

Briefing
Paper

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Torture-tainted trials in Sudan

Examining the “exclusionary rule” under international and Sudanese law



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Introduction

On 15 January 2022, 17-year-old Mohamad Adam (better known as “Tupac”) was arrested from a Khartoum-area hospital after sustaining injuries during a protest on 13 January 2022. Along with three other young men – Mohamed al-Fateh, Ahmed al-Fateh, and Musab al-Sherif, all of whom were arrested in a similar fashion – Tupac was charged with the killing of a police brigadier general during the same protest.¹

In a 24 January 2022 statement on Facebook, the Police Press described the events of 13 January 2022 and subsequent investigation conducted by the Central Investigation Department,² stating that police forces “arrest[ed] a number of subjects and subject[ed] them to investigation” after “pursuing them and reaching their hideout.”³ The statement noted that “defendants confessed to committing the crime, and all necessary technical measures were taken,” including a “court confession.”⁴

According to statements by Adam’s defence lawyers, while held in incommunicado detention by security forces, he and other defendants were subjected to torture and other forms of ill-treatment, and all of their confessions were extracted by torture. Accordingly, in the first session of the trial, which opened on 29 May 2022, the defence lawyers in the case requested a medical examination to prove the issue of torture. At the time, the presiding judge granted the defence team’s request, a decision subsequently upheld by Sudan’s High Court.⁵

At the time of writing, the status and outcomes of any medical examination remain unknown, and REDRESS is not involved in the ongoing legal proceedings. However, this case—and others progressing through the Sudanese legal system at the time of writing, including that of several young men accused of killing a Sudan Armed Forces Military Intelligence officer⁶—are consistent with a long history of the use of torture for the

1 One other defendant has also reportedly been charged in an associated case with “inciting violence” against security forces. Associated charges against two others have either been dropped or are being considered separately; the status of these cases is unknown.

2 A police branch specialising in investigating major crimes (sometimes known as the Federal Investigation Police).

3 Facebook, Police Press Office, 25 January 2022, available at: <https://www.facebook.com/s.policepressoffice/posts/1069027586997878>.

4 *Ibid.*

5 Dabanga, “Sudanese High Court rejects prosecution appeal in policeman murder trial,” 31 July 2022, available at: <https://www.dabangasudan.org/en/all-news/article/sudanese-high-court-rejects-prosecution-s-appeal-in-favour-of-protesters-defence-in-policeman-murder-trial>.

6 Military Intelligence Sergeant Mirghani al-Jaili was allegedly found dead on 8 March 2022 following protests near the presidential palace in Khartoum. Eight individuals belonging to the Sudanese protest movement were initially arrested following al-Jaili’s death. Four were released on bail several months later following a hunger strike. Sudan Tribune, “Sudanese army accuses protesters of killing a soldier,” 13 June 2022, available at: <https://sudantribune.com/article256192/>. See also Sudan Akhbar, “The release of 4 detainees accused of killing an intelligence office near the Republican Palace”, 27 June 2022, available at: <https://www.sudanakhbar.com/1185327>.

purpose of extracting confessions by Sudan’s security forces,⁷ and highlight the significant work needed in Sudan to ensure the absolute prohibition of torture and other forms of ill-treatment.

In particular, above and beyond the urgent need for reforms to curtail the use of torture in custodial settings, these and other cases demonstrate the need for legal reforms prohibiting the use of information tainted by torture in judicial proceedings.⁸ As the former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted in a report to the Human Rights Council, such an exclusionary rule is “fundamental for upholding the prohibition of torture and other . . . ill-treatment by providing a disincentive to carry out such acts.”⁹ However, Sudanese law does not prohibit the use of “confessions” extracted under torture and other evidence derived from torture as evidence in trials.

Accordingly, this briefing sets out the relevant international law concerning the exclusionary rule, Sudan’s legal framework vis-à-vis torture-tainted evidence, and other obstacles to justice for victims of torture given current Sudanese policies and practice. This briefing also offers several concrete areas for reform, including in particular legislative amendments to Sudan’s Evidence Act 1993, the Criminal Procedure Act 1991, and the Criminal Law Act 1991.

