following the admissibility decision, the Commission will approach both parties with a view to reaching a friendly settlement. If both parties reach such a settlement, a Rapporteur appointed by the Commission will write a report containing the terms of the settlement which will be presented to the Commission at its session. A friendly settlement brings the consideration of a case to an end. Where no friendly settlement can be reached, the case will proceed to the merits.

### *Should a friendly settlement be sought?*

A friendly settlement is voluntary and lawyers or NGOs should consider carefully whether the victim(s) wish to proceed with a friendly settlement and, if so, whether it is in their best interest. For example, while the State may offer money as compensation, there will usually be no public consideration of the substance of the complaint. Where an NGO brings a case based on public interest considerations such as most of the cases against Sudan described above, a friendly settlement is commonly not suited to result in the desired public record acknowledging the violation and making recommendations as to how to remedy them and/or prevent repetition.

### *Decision on merits of case*

The decision on the merits will be based on the information supplied by the parties. This should consist in precise allegations of facts supported by attached relevant documents on the part of the author. In reaching its decisions on the merits, the Commission will rely on written and possibly also oral pleadings. It may also carry out its own fact finding missions where deemed necessary, as it has, for example, done in respect of one of the cases against Sudan.<sup>177</sup> The Commission may also take *amicus curiae* briefs (submission by a "friend of the court", i.e. an interested third-party such as NGOs, to assist the human rights body or court in reaching its decision) into consideration.<sup>178</sup>

---

<sup>177</sup> *Supra*.

<sup>178</sup> This has, for example, been done by the Africa Access to Justice Initiative of the International Commission of Jurists (Kenya & Swedish) sections.

Where the State party successfully refutes the allegation or the complainant fails to meet this standard, the complainant will not be able to prove that a violation has occurred. If the complainant establishes at least a prima facie case and the State party fails to respond satisfactorily or where the author proves his/her case, the Commission will find a violation. In such case, its decision will specify which provisions of the Charter have been violated and will spell out the required action to be taken by the State party to remedy the violation. As referred to above, the Commission has for example urged the Government of Sudan to bring legislation into conformity with the African Charter and to provide compensation to the victims.<sup>179</sup>

Being a quasi judicial institution, the Commission's decisions are not binding in themselves. Pursuant to Article 54 of the Charter, the Assembly of Heads of States and Government have always adopted the Commission's decisions which are attached to its activity reports. Under Article 58 which deals with massive violations of human rights, the Commission may state its findings and make recommendations to the Assembly.

*Follow-up: Enforcement*

The African human rights system provides for no follow-up mechanism. The Secretariat of the Commission sends reminders to State parties urging them to comply with the Commissions' decisions but, as the Commission itself acknowledges, it essentially relies on the good will of States. In practice, State parties' record of compliance is wanting. There is no organ particularly charged with enforcing the Commission's decisions. Complainants have engaged with concerned states to initiate enforcement of the Commission's decisions. In the case of Sudan, the Government has to date not complied with any of the decisions made by the African Commission in the four cases against it, leaving the torture survivors concerned without a remedy contrary to the pronouncements of the regional human rights body.

**What steps can lawyers or NGOs take where the Government of Sudan fails to comply with a decision by the African Commission**

Where the State party, i.e. Sudan, fails to comply with the decision, the complainant can take the following steps:

- Firstly, he/she needs to keep the Secretariat of the Commission informed about the continued failure of Sudan to comply voluntarily so that the Commission can continue sending reminders to the Government of Sudan.
- Secondly, petition the Government of Sudan to provide the remedies awarded by the African Commission. Although there are neither any express laws granting a right to have decisions by the African Commission enforced nor any precedents in which lawyers successfully petitioned judges to order the enforcement of decisions by the African Commission, it should be possible to bring a case before the Constitutional Court under Article 34 of the Constitution where the responsible authorities fail to comply with the decisions of the African Commission. Such a case could be based on the freedom from torture and the right to a remedy guaranteed under Articles 20 and 31 of the Constitution respectively.

---

<sup>179</sup> See the summary of Sudan cases in the Annex 2 below.

- Thirdly, work with the national human rights commission once operational to seek enforcement of the Commission's decisions.
- Fourthly, where the victim is a foreign national, he/she may ask his/her Government to use diplomatic channels in order to secure Sudan's compliance with the Commissions' decision.

### The State Reporting Procedure under Article 62

Following ratification of the African Charter, states must periodically, every two years, present reports on legislative or other measures taken with a view to giving effect to the rights and freedoms guaranteed by the Charter. The Commission examines to what extent the laws and measures taken by a state indicate respect for the provisions of the African Charter. The status of the Charter in the legal system should be made clear and periodic reports must contain information on actual practices, court decisions and any other details on how a state complies with its obligations under the Charter. Sudan has only submitted one report to date, in 1997.

Lawyers may provide the African Commission with thematic or general shadow reports on the actual human rights situation in Sudan at the time when the Government of Sudan submits its next report to the Commission.

### Thematic mechanisms: Special Rapporteurs and focal points

The African Commission has several Special Rapporteurs. There is no Special Rapporteur on Torture yet, and to date only one focal point, currently Ms. Sanji M. Monageng, has been appointed. There is, however, a Special Rapporteur on Prisons and Conditions of Detention in Africa who was appointed in 1996. The Special Rapporteur, presently Ms. Vera Mlangazuwa Chirwa, is mandated to examine the situation of persons deprived of their liberty within the territories of States parties to the African Charter, including Sudan. The main function of the Special Rapporteur is to monitor conditions and carry out fact-finding missions but she may also receive information from individuals and NGOs. The Special Rapporteur frequently issues reports on visits to detention facilities that include recommendations on what steps the national authorities concerned should take to address the shortcomings and concerns identified.<sup>180</sup> The Special Rapporteur has yet to visit Sudan. There is also a Special Rapporteur on Women's rights, Dr. Angelo Melo, and the Special Rapporteur on Human Rights Defenders in Africa, Mrs. Jainaba Johm, on Refugees and Internally Displaced People in Africa, Mr. Bahame Tom Mukirya Nyanduga, and on freedom of expression in Africa, Mr. Andrew Chigovera, the latter three having been appointed in 2004.

