



David Rose/Panos Pictures. Protesters crowded a bridge in Khartoum, Sudan, after the fall of President Omar al-Bashir.

A WAY FORWARD?

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

Report Summary

Sudan, under the regime of former President Al-Bashir, heavily relied on the use of torture to silence its critics and terrorize communities. Over the years, national, regional and international actors have identified several laws and policies that allowed for torture to continue and perpetrators to operate with impunity. The African Commission on Human and Peoples' Rights in its decisions has repeatedly found that the Sudanese government violated Article 5 of the African Charter on Human and Peoples' Rights, a prohibition of all forms of torture, cruel, inhuman and degrading punishment and treatment. The Commission urged the government to undertake legislative reforms to comply with its obligations under international and regional law and provide reparations to the victims. However, until today seven decisions have yet to be implemented.

The removal of President Al-Bashir in April 2019 and the installation of a new government following a power sharing agreement between the Transitional Military Council and the Forces for Freedom and Change in August 2019 offers an opportunity to introduce and implement changes necessary to end the practice of torture in Sudan, punish the perpetrators and provide reparations for the victims.

Over the last three decades, security forces, militias and police, the agents of the ruling National Congress Party (formerly the National Islamic Front), practised the most brutal and diverse forms of torture, including routine beating of detainees, electric shocks, rape and threats of rape, sleep deprivations and refusal of food and medical assistance. The list of victims of torture in Sudan is extensive and includes students, human rights defenders and political ac-

tivists, trade unionists, professionals, journalists, minority ethnic groups and women. The system of immunities has ensured that anyone who committed torture remains above the law, and victims have no recourse to pursue justice and obtain reparations for their violations.

Lack of accountability for violations and the non-existent system of remedies are violations of Sudan's obligations under international law. Sudan is a party to several human rights treaties at the regional and international level that prohibit the use of torture, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Further, the prohibition of torture is recognized as a *jus cogens* norm under customary international law allowing no derogation from such practice.

To bring Sudan in line with its international obligations and the implementation of pending decisions of the African Commission, domestic law and policy reforms are essential. The new Constitutional Declaration of 2019 paves the way for institutional, structural and legislative reforms. However, the Declaration, while setting out an ambitious agenda for reforms and ensuring certain rights and safeguards to prevent human rights abuses are in place, leaves many issues unaddressed or uncertain.

Given the magnitude of the task to reform a regime that engaged in human rights violations for decades with impunity, it is important to set out priorities and achievable benchmarks to ensure progress and

justice. The priorities can be divided into adopting international conventions regulating prohibition of torture, amending domestic law to comply with international law obligations and judicial, structural, police and security reforms.

Sudan must sign on and ratify international and regional instruments that regulate the prohibition of torture. The domestic law should be amended to ensure that the definition of torture is in compliance with Article 1 of the International Convention Against Torture and Cruel and Inhuman, Degrading Treatment or Punishment. Currently the punishment for torture is minimal or non-existent. The law should ensure that offences of torture are punishable by appropriate penalties which reflect the grave nature of the crime. To avoid any future instances of torture, the law must provide for basis due process rights of detained individuals. These include access to legal representation from the time of the arrest, ensure that a detained person can contact his or her family or employer without requiring prior authorizations as well requiring a medical examination within 24 hours of detention to avoid instances of torture. Justice cannot be achieved if the immunity laws that have prevented families and victims of torture from seeking justice remain in place.

Finally, any reforms must include effective institutional reforms. The judiciary and entities tasked with monitoring and investigation of human rights violations must be independent from the executive and victims must be able to seek reparations.



SUMMARY OF RECOMMENDATIONS

David Rose/Panos Pictures. Protesters pass graffiti calling for 'justice' in Khartoum.

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

1. Sudan must ratify the following treaties:

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

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

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

a. The Constitution of Sudan:

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

b. The Criminal Act 1991:

- Amend Article 115 clause 2 to define torture in line with the definition under the UNCAT;
- Provide proportional punishments for torture and ill-treatment, including in general

provisions under the Penal Code (Articles 138, 139, 142, 143, 144, 164 and 165).

- Amend Article 115 to remove the statute of limitations to initiate a criminal complaint in cases of torture.
- c. The Criminal Procedure Act, 1991:
- Amend Articles 77 and 79(2) to ensure that the judicial review is conducted by a judge.
 - Include the standards of review under the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
 - Amend Article 83(3) to specify the right to access legal representation at the initial stage of interrogation, access to legal aid if the arrested person cannot afford a lawyer and the right to be informed of this at the time of arrest.
 - Amend Article 83(5) to remove the requirement of approval of the Prosecution Attorney or the Court before informing family of the arrest, and to require that the arrested person be informed of this right.
 - Include a mandatory medical examination of the arrested person within 24 hours of the arrest.
 - Include procedures for recording interrogations, either written or in taped audio/video recordings.
- d. Police Forces Act 2008:
- Delete clause 2 of Article 45 in order to remove the immunities provided to members of the police forces.
- e. Armed Forces Act 2007:
- Delete clause 2 of Article 42 in order to remove the immunities provided to members of the military.

- f. National Security Act 2010:
- Delete clauses 1, 3, 4, 5 and 6 of Article 52 in order to remove the immunities provided to members of the NISS.
 - Amend Article 50 to require that the arrested person be brought before an independent magistrate within 24 hours of arrest.
 - Amend Article 51 Clause 2 to remove any conditions on the right of the arrested person to communicate with the family or an advocate.
 - Include a mandatory medical examination within 24 hours of arrest.
- g. Evidence Act 1994:
- Amend Article 10 to clearly specify that confessions extracted under torture are inadmissible.