7 See, for e.g., Amnesty International, “Sudan: Agents of Fear: The National Security Service in Sudan,” 19 July 2010, available at: <https://www.amnesty.org/en/documents/afr54/010/2010/en/> (reporting that “[b]etween May 2008 and June 2010, Amnesty International recorded more than 120 death sentences that were handed out during unfair trials that relied partly or mainly on ‘confessions’ reportedly extracted under torture”). See also Human Rights Committee, “Consideration of reports submitted by State parties under article 40 of the Covenant,” UN Doc CCPR/C/SDN/CO/3/CRP.1, 26 July 2006, para 25; African Centre for Justice and Peace Studies, “Sudan: On the International Day in Support of Torture Survivors, End Torture and Repeal Enabling Legislation,” 26 June 2015, available at: <https://www.acjps.org/sudan-on-the-international-day-in-support-of-torture-survivors-end-torture-and-repeal-enabling-legislation/>; ACHPR, *Abdel Hadi v. Sudan*, Communication 368/09, 4 June 2014, para 73 (finding that the Complainants in the case were subjected to “treatment inflicted by security forces acting in their official capacity with the aim of extracting confessions from the victims and as punishment for the killing of police men at the Soba Aradi IDP camp”).

8 Sudanese authorities have historically used torture and other forms of ill-treatment to obtain confessions, particularly in cases of political significance. For example, in 2006, nine Fur men living in South Khartoum allegedly confessed under torture to the killing of journalist Mohamed Taha Mohamed Ahmed. See Sudan Tribune, “Govt tortured accused in Sudan murder trial-defence,” 4 July 2007, available at: <https://sudantribune.com/article22947/>.

9 Juan E. Méndez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” (10 April 2014), para 17.

Recommendations

To a future legitimate and democratically elected Sudanese government:

- Amend the Criminal Law Act 1991 and Criminal Procedure Act 1991 to:
 - Make torture a distinct criminal offence, drafted not as a “principle to be regarded” but as a specific and separate crime;
 - Ensure that torture is prohibited under all circumstances, including during declared states of emergency and situations of armed conflict;
 - Prevent the defence of “military or superior orders” as a justification for torture.
- Amend the Evidence Act 1993 (as last amended in 1994) (including in particular articles 10(1) and 20) and the Criminal Procedure Act 1991 to codify an explicit exclusionary rule which:
 - Provides for the exclusion of evidence or statements obtained through torture or other ill-treatment of the defendant or a third party (e.g., a witness) at any stage of any proceedings;
 - Excludes documentary or other evidence obtained as a result of torture or other forms of ill-treatment, regardless of whether such evidence has been corroborated or is not the only decisive evidence in the case;
 - Ensures that, absent audio-visual evidence or corroborating testimony from a lawyer present during an interrogation, a court cannot rely solely on testimony from the original investigating officer(s) to demonstrate that evidence has not been obtained by torture.
- Amend the Criminal Procedure Act 1991 (including in particular articles 79, 83, and 139) and any other related rules of procedure to ensure that:
 - A defendant need only provide a credible complaint (or “plausible reason”) as to why evidence in question was obtained through torture or other ill-treatment;
 - Once a defendant has provided a credible complaint (or “plausible reason”) as to why evidence in question was obtained through torture or other ill-treatment, the burden of proof shifts to the government to prove that the evidence was not obtained through torture or ill-treatment;
 - There is a duty to investigate allegations of torture, and any prosecutorial decision to initiate an investigation is non-discretionary;
 - Any investigation regarding allegations of torture is carried out by a prosecutor and/or

- independent investigator other than the one in charge of the initial criminal investigation;
 - Arrested individuals promptly receive access to independent legal assistance at the interrogation stage;
 - An arrested person’s right to inform a third party or family member as soon as possible upon arrest (e.g., no longer than 3 hours after arrest) is guaranteed and not subject to prosecutorial or judicial approval;
 - Any person arrested and detained on a criminal charge is brought before a judge within 48 hours;
 - Any person arrested and detained is guaranteed access to an independent medical examination.
- Amend the Armed Forces Act 2007, Police Forces Act 2008, National Security Act 2010, and other relevant laws to abolish immunities for acts of torture and other acts conducted during official business.
 - Organise comprehensive and long-term training of all justice sector actors (ie, judges, lawyers, and prosecutors) and medical professionals to ensure that they are fully aware of the relevant legislation and standards surrounding the absolute prohibition of torture and ill-treatment and the exclusionary rule.