### **How can Sudanese lawyers use the Special Rapporteurs and Focal Points?**

Sudanese lawyers and NGOs can submit information falling within the mandate of the relevant mechanism to the Special Rapporteur(s) concerned who may then take it up with the Sudanese Government, e.g. by issuing recommendations, requesting visits to detention facilities or other steps. The information should include as much detail as possible and be backed up by any supporting evidence (see above).

<sup>180</sup> Information about the activities of the Special Rapporteur can be found in the Annual Activity Reports of the African Commission on Human and Peoples' Rights. See also [http://www.penalreform.org/english/frset\\_theme\\_en.htm](http://www.penalreform.org/english/frset_theme_en.htm)

Information should be sent to:

Special Rapporteur on ...[Insert thematic mandate of the Special Rapporteur]  
Kairaba Avenue, P.O. Box 673  
Banjul, The Gambia  
Telephone: + 220 392 962; Fax: + 220 390 764  
Email: [achpr@achpr.org](mailto:achpr@achpr.org)

### The African Court for Human and Peoples' Rights

The Protocol to the African Charter of 1998, which established the African Court for Human and Peoples' Rights, came into force on 25 January 2004 following the ratification by the 15<sup>th</sup> State party.<sup>181</sup> The Court, to be composed of more than a dozen independent judges, will hear cases referred to by the African Commission or brought directly by individuals and NGOs, provided that the State party concerned has accepted the Court's competence to deal with such complaints. The Court has the power to make "appropriate orders to remedy the situation, including the payment of fair compensation and reparation"<sup>182</sup> but it has no enforcement powers.<sup>183</sup> The Court may also issue advisory opinions.<sup>184</sup> At the African Union Summit in January 2005, a decision was made to continue with efforts to set up the African Court on Human and Peoples' in 2005.

### **What can Sudanese lawyers do to promote ratification of the Protocol?**

Sudan has not accepted the competence of the African Court to date. The Court promises to strengthen the protection of human rights in Africa, and Sudan in case of ratification, given the judicial nature of proceedings and its greater powers compared to the African Commission. The Court's competence to deal with individual and NGOs directly, if accepted by the Sudanese government, would significantly broaden access to justice for Sudanese torture survivors on the regional level where domestic remedies fail. Sudanese lawyers and NGOs should lobby the Sudanese government to ratify the Protocol and accept the competence of the Court to receive individual and NGO complaints.

## ***UN Charter Bodies***

### What UN Charter bodies are responsible for the protection and promotion of human rights?

The UN has several bodies working to further human rights by establishing international standards, protecting human rights and providing advice and technical assistance. The main bodies and organs are the Commission on Human Rights (hereinafter HRC), the Sub-Commission on the Promotion and Protection of Human Rights (hereinafter Sub-Commission) and the UN High Commissioner for Human Rights (hereinafter UNHCHR). The HRC has established a number of thematic mechanisms that include special rapporteurs,

---

<sup>181</sup> See for further information APT, *The African Court on Human and Peoples' Rights, Presentation, analysis and commentary: The Protocol of the African Charter on Human and Peoples' Rights, establishing the Court*, Geneva, January 2000, at <http://www.aht.ch/africa/African%20Court.pdf>

<sup>182</sup> Article 27 (1) of the Protocol.

<sup>183</sup> Articles 30 and 31 *ibid.*

<sup>184</sup> Article 4 *ibid.*



representatives, independent experts or working groups with a mandate to examine particular forms of human rights violations worldwide.<sup>185</sup> There are also separate country-specific mechanisms dealing with human rights situations in particular countries that can be and have been employed by the UN in the case of Sudan.

### Commission on Human Rights (HRC) and Sub-Commission on Human Rights

The main UN policy-making body in the field of human rights is the HRC. It is composed of 53 member governments meeting once a year. Its work consists in preparing studies, making recommendations and drafting international human rights treaties and declarations. The HRC makes recommendations to the Economic and Social Council that in turn recommends the adoption of resolutions or other matters to the UN General Assembly, the main deliberative body of the UN that is composed of all member States, which has, for example, adopted the Universal Declaration of Human Rights in 1948 and the Declaration on the Protection of all persons from being subjected to torture and other cruel, inhuman, degrading treatment or punishment, the precursor of the Convention against Torture, in 1975. The HRC also investigates human rights violations under special procedures explained in more detail below.

The Sub-Commission, set up by the HRC, consists of 26 independent experts that undertake studies and inquiries, make recommendations and draft standards relating to human rights with a view to consideration and possible adoption by the Commission, such as its current work on the Draft 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.

### **How can the HRC and the Sub-Commission be used in relation to Sudan?**

- Lobbying

The HRC and Sub-Commission play an important role in monitoring the human rights situation in a country. Although the HRC is a political body, its decisions can have a positive impact on a country specific situation where effective follow-up mechanisms are in place. The HRC has not only drawn attention to, and condemned human rights violations committed by Sudan, but has also set up mechanisms, such as the Special Rapporteur on Human Rights in Sudan, to monitor the human rights situation and bring about positive changes.<sup>186</sup>

Sudanese lawyers and NGOs can submit information about violations to the HRC and the Sub-Commission, either through accredited NGOs or by using the 1503 procedure described in more detail below, and lobby for the adoption of resolutions putting pressure on the Government of Sudan and asking it to take steps to prevent further violations and remedy past ones.

<sup>185</sup> These comprise such mechanisms as the Working Group on enforced or involuntary disappearances, the Working Group on arbitrary detention, the Special Rapporteurs on the independence of judges and lawyer; on violence against women, its causes and consequences; on extrajudicial, summary or arbitrary executions, and, with a specific mandate for dealing with torture cases, the Special Rapporteur on Torture.

<sup>186</sup> A list of all relevant UN documents can be found at <http://www.ohchr.org/english/countries/sd/>.

- Lodging a complaint under the 1503 Procedure

Complaints about serious human rights violations, including torture, may be brought under the 1503 procedure.<sup>187</sup> The 1503 procedure is a confidential procedure aimed at monitoring State practice and bringing about positive changes through dialogue with the concerned State. It is limited to “situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights.” It is not applicable where the matter is already subject to a public consideration of the HRC or where the complaint concerns a violation of individual rights and can be pursued through individual complaints procedures.