4. Finally, Sudan should conduct the following institutional reforms:
- Ensure the independence of the judiciary.
 - Ensure the independence of the National Human Rights Commission.
 - Spread awareness of the right to complain against violations by state officials.
 - Provide legal representation to those who cannot afford the services of a lawyer.
 - Develop a comprehensive programme of protection for victims and witnesses.
 - Adopt all other legal and policy reforms needed to realize the right to reparations for torture survivors.

SUMMARY OF THE AFRICAN COMMISSION’S CASES

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

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

1 *Amnesty International and Others v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91 & 89/93 (1999)

David Rose/Panos Pictures. Two women looked a displayed of photographs of people killed during the protests.



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

Facts	29 civilians accused of terrorism were arrested, detained and subjected to torture.
Articles violated	5 (torture), 6 (liberty) and 7(1) (fair hearing).
Legislative and Judicial reforms	... “to bring its legislation in conformity with the African Charter” ²
Compensation	... “to duly compensate the victims” ³

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

Facts	A Sudanese lawyer and activist prohibited from giving a lecture and subjected to threats, arrests and attacks several times.
Articles violated	6 (liberty), 9 (freedom of expression), 10 (freedom of association), 11 (freedom of assembly) and 12 (freedom of movement).
Legislative and Judicial reforms	“Amend its existing laws to provide <i>de jure</i> protection of the human rights to freedom of expression, assembly, association and movement.” ⁴

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

Facts	Eight student women convicted and sentenced to fines or lashes because they were not properly dressed or acting in a manner considered being immoral.
Articles violated	5 (torture).
Legislative and Judicial reforms	“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...” ⁵
Compensation	“Take appropriate measures to ensure compensation of the victims.” ⁶

2 Law Office of Ghazi Suleiman / Sudan, Comm. Nos. 222/98-229/99 (2)
3 Ibid.
4 Law Offices of Ghazi Suleiman / Sudan, Comm. No. 228/99 (2003)
5 Curtis Francis Doebbler/Sudan, Comm. No. 236/00 (2003)
6 Ibid.

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

Facts	Massive and systematic human rights violations including torture carried out by security and paramilitary forces against the indigenous Black African tribes in Darfur.
Articles violated	4(right to life), 5 (torture), 6 (liberty), 7 (fair trial), 12(1) (freedom of movement), 14 (right to property), 16 (health), 18(1) (family) and 22 (right to development).
Legislative and Judicial reforms	“undertake major reforms of its legislative and judicial framework in order to handle cases of serious and massive human rights violations” ⁷ “desist from adopting amnesty laws for perpetrators of human rights abuses” ⁸
Duty to investigate and punish	... “conduct effective official investigations into the abuses, committed by members of military forces, i.e. ground and air forces, armed groups and the Janjaweed militia for their role in the Darfur” ⁹ “take steps to prosecute those responsible for the human rights violations, including murder, rape, arson and destruction of property” ¹⁰
Compensation	“to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation” ¹¹
Other	“rehabilitate economic and social infrastructure, such as education, health, water, and agricultural services, in the Darfur provinces in order to provide conditions for return in safety and dignity for the IDPs and Refugees” ¹² “establish a National Reconciliation Forum to address the long-term sources of conflict, equitable allocation of national resources to the various provinces, including affirmative action for Darfur, resolve issues of land, grazing and water rights, including destocking of livestock” ¹³ ... “consolidate and finalise pending Peace Agreements.” ¹⁴

7 Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan, Comm. Nos. 279/03-296/05 (2009), para. 229(2)
8 Ibid, para. 229(7)
9 Ibid, para. 229(1)
10 Ibid, para. 229(3)
11 Ibid, para. 229(4)
12 Ibid, para. 229(5)
13 Ibid, para. 229(6)
14 Ibid, para. 229(8)

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

Facts	88 IDPs from Darfur arbitrary arrested, held in incommunicado detention during 12 months and subjected to torture after the police tried to relocate families in the IDPs camp.
Articles violated	1 (recognition of rights in the charter), 5 (torture), 6 (liberty) and 7(1) (c) (d) (right to defence and tried within a reasonable time).
Legislative and Judicial reforms	"Where appropriate, amend the legislation incompatible with the Charter" ¹⁵
Duty to investigate and punish	"Initiate an effective and impartial investigation into the circumstances of arrest and detention and the subsequent treatment of the Complainants" ¹⁶
Compensation	"pay adequate compensation to the victims named in the present Communication in accordance with the domestic law for the rights violated" ¹⁷
Other	"train security officers on relevant standards concerning adherence to custodial safeguards and the prohibition of torture" ¹⁸

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

Facts	Three human rights defenders arrested and detained because accused of spying on behalf of the ICC, and who left the country thereafter.
Articles violated	1(recognition of rights in the charter), 5 (torture), 6 (liberty), 9 (freedom of expression), 10 (freedom of association), 12 (freedom of movement), 15 (work under equitable conditions) and 16 (health).
Duty to investigate and punish	"Investigate and prosecute all those persons who participated in the illegal incarceration and torture of the Complainants" ¹⁹
Compensation	"Pay adequate compensation to the Complainants named in the present Communication in accordance with the domestic law of The Sudan for the rights violated" ²⁰
Other	... "Reopen and unfreeze the bank accounts of [the victim]" ²¹

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

16 Ibid, para. 93(ii)(b)

17 Ibid, para. 93(ii)(a)

18 Ibid, para. 93(ii)(d)

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

20 Ibid

21 Ibid