

TORTURE IN SUDAN: JUSTICE AND PREVENTION
Priorities for change following the end of al-Bashir regime
25 April 2019

INTRODUCTION

1. This briefing identifies priority areas for reform on torture in Sudan following the recent removal of Omar al-Bashir as President. It focuses on reparations for victims of torture, ensuring individual accountability and preventing torture in the future.

CURRENT SITUATION

2. The situation in Sudan remains in flux following President al-Bashir's removal on 11 April 2019. The military council, now led by General Burhan, has promised to dismantle al-Bashir's regime, release detained protesters, and restructure the National Intelligence and Security Services (NISS). The Director of NISS, Salah Gosh, has resigned.
3. The military council has pledged respect for human rights, accountability for corruption, and justice for killings of protesters and other human rights violations, and has reportedly met with political parties and groups behind the protests. However, protesters remain on the streets calling for justice, accountability and for the immediate installation an independent civilian government.

TORTURE IN SUDAN

4. The prevalence of torture in Sudan is a longstanding concern. Human rights defenders, women, political activists, lawyers, journalists, trade unionists, students and other groups have been systematically targeted.
5. The NISS and Sudanese Military Intelligence are the primary institutions responsible for torture and ill-treatment cases in detention. Security agents have been vested with wide-ranging immunities, and have carried out a range of human rights violations with impunity. Sudan's National Security Act 2010 provides a legal foundation giving the NISS extensive powers to arrest, arbitrarily detain, and interrogates perceived political opponents and those with perceived links to rebel groups, in order to silence opposition. Torture is commonly practised by police and prison staff to extract confessions or to extort money. Police in particular are implicated in the enforcement of public order laws, and numerous reports of ill-treatment, torture and sexual violence of female prisoners in police stations exist. Members of the army and paramilitary forces have also been extensively implicated in torture in the course of military campaigns in Southern Sudan, Kordofan, the Blue Nile region and Darfur.
6. Sudan is a party to several relevant international treaties prohibiting torture, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights. These treaties are also an integral part of Sudan's Bill of Rights. Sudan is therefore obliged to take measures aimed at preventing torture, responding to allegations of torture by means of prompt, impartial and effective investigations and prosecutions, and providing effective remedies and reparation. However, Sudan has not ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
7. The African Commission on Human and Peoples' Rights (African Commission) has decided seven cases against Sudan involving torture or ill-treatment, with at least ten cases outstanding. In each of these cases the African Commission has found sufficient evidence of torture and other ill-treatment, and thereby violations of article 5 of the African Charter. The African Commission

has acknowledged that Sudan's legal framework is inadequate. It has repeatedly recommended that Sudan should compensate victims, investigate and prosecute those responsible of violations, and make judicial and legislative reforms in conformity with the African Charter. Sudan has not implemented any of the African Commission's decisions, or indicated what steps it will take to implement the decisions.

Remedies and reparation for victims of torture

8. Following the removal of al-Bashir as President there is likely to be a large number of victims of torture seeking reparation for their treatment. To date, there is an almost complete absence of cases that have resulted in compensation or other forms of reparation being awarded to victims of torture. The law does not provide for an explicit right to reparation for torture. Immunities, short statutes of limitation and lack of adequate protection for victims and witnesses, in combination with systemic shortcomings that undermine effective access to justice, render existing remedies ineffective, a fact recognised by the African Commission in its jurisprudence. There are no effective national human rights institutions or administrative mechanisms providing at least some form of reparation for torture survivors.

Accountability for violations

9. Efforts should be made to hold to account all those who have been implicated in torture, killings, arbitrary detention and other human rights violations. There should be full cooperation with the International Criminal Court (ICC) to fulfil existing arrest warrants, including for al-Bashir.
10. There has been almost complete impunity for torture, including acts of rape and sexual violence, in Sudan. A series of interrelated factors contribute to this impunity: lack of a criminal offence of torture that is in line with international standards; immunities for officials; brief statutes of limitations; lack of victim and witness protection; and the absence of a system aimed at holding officials accountable for wrongdoing, i.e. by means of prompt, impartial and effective investigations and prosecutions. The granting of immunity has been the most visible means of shielding alleged perpetrators from accountability. It reflects a system dominated by the executive at the expense of effective oversight, be it judicial or otherwise.

Preventing torture in the future

11. Sudan should undertake institutional reforms to address the practical factors that currently allow torture to take place. These include an absence of custodial safeguards, such as access to lawyers and doctors, and the existence of NISS detention centres and NISS-controlled sections of prisons outside the normal custodial system, where detainees are frequently held incommunicado. Detention facilities also require increased resources to reduce overcrowding and improve poor conditions.

RECOMMENDATIONS

12. Sudan should be urged to take a series of measures to prevent further torture, and to ensure that the survivors of torture are able to obtain justice and reparations:
 - a) Implement constitutional and legislative reforms to bring Sudan in line with its obligations under international law. These should include prohibiting torture as defined by international standards in the Sudanese constitution and providing for an explicit right to reparation for torture.
 - b) Remove barriers to accountability for torture by repealing immunity laws, removing statutes of limitation for the offence of torture, and providing protection for victims, witnesses and human rights defenders.
 - c) Conduct prompt and impartial criminal investigations into the individuals responsible for torture in Sudan, including former Directors of NISS, Salah Gosh and Mohamed Atta.

- d) Implement institutional reforms to prevent torture in future, including abolishing NISS detention centres and NISS-controlled sections of prisons, improving conditions of detention and ensuring access to lawyers and doctors for detained individuals.
 - e) Begin a transitional justice process to provide reparations to the survivors of torture, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
 - f) Ratify the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol.
13. The African Commission should hold a Rule 112 hearing on implementation of the seven decided cases involving torture and ill-treatment by Sudan at the 65th Ordinary Session in Banjul, Gambia.