Individuals or groups claiming to be a victim of a gross violation of human rights or having direct reliable knowledge, including NGOs, may submit complaints, called communications, to the UN under the 1503 procedure, which is confidential. However, countries under examination are announced and can be brought to the attention of the UN Economic and Social Council for further action.

*What factors should be taken into account when considering the use of the 1503 procedure for Sudan?*

The 1503 procedure is suitable for drawing attention to gross and systematic human rights violations, including torture. It can be used to exert international pressure on Sudan to cease human rights violations and remedy past violations. Specifically, the HRC can, in the course of its confidential dialogue, make suggestions to the Sudanese government as to how to improve the situation. Sudan was already examined under the 1503 procedure from 1991-1993, a period which was followed by renewed activism by the Country Rapporteur and the HRC.<sup>188</sup>

The 1503 procedure has important limitations that need to be kept in mind when considering its use. It is not a complaints procedure through which a torture survivor can seek redress as the HRC has no power to award any form of reparation. The objective of the procedure is to devise measures to put an end to the violation(s) rather than to provide justice to the individual complainant(s). Due to its confidential nature, complainants will not be informed about the outcome of the investigation and the result of any dialogue with State representatives.

*How to use the 1503 Procedure*<sup>189</sup>

Complaints can be sent, by mail, fax or e-mail, to the UN High Commissioner for Human Rights at the following address:

Commission/Sub-Commission Team (1503 Procedure) Support Services Branch, Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 1211 Geneva 10, Switzerland, Fax: + 41 22 917 9011; Email: [1503@ohchr.org](mailto:1503@ohchr.org)

They are considered by the Working Group on Communications set up in 2000 which meets annually after the meeting of the Sub-Commission, usually in August. The complainant will receive an acknowledgment of receipt of his/her communication.

---

<sup>187</sup> Named after resolution 1503 of the UN Economic and Social Council. Information on the procedure can be found at <http://www.ohchr.org/english/bodies/chr/1503.htm>.

<sup>188</sup> See <http://www.ohchr.org/english/countries/sd/>.

<sup>189</sup> See for further information Fact Sheet No.7/Rev.1, *Complaints Procedures*, published by the UN High Commissioner for Human Rights at <http://www.ohchr.org/english/about/publications/docs/fs7.htm#part2>.

### "Admissibility"

- A complaint must describe the facts, the purpose of the petition and the rights that have been violated. It will not be considered if it is anonymous, contains abusive language or is politically motivated. Hence, the complainant, which may be an individual or groups who claim to be victims of a human rights violation or to have direct, reliable knowledge (i.e. not purely based on mass media reports), must provide his/her name (but may request confidentiality vis-à-vis the State concerned, i.e. the Sudanese government), and should use language that is not insulting or abusive. The complaint should contain facts demonstrating that there are reasonable grounds to believe that there is a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The complainant should also demonstrate what domestic remedies exist and have been used, if any, and what the outcome of any cases has been. This should include evidence supporting the allegation, such as court records etc. Domestic remedies need not be exhausted if it can be shown that they are ineffective to resolve the situation.

### "Merits"

- As the 1503 procedure is meant to examine situations revealing systematic violations of human rights, the complainant should include as many facts as possible that help to establish a pattern and therefore go beyond the particularities of individual cases. Where possible available information about torture should be presented to demonstrate that torture is widespread or systematic, detailing incidents, alleged perpetrator(s), victims, methods used, purpose, place and time of violation, legislation facilitating torture and the failure of the State to take sufficient steps to combat torture. The complainant should also explain why the facts amount to gross violations, for example with reference to duration, scale and systematic nature of the violations.
- The information should be based on consistent and reliable evidence, in particular affidavits, medical reports, court records but also reports by reputed NGOs.
- The complainant should propose possible remedies, such as asking the UN to set up a commission of inquiry.

### Special Rapporteur on Torture

The Special Rapporteur on Torture, established by Commission resolution 1985/33 to examine questions relevant to torture, exercises his mandate on the basis of relevant international standards, in particular those laid down in the UN Convention against Torture and UN resolutions. It covers all UN members and is not limited to State Parties to the Convention against Torture.<sup>190</sup> The Special Rapporteur, currently Prof. Manfred Nowak, plays an important role in the fight against torture. Although he cannot award reparation in individual cases and his conclusions are neither legally binding nor enforceable, he is the most high profile single person in respect of torture who can draw public attention to violations, and thereby create pressure on States to take steps to improve the situation through legal and/or institutional reforms and other appropriate measures. To this end, the

---

<sup>190</sup> See for information on the Special Rapporteur on Torture <http://www.ohchr.org/english/issues/torture/rapporteur/index.htm> and Giffard, Torture Reporting Handbook, supra, pp.92 et seq.

Special Rapporteur addresses the question of torture on three levels, namely with regard to general developments, country-specific situations and individual cases.<sup>191</sup>

Sudanese lawyers and NGOs can use the Special Rapporteur for two purposes, either drawing attention to the general situation in the country or asking him to intervene in individual cases, or both.

### *Communications relating to the general situation concerning torture in Sudan*

Communications to the Special Rapporteur can be sent with a view to urging the Special Rapporteur to make recommendations to the Government of Sudan about improvements which should be made concerning the prohibition of torture, which may possibly include requesting the Government of Sudan to allow a fact-finding visit in order to draw public attention to a specific situation.

Communications should seek to identify systematic patterns of torture based on a collection of individual incidents. This may consist in consistent reports about the targeting of victims, the identity of perpetrator(s), torture methods used, detention conditions amounting to ill-treatment, factors facilitating the use of torture, e.g. lack of safeguards and impunity. Communications should also alert the Special Rapporteur to existing or planned legislation adversely impacting on the prohibition of torture, such as criminal sentencing provisions, criminal procedure legislation and legal provisions providing for *de facto* or *de jure* impunity for torture (for planned legislation, the Special Rapporteur may use the Urgent Appeals Procedure, see below). The Special Rapporteur commonly takes up information received by way of sending letters to the government concerned (see the following section for details of procedure).