To the international community:

- Support a future democratically elected Sudanese government to conduct legal reforms to bring their domestic legal system in compliance with international standards in relation to the absolute prohibition of torture and ill-treatment and to the exclusionary rule.
- Support advocacy initiatives to raise awareness around the use of torture, and the need for legal reform to prohibit torture and ill-treatment in Sudan.
- Fund and provide technical support to any future legitimate Sudanese authorities and NGOs through targeted training to:
 - Justice sector professionals on relevant domestic and international legal standards, including to lawyers, prosecutors and judges on the duty to refuse to consider evidence reasonably believed to be obtained through torture or ill-treatment, and the requirement to inform the relevant court about the existence of such evidence;
 - Law enforcement and other security actors on the absolute prohibition of torture and other forms of ill-treatment;
 - Law enforcement and other security actors on “investigative interviewing” techniques as an alternative to coercive interrogations, in compliance with the Principles on Effective Interviewing for Investigations and Information Gathering (the “Mendez Principles”);
 - Clinical practitioners on conducting medico-legal examinations to corroborate allegations of torture and other forms of ill-treatment, in compliance with the revised Istanbul Protocol.

The prohibition of torture and other ill-treatment

In August 2021, Sudan ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).¹⁰ In ratifying the UNCAT, as well as several other international treaties which prohibit torture and ill-treatment (such as the International Covenant on Civil and Political Rights), Sudan has made a binding commitment to prohibit, prevent, and punish acts of torture and ill-treatment.¹¹

As part of this commitment, which extends to preventing torture both through acts or omissions, Sudan must not take part in, adopt, or recognise acts that breach the absolute prohibition on torture.¹² This includes ensuring that: acts of torture are offences under national law and are punishable by an appropriate penalty which takes into account the grave nature of the offence;¹³ no amnesties are provided for torture and other serious international crimes;¹⁴ and that law enforcement personnel, security services, public officials or others involved in custody, interrogation or detention are properly trained on the prohibition against torture and ill-treatment.¹⁵

Legal professionals, including public prosecutors and courts, also play a key role in prohibiting torture and ill-treatment, particularly by implementing and enforcing rules which prevent the admission of evidence extracted by torture in any proceedings. Article 15 of the UNCAT requires that: “[e]ach 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.”¹⁶ This is known as the “exclusionary rule.”

10 See REDRESS, “In Historic Move, Sudan Ratifies Key International Treaty on Torture, Joining 171 Other States,” 12 August 2021, available at: <https://redress.org/news/in-historic-move-sudan-ratifies-key-international-treaty-%20on-torture-joining-171-other-states/>.

11 Torture is defined in article 1 of the UNCAT as: “[a]ny 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.”

12 REDRESS and Fair Trials, “Tainted by Torture: Examining the Use of Torture Evidence,” May 2018, p 40, available at: <https://redress.org/publication/tainted-by-torture-examining-the-use-of-torture-evidence/>; Juan E. Méndez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” (10 April 2014), p 12.

13 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. 39/46 (10 Dec. 1984), art 4.

14 UNCAT, General Comment No. 2: Implementation of Article 2, 24 January 2008, para 5.

15 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. 39/46 (10 Dec. 1984), art 10(1).

16 *Ibid.*, art 15.

Understanding the exclusionary rule

As REDRESS and other organisations have previously reported,¹⁷ the “exclusion of evidence obtained by torture and other ill-treatment serves as an important safeguard against torture, including by disincentivising what is identified by [a former Special Rapporteur on torture] as the most frequent purpose of such violation: to extract a confession.”¹⁸ The exclusionary rule also safeguards due process and other fair trial rights, contributing to the “effectiveness, integrity and public reliability of criminal justice systems by ensuring court proceedings are based on reliable evidence, preventing miscarriages of justice and strengthening the rule-of-law-based institutions.”¹⁹

The UN Human Rights Committee has noted that “it is important for the discouragement of violations under article 7 [of the ICCPR, prohibiting torture and other ill-treatment] that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.”²⁰ The Human Rights Committee further emphasised that “[t]he purpose of interviewing is obtain accurate and reliable information in order to elicit the truth about matters under investigation” and that the use of torture or other cruel, inhuman or degrading treatment or punishment is at odds with achieving that goal.²¹

Consequently, States must ensure that their domes-

Where is the exclusionary rule found in international law?

- UN Declaration against Torture (Article 12)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 15)
- Inter-American Convention to Prevent and Punish Torture (Article 10)
- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (“Robben Island Guidelines”) (Article 29)
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Section N(6)(d)(1))
- International Covenant on Civil and Political Rights (Article 7)
- Rome Statute of the International Criminal Court (Article 69(7))

17 REDRESS and Fair Trials, “Tainted by Torture: Examining the Use of Torture Evidence,” May 2018, pgs. 12 – 14, available at: <https://redress.org/publication/tainted-by-torture-examining-the-use-of-torture-evidence/>.

18 REDRESS and CTI, “Anti-Torture Standards in Common Law Africa: Good Practices and Way Forward,” 2022, p 56, available at: <https://cti2024.org/resource/cti-redress-report-on-africa-anti-torture-law-standards/>.