### *Communications in individual cases of torture*

#### - Allegation Letters

The Special Rapporteur periodically sends allegation letters to governments that contain allegations concerning individual cases not requiring immediate attention and those concerning general trends, patterns and special factors contributing to the practice of torture in a country. Depending on the outcome, the Special Rapporteur may make further inquiries or recommendations. The communications made are referred to in reports issued annually by the Special Rapporteur.<sup>192</sup>

Communications urging the Special Rapporteur to intervene should, according to the Model Questionnaire,<sup>193</sup> where possible, contain:

- The full name of the torture survivor;
- Date on which the incident(s) of torture occurred (at least as to the month and year);
- Place where the person was seized (city, province etc.) and location at which the torture was carried out (if known);

---

<sup>191</sup> See for further information on the work of the Special Rapporteur his annual reports which can be found at <http://www.ohchr.org/english/issues/torture/rapporteur/index.htm>.

<sup>192</sup> See UN Doc. E/CN.4/2004/56/Add.1, 23 March 2004, at <http://daccessdds.un.org/doc/UNDOC/GEN/G04/122/67/PDF/G0412267.pdf?OpenElement>.

<sup>193</sup> The questionnaire can be found on the website of the UN High Commissioner for Human Rights at <http://www.ohchr.org/english/issues/torture/rapporteur/model.htm>.

- Indication of the forces carrying out the torture;
- Description of the form of torture used and any injury suffered as a result;
- Identity of the person or organization submitting the report (name and address, which will be kept confidential).

The communication should also contain information on whether the victim, his/her family or legal representatives have pursued any domestic remedies, and if so, what the outcome has been.

### Urgent Appeal Procedure

Under the Urgent appeal procedure, the Special Rapporteur acts upon receiving credible information suggesting that an individual(s) is/are at risk of torture by or with the involvement of public officials. The urgent appeals procedure is aimed at preventing possible acts of torture. The Special Rapporteur sends a letter to the Minister of Foreign Affairs of the country in question in which he urges the Government to ensure the physical and mental integrity of the person(s) (without taking a position on the facts of the case).

The communication needs to show, in addition to the information to be submitted according to the Model Questionnaire (see above) that there is a risk of torture<sup>194</sup> by providing as much detail as possible, in particular date, time and location when the person(s) concerned were taken into custody and factors that indicate the risk of torture. Such risk factors may relate to:

- the person(s) at risk: He/She has been threatened or tortured before; he/she belongs to a group of persons whose members are commonly tortured when arrested, for example political opponents or members of particular ethnic groups;
- the circumstances of arrest and detention: the person(s) at risk are held incommunicado; they are denied the right to access lawyers; they are held in detention facility where torture is known to be common;
- the potential perpetrator(s): the person(s) at risk has been arrested by a branch of law-enforcement officials, security personnel or the army that is known to use torture.

All communications should include as much supporting documentation as possible and should be sent to:

Special Rapporteur on Torture c/o Office of the High Commissioner for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland, E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org).

### Country Specific Rapporteurs

#### *What are country specific rapporteurs?*

Country specific rapporteurs are appointed by the HRC to report on the human rights situation in the country concerned and to recommend to the HRC what steps should be taken to improve the situation.<sup>195</sup> In practice, country specific rapporteurs have commonly

<sup>194</sup> This includes risk of corporal punishment, means of constraint contrary to international standards, prolonged incommunicado detention, solitary confinement, "torturous" conditions of detention, the denial of medical treatment and adequate nutrition, and the threatened use or excessive use of force by law enforcement officials.

<sup>195</sup> See <http://www.ohchr.org/english/bodies/chr/special/countries.htm> for current mandates.

been appointed for countries whose human rights situation gives serious grounds for concern. The decision to appoint a country-specific rapporteur is ultimately political, depending on sufficient support within the HRC, and can be sensitive because of the symbolic and intrusive nature of such a step.

*How can the country specific rapporteur be used in Sudan?*

In 1993, the HRC appointed a Special Rapporteur on the situation of human rights in Sudan whose mandate was discontinued in 2003. The Rapporteur and the HRC highlighted human rights violations in Sudan throughout the term of his mandate, thereby keeping the spotlight on the need to improve the situation.<sup>196</sup> At the time of writing, there is no Special Rapporteur on the situation of human rights in Sudan that could be used by Sudanese lawyers or NGOs. In future, should such a Special Rapporteur be appointed by the Commission, Sudanese lawyers and NGOs could use such mechanism by sending communications that detail the practice of torture, both in relation to general patterns and individual cases.

## ***International Criminal Law and the International Criminal Court***

The International Criminal Court (ICC), based in The Hague in the Netherlands, is the first criminal court with a potentially worldwide reach.<sup>197</sup> It was established because of the increasing concern that the perpetrators of the worst crimes known to humanity were often escaping justice at the national level, and other forms of criminal justice, such as ad-hoc tribunals, mixed tribunals combining national and international elements or universal jurisdiction, though important, were increasingly seen as inadequate to ensure international criminal justice.<sup>198</sup> The ICC is a treaty-based mechanism, i.e. requiring ratification or accession by State parties of the Rome Statute of the ICC.

The Court has jurisdiction to try the international crimes of genocide, crimes against humanity and war crimes,<sup>199</sup> and may in future have jurisdiction over the crime of aggression. Torture may be a modality of any of these crimes; for example it would constitute a crime against humanity if committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.<sup>200</sup> Individuals have criminal responsibility under the Statute even if they are heads of state.<sup>201</sup> Commanders and other superiors can be held to be responsible for crimes committed by forces under their effective command and control and superior orders will normally not relieve a perpetrator from criminal responsibility.<sup>202</sup>

---

<sup>196</sup> See <http://www.ohchr.org/english/countries/sd/>.

<sup>197</sup> See the Court's homepage at <http://www.icc-cpi.int>.

<sup>198</sup> See Preamble of the Rome Statute of the ICC: "*The State Parties to this Statute, ...Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international co-operation, Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes...*" Background documentation on the establishment of the ICC can be found at <http://www.un.org/law/icc/>.

<sup>199</sup> Articles 5-8 of the ICC statute.

<sup>200</sup> See Article 7 (1) (f) *ibid.* for Crimes against Humanity. Article 7 (2) (c) defines torture as "... the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."

<sup>201</sup> Article 27 *ibid.*

<sup>202</sup> Articles 28 and 33 *ibid.*

The Court is principally competent to try these crimes if: (i) they have been committed on the territory of a State party or by a national of a State party and (ii) they have been committed after the entry into force of the Statute for the State concerned.<sup>203</sup> The Court may exercise its jurisdiction on three grounds: (i) if a State party (either the State where the crimes occurred, as has been the case with the first referrals, or another State party) refers a case to the Prosecutor of the ICC; (ii) the UN Security Council refers a case to the Prosecutor that may relate to crimes committed on the territory or by nationals of a State party or non-State party; or (iii) the Prosecutor initiates an investigation on its own motion on the basis of information on crimes within the jurisdiction of the Court.<sup>204</sup> As a general principle, the Court may only exercise its jurisdiction where a State party is unwilling or unable to do so.<sup>205</sup> Where the case is admissible under the Rome Statute and the Prosecutor decides to bring charges following an investigation, a trial will be held in which the accused are granted due process rights.<sup>206</sup> If found guilty, the accused faces a punishment of imprisonment of up to 30 years or life imprisonment in extremely serious cases and a fine as well as forfeiture of proceeds, property and assets derived from that crime.<sup>207</sup>

### *The role of victims before the ICC*

The Statute of the ICC provides for a progressive regime for victims of crimes within the jurisdiction of the Court who can participate in proceedings in a number of ways. Victims, and NGOs for that matter, can provide the Prosecutor with information about crimes falling within the jurisdiction of the ICC. Equally, victims are given protection during proceedings (the same applies to witnesses); they enjoy a series of participatory rights in the course of proceedings; and have a right to apply for reparation against those found guilty by the Court.<sup>208</sup> According to Article 75 (2): “The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79.” This Trust Fund will work for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.<sup>209</sup>

### *The practice of the ICC to date*

The Rome Statute of the ICC came into force on 1 July 2002. The Prosecutor of the ICC has to date received over 1000 communications regarding alleged crimes, most of which fall outside of the jurisdiction of the ICC. In early 2005, two situations were under investigation, in Uganda and the Democratic Republic of Congo, both of which had been referred to the ICC by the respective State party itself.<sup>210</sup>

<sup>203</sup> Articles 11 and 12 *ibid.*

<sup>204</sup> Article 13 *ibid.*

<sup>205</sup> The so-called complementary principle, see Article 17 (1) (a) and (b) *ibid.*

<sup>206</sup> See Articles 53 *et seq.* on Investigation and Prosecution and Articles 62 *et seq.* on the Trial.

<sup>207</sup> Article 77 *ibid.*

<sup>208</sup> Articles 43 (6), 54 (1) (b), 57 (3) (c), 64 (2) (6) (e), 68, 75, 79, 82 (4) 87 and 93 (1) (j) *ibid.*

<sup>209</sup> Information about developments concerning victims' rights at the ICC can be found in the Victims' Rights Working Group Bulletin, published 3 times a year. The Bulletins, available in Arabic, are located at: [www.vrwg.org](http://www.vrwg.org).

<sup>210</sup> A third situation currently under consideration concerns the Central African Republic. See for further information <http://www.icc-cpi.int/cases.html>.

***How can the ICC be used in the Sudanese context?***

The Court has in principle no jurisdiction with respect to crimes committed in Sudan because Sudan has neither signed nor ratified the Rome Statute of the ICC. There are, however, two exceptions on the ground of which the Court may be competent to try such crimes. Firstly, the Court may try crimes committed by nationals of State parties on Sudanese territory. The conduct of Ugandan troops in Southern Sudan may fall within this category. Victims who wish to alert the Prosecutor of such crimes should include details about the territory where the crimes were allegedly committed, nationality of the perpetrators, age (the Court has no jurisdiction over persons under the age of 18 years) and where possible identity of the perpetrator, and date of the crime (must be after 1 July 2002). The information should specify incidents constituting modalities of a crime, including torture, aspects that point to a systematic and deliberate pattern, e.g. the widespread nature and specific orders to commit such crimes, and the gravity of the crime to enable the Prosecutor to assess the interests of victims. The Prosecutor should also be informed as to whether there have been any domestic criminal proceedings as this factor is important for the admissibility of the case.

Secondly, at the time of writing, the UN Security Council was considering whether to refer a situation to the Prosecutor of the ICC. The International Commission of Inquiry on Darfur has recommended that the ICC be referred the situation of war crimes and crimes against humanity allegedly committed in the course of the Darfur conflict.<sup>211</sup>

Communications containing relevant information about international crimes falling within the jurisdiction of the ICC should be sent to the Prosecutor of the International Criminal Court at:

PO Box 19519, 2500 CM, The Hague, The Netherlands, Fax: +31 (0)70 515 8555  
[Tel: + 31 (0)70 515 8515]

General information about the ICC can be obtained through the court's website: [www.icc-cpi.int](http://www.icc-cpi.int), or by Email: [pio@icc-cpi.int](mailto:pio@icc-cpi.int) or telephone: +31 (0)70 515 8186.

---

<sup>211</sup> Report of the International Commission of Inquiry on Darfur, supra, Section IV, pp.144 et seq.



## **ANNEX 1: LEGAL DOCUMENTATION**

### **UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

#### **PART I**

##### **Article 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

##### **Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

##### **Article 3**

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

##### **Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

### Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
  - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
  - (b) When the alleged offender is a national of that State;
  - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

### Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

### Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

### Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### Article 12

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

#### Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

#### Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

#### Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

### PART II

#### Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

#### Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

#### Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

#### Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

#### Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

**PART III****Article 25**

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

**Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

**Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

**International Covenant on Civil and Political Rights (1966) (Extracts)**

***Article 2***

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

***Article 7***

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**- African Charter on Human and Peoples' Rights (1981) (Extracts)**

Article 5

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.



## Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

## Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

**Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994)**

1. This general comment replaces general comment 7 (the sixteenth session, 1982) reflecting and further developing it.
2. The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".
3. The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.
4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.
5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or

disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. As the Committee has stated in its general comment No. 6 (16), article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.

7. Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.

8. The Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

9. In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.

10. The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.

11. In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

12. It is important for the discouragement of violations under article 7 that the law must prohibit the use of inadmissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

13. States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.

14. Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

15. The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

**- Principles for the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, Submitted to the United Nations High Commissioner for Human Rights, 9 August 1999)**

The following principles represent a consensus among individuals and organizations having expertise in the investigation of torture.