19 *Ibid.*

20 UN Human Rights Council, General Comment No. 7: Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment), 30 May 1982, para 12; Committee against Torture, Communication No. 219/2002, 15 May 2003, para 6.10.

21 Human Rights Council, “Forty-sixth session,” 15 March 2021, para 9, available at: https://cti2024.org/wp-content/uploads/2021/03/HRC46-Resolution-torture_Role-and-responsibilities-of-police.pdf.

tic legal regimes expressly²² prohibit reliance on “torture evidence” by including an exclusionary rule in any relevant codes of evidence or criminal and civil procedure. The Committee against Torture has stated this requirement as follows: “[o]ne of the essential means in preventing torture is the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence.”²³

Because the inadmissibility of “torture evidence” stems from the absolute prohibition on torture which must be observed “in all circumstances,”²⁴ exclusionary rules enacted in domestic legislation should not permit judicial “balancing.”²⁵ Factors such as the nature or seriousness of the crime for which an individual is accused are not relevant in determining whether “torture evidence” can be admitted in proceedings against the individual. Similarly, courts should not balance the admissibility of “torture evidence” against the “fairness of the trial” considerations.²⁶

The prohibition on the use of torture-tainted evidence extends to witness statements from third parties extracted through torture or other forms of ill-treatment, which must also be excluded from any legal proceedings.²⁷ Similarly, torture-tainted statements may not be invoked as evidence against any other person in any proceedings, except against a person accused of such treatment as evidence that the statement was made under torture.²⁸

Derivative evidence

Derivative evidence—evidence that would not have been gathered but for torture or other illegal activities—must also be excluded from legal proceedings. The UNCAT does not directly address this issue. However,

22 Article 2(1) of UNCAT provides, “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. 39/46 (10 Dec. 1984), art 2(1). See also REDRESS and the Convention against Torture Initiative, “Non-Admission Of Evidence Obtained by Torture And Ill-Treatment: Procedures And Practices,” 2020, pgs. 15-16, available at: https://cti2024.org/wp-content/uploads/2021/01/CTI-Exclusionary_Rule_Tool_8-2020_FINAL_.pdf.

23 Report of the Committee against Torture, UN Doc A/54/44, para 45.

24 UNCAT, General Comment No. 2: Implementation of Article 2, 24 January 2008, para 6.

25 A number of jurisdictions have adopted this “balancing act” approach. As REDRESS and Fair Trials documented in 2018, for example, the Thai Criminal Procedure Code requires judges to consider several factors in deciding whether to admit any evidence, including: (a) the evidential value, importance and credibility of the evidence; (b) the circumstances and gravity of the offence in the case; (c) the nature and damages resulting from the unlawful means; and (d) whether and to what extent the person, who committed the unlawful act from which the evidence derives, has been punished. See REDRESS and Fair Trials, “Tainted by Torture: Examining the Use of Torture Evidence,” May 2018, p 17, available at: <https://redress.org/publication/tainted-by-torture-examining-the-use-of-torture-evidence/>.

26 *Ibid.*

27 See, for e.g., UNCAT, P.E. v. France, Communication No. 193/2001, UN doc. CAT/C/29/D/193/2001 (2002), para 6.3.

28 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Sir Nigel Rodley, UN Doc. A/54/426, 1 Oct. 1999, para 12(e).

other international bodies²⁹ have interpreted international law as requiring that other forms of evidence, beyond confessions and statements extracted directly by torture, must be excluded, because the prohibition on torture is absolute.

For example, the Human Rights Committee has said that given the non-derogable nature of the prohibition on torture and ill-treatment: “[n]o statements or confessions or, in principle, other evidence obtained in violation of [the prohibition on torture and ill-treatment] may not be invoked as evidence in any proceedings covered by article 14 [concerning the right to a fair trial].”³⁰ The Human Rights Committee further clarified that the right to a fair trial is binding even during states of emergency, and that “deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.”³¹

29 For example, the Inter-American Court has held that “[t]he absolute nature of the exclusionary rule is reflected in the prohibition on ... not only to evidence obtained directly by coercion, but also to evidence derived from such action.” See Inter-American Court of Human Rights, *Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico*, Case No. 12, 449, 26 November 2010, para 167; see also ECHR, *Case of Gäfgen v. Germany*, Application no. 22978/05, Judgment, 1 June 2010; ACHPR, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, Principles F(l), N(6)(d)(i), N(6)(g); UNCAT, *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 19 of the Convention*, 18 July 2005, UN Doc. CAT/C/4/Rev.3, para 24; UNGA, *Resolution adopted by the General Assembly on 19 December 2017: 72/163. Torture and other cruel, inhuman or degrading treatment or punishment*, 19 January 2018, UN Doc. A/Res/72/163, para 6; UN, *Guidelines on the Role of Prosecutors*, 1990, para 16; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, UN Doc A/HRC/25/60 (10 April 2014), para 25; *Report on the Working Group on Arbitrary Detention, “United Nations Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court,”* 4 May 2015, Principle 12.

30 UN Human Rights Committee, General Comment No. 32, para 6. See *similarly*, UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 6 August 2008, A/63/223, para 45(d), which refers to ‘the information obtained at such hearings, or derived solely as a result of leads disclosed’.

31 UN Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), 31 August 2001, para 11.

The prohibition of torture under Sudanese law

Legal reforms made prior to the 2021 coup

As indicated previously, Sudan has ratified both the UNCAT and ICCPR. Nonetheless, Sudan's laws — and practice — in relation to the prohibition of torture fall far short of its international obligations.

Under the pre-coup transitional government, Sudan made some important strides towards bringing its laws in line with UNCAT and other international human rights standards. To start, the Constitutional Document 2019 provides that “[n]o-one may be subjected to torture or harsh, inhumane, or degrading treatment or punishment, or debasement of human dignity.”³²

Reforms in 2020 further strengthened Sudan's laws in relation to torture. In particular, changes to provisions of the Criminal Procedure Act 1991 and Criminal Law Act 1991 recognised that torture can be both mental and physical,³³ and prohibited “torture of [the] accused or assault him in any way,” or to force an accused person to “provide evidence against himself.”³⁴ Consistent with these reforms, amendments to the Criminal Law Act 1991 increased the penalty for public officials who use torture to obtain or prevent the provision of information in legal proceedings.³⁵

However, even as amended, these and other Sudanese laws do not ensure the clear and unambiguous criminalisation of acts of torture. The amendments outlined above are largely procedural, rather than substantive provisions of criminal law,³⁶ and the prohibition of torture in relation only to “legal proceedings” is not consistent with international law. Rather, the prohibition of torture should be general and absolute, and set as an offence under criminal law, regardless of the context or the victim's identity.

Though the Constitutional Document 2019 does prohibit torture, it does not prohibit the use of confessions obtained by means of torture or other forms of ill-treatment, and does not provide a guarantee against

32 Constitutional Document 2019, art 51, available at: https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en.

33 Criminal Procedure Act 1991, art 83(1), available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf> (“[a]n arrested person shall be treated in such a way, as may preserve the dignity of the human being; he shall not be hurt physically, or mentally...”).

34 Criminal Procedure Act 1991, art 4(d), available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf>.

35 Criminal Law Act 1991, art 115(2), available at: <https://redress.org/wp-content/uploads/2021/09/Criminal-Act-1991-English.pdf>.

36 For example, Article 4 of the Criminal Procedure Act 1991 is only drafted as a “principle to be regarded” and not as a point of substantive law.

self-incrimination.³⁷ In any case, absent the creation of an independent Constitutional Court “competent to oversee the constitutionality of laws and measures, to protect rights and freedoms, and to adjudicate constitutional disputes,”³⁸ any protections enshrined in the Constitutional Document 2019 cannot be challenged or assessed in court.

The exclusionary rule under Sudanese law

None of the provisions discussed above address the problem of what to do with evidence or confessions elicited through torture. Sudan does not have an exclusionary rule which prohibits the admission of statements extracted under torture, or other material derived from that torture, as evidence during legal proceedings. In particular, article 10(1) of the Evidence Act 1993 (as last amended in 1994), which permits the use of evidence obtained “through illegal means if such evidence is corroborated by other evidence,”³⁹ does not include a mandatory exclusion clause regarding evidence obtained through torture (or other serious human rights violations).

On first read, article 20(2) of the Evidence Act does appear to rule out the use of evidence extracted under torture, reading in relevant part that “[i]n criminal matters a confession shall not be proper when it comes as a result of inducement or coercion.”⁴⁰ However, article 10(1) of the Evidence Act (concerning “evidence obtained by unlawful means”) provides that “subject to provisions concerning confession and inadmissible evidence, the evidence shall not be rejected merely because it was obtained by an incorrect procedure when the court is satisfied that it is independent and acceptable.” Article 10(2) of the Evidence Act further provides that “[a] court may, whenever it deems appropriate to achieve justice, not institute conviction by virtue of the evidence mentioned in [article 10(1)] unless it is supported by further evidence.”⁴¹

Consequently, when read together, articles 10 and 20 of the Evidence Act do not expressly prohibit confessions obtained by torture, nor do they preclude the admissibility of other evidence which may have been directly or indirectly obtained through torture, other forms of ill-treatment, or other infringements of key rights. Rather, Sudanese judges have broad latitude to exercise discretion in determining whether to exclude illegally obtained evidence, with grave implications for victims of torture or ill-treatment and people accused of crimes.