- 1) The purposes of effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment (hereafter torture or other ill treatment) include the following:
  - (i) clarification of the facts and establishment and acknowledgement of individual and state responsibility for victims and their families;
  - (ii) identification of measures needed to prevent recurrence;
  - (iii) facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.
- 2) States shall ensure that complaints and reports of torture shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill treatment may have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.
- 3a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry[\*]. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those allegedly involved in torture to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved and to demand the production of evidence.
- 3b) Alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture shall be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families, as well as those conducting the investigation.
- 4) Alleged victims of torture or ill treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.[ \*]

5b) A written report, made within a reasonable period of time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, either reply to the report of the investigation or indicate the steps to be taken in response.

6a) Medical experts involved in the investigation of torture should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

6b) The medical expert should promptly prepare an accurate written report. The report should include at least the following:

- i. Circumstances of the interview: name of the subject and names and affiliations of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
- ii. History: A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill treatment, the times when torture or ill treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- iii. Physical and psychological examination: A record of all physical and psychological findings on clinical examination including, appropriate diagnostic tests and, where possible, color photographs of all injuries;
- iv. Opinion: An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should also be given;
- v. Authorship: The report should clearly identify those carrying out the examination and should be signed.

6c) The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

**- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia**

Part I: Prohibition of Torture

A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:
  - a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
  - b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;
  - c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
 Ratification of or accession to the Rome Statute establishing the International Criminal Court;

*Promote and Support Co-operation with International Mechanisms*

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.
3. States should co-operate with the United Nations Human Rights Treaties Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

*C. Criminalisation of Torture*

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.
6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.
12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

*D. Non-Refoulement*

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

*E. Combating Impunity*

16. In order to combat impunity States should:
  - a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.

- b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.
- c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.
- d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.
- e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

*F. Complaints and Investigation Procedures*

- 17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.
- 18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.
- 19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).

**Part II: Prevention of Torture**

**A. Basic Procedural Safeguards for those deprived of their liberty**

- 20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:
  - a) The right that a relative or other appropriate third person is notified of the detention;
  - b) The right to an independent medical examination;
  - c) The right of access to a lawyer;
  - d) Notification of the above rights in a language, which the person deprived of their liberty understands.

*B. Safeguards during the Pre-trial process*

States should:

- 21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- 22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.
- 23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.
- 24. Prohibit the use of incommunicado detention.
- 25. Ensure that all detained persons are informed immediately of the reasons for their detention.
- 26. Ensure that all persons arrested are promptly informed of any charges against them.
- 27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.
- 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 taped recordings of interrogations.
- 29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.
- 30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.
- 31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
- 32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

**C. Conditions of Detention**

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners.
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.
36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.
37. Take steps to reduce over-crowding in places of detention by inter alia, encouraging the use of non-custodial sentences for minor crimes.

#### *D. Mechanisms of Oversight*

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.
39. Encourage professional legal and medical bodies, to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.
40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.
41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.
42. Encourage and facilitate visits by NGOs to places of detention.
43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.
44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

#### *D. Training and empowerment*

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.
46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

#### *E. Civil Society Education and Empowerment*

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.
48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

### Part III: Responding to the Needs of Victims

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.
50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:
  - a) Offered appropriate medical care;
  - b) Have access to appropriate social and medical rehabilitation;
  - c) Provided with appropriate levels of compensation and support;
 In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

## **ANNEX 2: SUMMARIES OF CASES DECIDED BY THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS CONCERNING SUDAN**

The **first case**, combining four communications submitted by various NGOs,<sup>212</sup> concerned extra-judicial killings, torture, in particular in the so-called ghost houses, arbitrary arrests and detention, interference with due process rights, and other violations committed in the period 1989-1993. In its admissibility decision, the Commission made an important finding concerning the need to exhaust domestic remedies in cases of serious human rights violations, holding that "[I]n cases of serious and massive [violations], the Commission reads Article 56.5 in the light of its duty to protect human and peoples' rights as provided for by the Charter. Consequently, the Commission does not hold the requirement of exhaustion of domestic remedies to apply literally, especially in cases where it is 'impractical or undesirable' for the complainants or victims to seize the domestic courts. The seriousness of the human rights situation in Sudan and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the Charter, their procedure would probably be 'unduly prolonged'."<sup>213</sup> With regard to the merits of the communications, the Commission found a violation of the right to be free from torture. It stated that "[T]here is substantial evidence produced by the complainants to the effect that torture is practised. All of the alleged acts of physical abuses, if they occurred, constitute violations of Article 5. Additionally, holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned."<sup>214</sup> The Commission elaborated further on Sudan's obligation concerning the prohibition of torture, stating that it "...appreciates the fact that the government's [sic] has brought some officials to trial for torture, but the scale of the government's measures is not commensurate with the magnitude of the abuses. Punishment of torturers is important, but so also are preventive measures such as halting incommunicado detention, effective remedies under a transparent, independent and effective legal system, and ongoing investigations into allegations of torture."<sup>215</sup> In its decision, the Commission recommended "strongly to the Government of Sudan to put an end to these violations [of Articles 2, 4, 5, 6, 7.1 (a), (c), (d), 8, 9, 10 and 26 of the African Charter] in order to abide by its obligations under the African Charter on Human and Peoples' Rights."

In the case of **222/98 and 229/99- Law Office of Suleiman/Sudan**, the complainant alleged torture, arbitrary arrest and violation of the right to inform family members and to be defended by a lawyer of one's choice.<sup>216</sup> The alleged violations related to two incidents involving 30 individuals in total that had taken place in 1998. With regard to admissibility, Sudan argued that the subsequent release of the applicants by way of pardon conditional on a renunciation of claims demonstrated that effective remedies had been available.<sup>217</sup> The complainants argued "...that there are no effective remedies of obtaining redress because the victims were forced to renounce their right to take legal action against the

---

<sup>212</sup> 48/90 Amnesty International vs Sudan; 50/91 Comite Loosli Bachelard vs Sudan; 52/91 Lawyers Committee for Human Rights vs Sudan and 89/93 Association of Members of the Episcopal Conference of East Africa vs Sudan, supra.

<sup>213</sup> Ibid., paras.38 and 39.

<sup>214</sup> Ibid., para.54.

<sup>215</sup> Ibid., para. 56.

<sup>216</sup> 222/98 and 229/99- Law Office of Suleiman/Sudan, in 16<sup>th</sup> Annual Activity Report of the African Commission for Human and Peoples' Rights, 2002-2003, Annex VII, p.39.

<sup>217</sup> Ibid., paras. 34 and 35.



Government."<sup>218</sup> The African Commission rejected Sudan's arguments, holding that it "...feels that the obligations of the States are of an *erga omnes* nature and do not depend on their citizens. In any case, the fact that the victims were released does not amount to compensation for violation. The African Commission has taken note of the changes introduced by the Government of Sudan with a view to more protection of human rights but wishes to point out that these changes have no effect whatsoever on past acts of violation and that, under its mandate of protection, it must make a ruling on the communications."<sup>219</sup> In considering the merits, the Commission found a violation of Article 5. It reiterated its position that the steps taken by the Sudanese Government have been inadequate in the light of the magnitude of the abuses and concluded that "[C]onsidering that the acts of torture have been recognised by the Respondent State, even though it did not specify whether legal action was taken against those who committed them, the African Commission considers that these acts illustrate the Government's violation of the provisions of Article 5 of the African Charter."<sup>220</sup> The Commission also found a violation of Articles 6 and 7 (1) of the African Charter and, in its decision, urged "the Government of Sudan to bring its legislation in conformity with the African Charter" and requested "the Government of Sudan to duly compensate the victims."

The case **236/2000- Curtis Francis Doebbler/Sudan** concerned the conviction and sentencing of eight students in 1999 to fines and lashes for the offence of violating public order (Article 152 of the Criminal Law of 1991) by not being properly dressed or acting in a manner considered being immoral.<sup>221</sup> The punishment was executed. The complainant alleged a violation of Article 5 of the African Charter. With regard to admissibility, local remedies were available but the victims were denied legal representation. In finding the application admissible the Commission held that "[I]n order to exhaust the local remedies within the spirit of Article 56(5) of the Charter, one needs to have access to those remedies but if victims have no legal representation it would be difficult to access domestic remedies."<sup>222</sup> In reaching its decision on the merits, the Commission found that the punishments constitute a violation of Article 5. According to the Commission, this Article "...prohibits not only cruel but also inhuman or degrading treatment. This includes not only action which cause serious physical or psychological suffering, but which humiliate or force the individual against his will or conscience."<sup>223</sup> It went on to elaborate that "[W]hile ultimately whether an act constitutes inhuman or degrading treatment or punishment depends on the circumstances of the case. The African Commission has stated that the prohibition of torture, cruel, inhuman or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses (See Communication 225/98 Huri-Laws/Nigeria)."<sup>224</sup> With regard to the type of punishment complained about, the Commission noted that it was not called upon to interpret Islamic Shari'a Law but solely confined to the application of the African Charter in Sudan's legal system. In this context, the Commission held that "[T]here is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored

---

<sup>218</sup> Ibid., para.36.

<sup>219</sup> Ibid., para.39.

<sup>220</sup> Ibid., para.47.

<sup>221</sup> *236/2000- Curtis Francis Doebbler/Sudan*, in 16<sup>th</sup> Annual Activity Report of the African Commission for Human and Peoples' Rights, 2002-2003, Annex VII, p.39.

<sup>222</sup> Ibid., para.27.

<sup>223</sup> Ibid., para.36.

<sup>224</sup> Ibid., para.37.

torture under the Charter and contrary to the very nature of this human rights treaty."<sup>225</sup> Finally, "[T]he law under which the victims in this communication were punished has been applied to other individuals. This continues despite the government being aware of its clear incompatibility with international human rights law."<sup>226</sup> In finding a violation of Article 5, the Commission requested the Government of Sudan to: "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; and take appropriate measures to ensure compensation of the victims."

In a further case, **228/99 *The Law Office of Ghazi Suleiman/Sudan***, which did not relate to torture, the African Commission held that Sudan had violated the rights to freedom of expression, association, assembly and movement by preventing Mr. Ghazi Suleiman from delivering a lecture to public human rights defenders in January 1999 in Sinnar, Blue Nile State.<sup>227</sup>

---

<sup>225</sup> Ibid. para. 42.

<sup>226</sup> Ibid., para. 44.

<sup>227</sup> *228/99 The Law Office of Ghazi Suleiman/Sudan*, in 16<sup>th</sup> Annual Activity Report of the African Commission for Human and Peoples' Rights, 2002-2003, Annex VII, p.48.

## ANNEX 3: ONLINE RESOURCES AND BOOKS ON THE ISSUE OF TORTURE

### (a) Websites of official bodies

- United Nations = [www.un.org](http://www.un.org) (contains documents issued by the UN Security Council and reports issued by the UN Secretary-General as well as links to general sources on international law)
- UN High Commissioner for Human Rights = [www.ohchr.org](http://www.ohchr.org) (contains a database with Sudan's official reports to treaty bodies, UN documents relating to the human rights situation in Sudan, documents issued by the Commission on Human Rights and its subsidiary body, documents issued by the Special Rapporteur of Torture and general materials on thematic questions relevant to torture)
- International Criminal Court = <http://www.icc-cpi.int/> (contains text of the Rome Statute for the International Criminal Court and relevant information about the Court and current developments, including status of pending cases)
- Committee for the Prevention of Torture (Europe) = [www.cpt.coe.int](http://www.cpt.coe.int)
- European Court of Human Rights = [www.echr.coe.int](http://www.echr.coe.int)
- Inter-American Commission of Human Rights <http://www.cidh.oas.org/DefaultE.htm>
- Inter-American Court of Human Rights = <http://www.corteidh.or.cr/stars.html>
- African Commission on Human and Peoples' Rights = <http://www.achpr.org/> (decisions in individual cases can be found in the annual Activity Reports of the Commission)

### (b) Websites of CINAT (International Coalition against Torture) Members

- **CINAT** = [www.cinat.org](http://www.cinat.org)
- **IRCT** = [www.irct.org](http://www.irct.org)
- **OMCT** = [www.omct.org](http://www.omct.org)
- **APT** = [www.apr.ch](http://www.apr.ch)
- **International Federation of ACAT** = [www.fiacat.org](http://www.fiacat.org)
- **Amnesty International** = [www.amnesty.org](http://www.amnesty.org)
- **International Commission of Jurists** = [www.icj.org](http://www.icj.org)
- **REDRESS** = [www.redress.org](http://www.redress.org)