As indicated above, this discretionary “balancing act” approach, which is sometimes applied by courts in other

37 Though exclusionary rules are often included in a State’s criminal code or acts of criminal procedure, some States have enshrined the exclusionary rule in their constitutions. For example, Japan, South Africa, and Brazil have included provisions prohibiting confessions obtained by torture or evidence elicited through unlawful means. See REDRESS and the Convention against Torture Initiative, “Non-Admission Of Evidence Obtained by Torture And Ill-Treatment: Procedures And Practices,” 2020, pgs. 15-16, available at: https://cti2024.org/wp-content/uploads/2021/01/CTI-Exclusionary_Rule_Tool_8-2020_FINAL_.pdf.

38 Constitutional Document 2019, art 31, available at: https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en.

39 Evidence Act 1993, art 10(1), available at: <https://redress.org/wp-content/uploads/2022/05/Evidence-Act-1993-ENGLISH.pdf>.

40 Evidence Act 1993, art 20(2), available at: <https://redress.org/wp-content/uploads/2022/05/Evidence-Act-1993-ENGLISH.pdf>. Article 20(1) of the Evidence Act also provides that “[a]n admission is not valid if it appears to be false.”

41 *Ibid.*, art 10(2). See also Evidence Act 1993, art 8 on admissible evidence, which states that “[t]he evidence which is admissible in any case must be relevant in proving or disproving the facts which are in issue or the facts related thereto provided that the admissibility of such facts is not prohibited by the provisions of this Act.”

jurisdictions when considering evidence obtained illegally through other means (e.g., unlawful searches), is not permissible under international law in relation to torture-tainted evidence. Rather, Sudanese law must be amended to include a mandatory exclusion rule for evidence obtained through torture.

Other barriers to the prohibition of torture-tainted evidence

Beyond the lack of an exclusionary rule in Sudan's legal framework, various other barriers in Sudanese law and practice interfere with the prohibition of evidence obtained by torture or other forms of ill-treatment.

Procedural safeguards to prevent torture

The failure to implement adequate legal and procedural safeguards for detained persons facilitates the continued use of torture by Sudanese security forces and law enforcement officials, including for the purpose of extracting confessions. Under international human rights law, States must ensure basic guarantees to all persons deprived of liberty. These include, among others: maintaining an official register of detainees, ensuring that detainees promptly receive access to independent legal assistance paid for by the State, and ensuring that family members or a third party are notified as soon as possible after the arrest of an individual.⁴² States are also required under international human rights law to ensure that detainees are able to “exercise the right to request and receive a medical examination by an independent medical doctor,” even absent a formal complaint of torture from the individual in question.⁴³

Sudanese law and practice are not consistent with these international standards. As REDRESS has previously reported, the widespread use of incommunicado and arbitrary detentions in Sudan, including since the 25 October 2021 military coup, puts detained individuals outside of the protection of the law, making them particularly vulnerable to torture and other forms of ill-treatment.⁴⁴ Several legal shortcomings contribute in particular to this problem.

First, though the Constitutional Document 2019 provides that “[a] person is informed of the reasons of arrest at the time of the arrest and shall be informed of the charge against him without delay,”⁴⁵ authorities do

42 See for e.g., ICCPR, art 9(2); UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention>. See also CTI and REDRESS, “Non-Admission of Evidence Obtained by Torture and Ill-Treatment: Procedures and Practices,” 2020, available at: https://cti2024.org/wp-content/uploads/2021/01/CTI-Exclusionary_Rule_Tool_8-2020_FINAL_.pdf.

43 Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc HR/P/PT/8 Rev.2, available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>, para 10.

44 REDRESS, Darfur Bar Association, PLACE, and Emergency Lawyers Group, “‘Taken from Khartoum’s Streets’: Arbitrary arrests, incommunicado detentions, and enforced disappearances under Sudan’s emergency laws,” March 2022, available at: <https://redress.org/news/new-joint-briefing-highlights-ongoing-arbitrary-arrests-and-enforced-disappearances-in-sudan/>.