### (c) Online resources

#### - International

- **REDRESS**, *Reparation, A Sourcebook for Victims of Torture and other Violations of Human Rights and International Humanitarian Law*, [www.redress.org/publications/SourceBook.pdf](http://www.redress.org/publications/SourceBook.pdf)
- **REDRESS**, *Taking Complaints of Torture Seriously, Rights of victims and Responsibilities of Authorities*, [www.redress.org/publications/PoliceComplaints.pdf](http://www.redress.org/publications/PoliceComplaints.pdf)
- **REDRESS**, *Amicus Brief on the Legality of Amnesties under International Law, submitted to the Special Court of Sierra Leone* <http://www.redress.org/casework/AmicusCuriaeBrief-SCSL1.pdf>
- **Human Rights Centre, University of Essex**, *The Torture Reporting Handbook*, [www.essex.ac.uk/torturehandbook/](http://www.essex.ac.uk/torturehandbook/)
- **Human Rights Centre, University of Essex**, *Combating Torture, A Manual for Judges and Prosecutors*, [www.essex.ac.uk/combatingtorturehandbook/](http://www.essex.ac.uk/combatingtorturehandbook/)
- **Amnesty International**, *Prevention of Torture At Home, A Guide to the Establishment of National Preventive Mechanisms*, <http://web.amnesty.org/library/Index/ENGIOR510042004?open&of=ENG-2F4>
- **Amnesty International**, *Combating Torture: A Manual for Action*, <http://web.amnesty.org/pages/stoptorture-manual-index-eng>

- **Inter-American Institute of Human Rights and APT, *Optional Protocol to the UN Convention against Torture, A Manual for Prevention*, <http://www.apt.ch/pub/library/OPCAT%20Manual.pdf>**
- **APT, *Monitoring Places of Detention, A practical guide*, <http://www.apt.ch/pub/library/Monitoring%20Guide%20EN.pdf>**
- **Medical Foundation, *Rape as a method of torture*, <http://www.torturecare.org.uk/publications/reportRape.htm>**
- **Human Rights Watch, *Torture and Abuse*, <http://www.hrw.org/doc/?t=torture>**
- **Coalition for the International Criminal Court (various) = [www.iccnw.org](http://www.iccnw.org)**
- **Victims' Rights Working Group (various) = [www.vrwg.org](http://www.vrwg.org)**
- **Interights, in particular database on International Case Law and Commonwealth Case Law = <http://www.interights.org>**
- **Human Rights Internet = <http://www.hri.ca>**

### **- Regional (Information and technical assistance)**

- **Centre for Human Rights, University of Pretoria, *African Human Rights Law Reports, 2000*, [http://www.chr.up.ac.za/centre\\_publications/ahrlr/ahrlr-text.pdf](http://www.chr.up.ac.za/centre_publications/ahrlr/ahrlr-text.pdf)**
- **Institute for Human Rights and Development in Africa [www.africaninstitute.org](http://www.africaninstitute.org);**
- **International Commission of Jurists (Kenya & Swedish Sections); <http://www.icj-kenya.org>;**
- **Interights; Africa Programme, [www.interights.org](http://www.interights.org)**

### **- Sudan specific**

- **United Nations, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General pursuant to Security Council Resolution 1564 of 18 September 2004, <http://www.ohchr.org/english/docs/darfurreport.doc>**
- **United Nations, Various documents on the human rights situation in Sudan, including reports by the Special Rapporteur on Human Rights in Sudan, <http://www.ohchr.org/english/countries/sd/>**
- **SOAT, together with fidh (International Federation for Human Rights), *Alternative Report to Sudan's periodic report before the African Commission of Human and Peoples' Rights, Sudan: One step forward, many steps back*, <http://www.soat.sudan.org/reports/Alternative%20Report%20to%20the%20African%20Commission-%20May%202004.pdf>; SOAT's newsletters provide for constant updates about torture practice and relevant developments, [www.soat.sudan.org](http://www.soat.sudan.org)**
- **Justice Africa, *The Phoenix State, Civil Society and the Future of Sudan* <http://www.justiceafrica.org/phoenix.html> (Summary only)**
- **REDRESS, *Reparation for Torture, A Survey of Law and Practice in Thirty Selected Countries: Sudan*, <http://www.redress.org/studies/Sudan.pdf>**
- **Amnesty International, *Sudan, Who will answer for the crimes*, <http://web.amnesty.org/library/Index/ENGAFR540062005?open&of=ENG-SDN>**
- **Human Rights Watch/Africa, *Behind the Red Line, Political Repression in Sudan*, <http://hrw.org/reports/1996/Sudan.htm>**

### **(e) Selected Literature**

#### **- On torture and the right to reparation under international law**

- Chris Ingelse, *The UN Committee against Torture: An Assessment*, The Hague/London/Boston: Kluwer Law International, 2001

- Ahcene Boulesbaa, *The U.N. Convention on Torture and the Prospects for Enforcement*, The Hague: Martinus Nijhoff, 1999
- J. Herman Burgers and Hans Danelius, *The United Nations Convention against torture*, Dordrecht/Boston/London, 1988
- Diane Orentlicher, *Independent Study on Best Practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity*, UN Doc. E/CN.4/2004/88, 27 February 2004
- Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law, Beyond the Nuremberg Legacy*, 2<sup>nd</sup> Edition, Oxford University Press, 2001
- Nigel Rodley, *The Treatment of Prisoners under International Law*, Second Edition, Clarendon Press, 1999
- Naomi Roht-Arriaza (ed.), *Impunity and Human Rights in International Law and Practice*, Oxford University Press, 1995
- Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, 1999 (second edition due in 2005)

- On Sudan

- Abdel Salam and Alex de Waal (eds.), *The Phoenix State, Civil Society and the Future of Sudan*, Justice Africa/Committee of the Civil Project, 2001
- Dr. Amin Mekki Medani, *Crimes against international humanitarian law in Sudan: 1989-2000*, 2001.