45 Constitutional Document 2019, art 51, available at: https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en. Sudanese law does not require that detained individuals are informed of their rights in a language they understand.

not need to inform detainees of their right to consult a lawyer at the interrogation stage⁴⁶ or to a medical examination, putting detainees at increased risk of torture. (Additionally, the protections provided in the Constitutional Document 2019 have not been reflected in other key Sudanese laws, including in particular the Criminal Procedure Act 1991, which in principle sets out arrest and detention procedures.)

Second, an arrested person's right to inform a third party or family member is subject to the approval of the Public Prosecution or a court,⁴⁷ constituting another significant barrier to this important safeguard against incommunicado detentions and torture, because families or others are unable to challenge the legality of an individual's detention.

Inadequate judicial oversight over arrests and detentions also puts individuals at risk of torture and ill-treatment. According to international standards, detained individuals must be brought promptly before a competent judicial authority;⁴⁸ judges should review the lawfulness of detention, and should have the power to order the release of a detained person if they find the detention is unlawful or arbitrary. The Human Rights Committee has in its General Comment No. 35 interpreted the requirement to bring any person arrested or detained on a criminal charge "promptly" and "without delay" before a judge as meaning within 48 hours, stating that "any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances."⁴⁹ While Sudanese law requires that a detainee be brought before a judge within 24 hours, this period can be extended by the Public Prosecution to up to 3 days.⁵⁰ In practice, as REDRESS and PLACE (a Sudanese legal aid organisation) have previously reported, these rights are routinely ignored.⁵¹

Additionally, beyond these legal and procedural shortcomings, the ongoing use of unlawful detention centres, including those operated by the Rapid Support Forces, General Intelligence Service, and Police Criminal Investigations directorate,⁵² puts individuals at high risk of torture and ill-treatment. Longstanding substantive and procedural immunities for these forces, as well as the SAF, further facilitate the continued

46 In addition, the right to legal representation provided by the State is only extended when a defendant "is unable to defend himself in crimes of extreme gravity." Constitutional Document 2019, art 51, available at: https://www.constituteproject.org/constitution/Sudan_2019.pdf?lang=en. Criminal Procedure Act 1991, art 135(1) provides that "the accused shall have the right to be defended by an advocate, or pleader," but only in relation to the "trial" phase.

47 Criminal Procedure Act 1991, art 83(5), available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf>.

48 See for e.g., ICCPR, art 9.3.

49 See UN Human Rights Committee, General Comment No. 35, Article 9, Liberty and Security of Person, UN Doc. CCPR/C/GC/35 (16 December 2014), para 33.

50 Criminal Procedure Act 1991, art 79, available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf>.

51 REDRESS and PLACE, "Sudan: Human Rights Two Years After Al-Bashir's Removal," April 2021, available at: <https://redress.org/news/sudan-two-years-post-bashir-progress-made-but-more-to-be-done/>.

52 See for e.g., REDRESS, Darfur Bar Association, PLACE, and the Emergency Lawyers Group, "'Taken from Khartoum's Streets:' Arbitrary arrests, incommunicado detentions, and enforced disappearances under Sudan's emergency laws," March 2022, available at: <https://redress.org/news/new-joint-briefing-highlights-ongoing-arbitrary-arrests-and-enforced-disappearances-in-sudan/>; see also Human Rights Watch, "Sudan: Hundreds of Protesters Detained, Mistreated," 28 April 2022, available at: <https://www.hrw.org/news/2022/04/28/sudan-hundreds-protesters-detained-mistreated>. Under the Constitutional Document 2019, the RSF was designated a regular military force. Accordingly, like the SAF and GIS, the RSF is not authorised to detain civilians or conduct other law enforcement functions. Nonetheless, the RSF, GIS and SAF continue to arrest and detain people, particularly in the wake of the coup.

use of torture.⁵³

Before and during trial

As indicated previously, international law recognizes that individuals seeking to exclude torture-tainted evidence must typically initiate an admissibility challenge, which then triggers the State's obligation to investigate the circumstances in which the evidence was obtained.

There is no single "standard of proof" required under international law for such allegations to trigger the State obligation to investigate, but international bodies have found that the threshold is low. For example, the UN Special Rapporteur on Torture has determined that, where a defendant has demonstrated that there are "plausible reasons to believe that there is a real risk of torture or ill-treatment," (italics added) the State, including the courts, must investigate "whether there is a real risk that the evidence has been obtained by unlawful means."⁵⁴ Similarly, the African Commission on Human and Peoples' Rights has held that "once a victim raises doubt as to whether particular evidence has been procured by torture or other ill-treatment, the evidence in question should not be admissible, unless the State is able to show that there is no risk of torture or other ill-treatment" (italics added).⁵⁵

Once a defendant has raised a plausible allegation that evidence was obtained through torture or other forms of ill-treatment, the burden of proof then shifts to the government to prove that the evidence in question was not obtained through torture. For example, human rights bodies such as the UN Human Rights Committee have found that, where an individual alleged that they were forced to sign a confession under duress, the burden of proof lay with the prosecution to "prove that the confession was made without duress."⁵⁶

Even more, as set out by former UN Special Rapporteur on torture Manfred Nowak, even without an allegation of torture raised by a defendant, "[j]udges and prosecutors should routinely ask persons arriving from police custody how they have been treated, and if they suspect that they have been subjected to ill-treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant."⁵⁷ The Committee against Torture has also held previously that judges

53 REDRESS and PLACE, "Sudan: Human Rights Two Years After Al-Bashir's Removal," April 2021, available at: <https://redress.org/news/sudan-two-years-post-bashir-progress-made-but-more-to-be-done/>.

54 Juan E. Méndez, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment," (10 April 2014), paras. 33, 66.

55 Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt, No. 334/06, African Commission on Human and Peoples' Rights, March 2011. See also Singarasa v. Sri Lanka, communication No. 1033/2001, para 7.4. See also Committee against Torture, which has determined that, once a defendant has demonstrated their claim that torture occurred is "well-founded," the burden of proof shifts to the state to prove that the evidence was not obtained by torture if it is to be admitted." GK v Switzerland (unreported), 12 May 2003, Communication No 219/2002, para 6.10.

56 HRC, Nallaratnam Singarasa v. Sri Lanka, Communication No. 1033/2001, U.N. Doc. CCPR/C/81/D/1033/2001 (23 Aug. 2004), para 7.4. See also, HRC, Darmon Sultanova v. Uzbekistan, Communication No. 915/2000, U.N. Doc. CCPR/C/86/D/915/2000 (19 Apr. 2006), para 7.3 and HRC, Saimijon and Bazarov v. Uzbekistan, para 8.3. See also REDRESS and Fair Trials, "Tainted by Torture: Examining the Use of Torture Evidence," May 2018, p 18, available at: <https://redress.org/publication/tainted-by-torture-examining-the-use-of-torture-evidence/>.

57 UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: addendum: mission to Indonesia, 10 March 2008, A/HRC/7/3/Add.7, para 80.

are required to ask individuals “explicitly about the treatment received since their arrest” and to “check whether their statements to the prosecutor were made freely and without any form of coercion.”⁵⁸

In Sudan, however, allegations raised by accused persons that they were forced to confess have historically been systematically ignored by judges; defence lawyers told REDRESS that judges routinely tell them the only way to address the issue of “torture evidence” and/or the act of torture itself is to initiate separate proceedings against an alleged perpetrator(s), and not in the case against the defendant.⁵⁹ For example, in a case concerning nine defendants (including minors) from the al-Lamab resistance committee accused of killing a RSF soldier in June 2019, lawyers alleged that confessions were extracted through torture; though the defendants were acquitted on other grounds after proceedings lasting nearly two years, the judge declined to address the allegations of torture through the proceedings and in his judgment.⁶⁰ No investigations were conducted into the issue of torture-tainted evidence, according to lawyers who worked directly on the case. As discussed above, this common practice is not consistent with international law.

Further, the incomplete criminalisation of torture in Sudan’s criminal laws means that only certain individuals – those “accused”⁶¹ or a “witness”⁶² in relation to legal proceedings – may open cases against perpetrators of torture. Others, such as those tortured in custodial settings but outside of the context of specific legal proceedings, may not have recourse to legal justice for violations, including some of those individuals told to address the issue of torture-tainted evidence by initiating secondary proceedings against an alleged perpetrator.⁶³

58 UNCAT, Report on Mexico Produced By The Committee Under Article 20 UNCAT, And Reply From The Government Of Mexico, U.N. Doc. CAT/C/75, (26 May 2003) para 220(d). See also, UNCAT, Inquiry under Article 20: Peru, U.N. Doc. A/56/44, paras.144-193 (16 May 2001), paras. 26 and 29. Sudanese law does provide that, where a defendant pleads guilty after the prosecutor has recorded a charge, and where the charged crime carries the death penalty, amputation, or flogging (above 40 lashes), the court shall “(a) hear any other evidence presented by the prosecution; (b) caution the accused as to the seriousness of his admission, where admission is the only evidence against him; and (c) adjourn the decision of conviction, for a period not exceeding one month.” Defendants are also, in theory, afforded a second opportunity to retract their confession before conviction. See Criminal Procedure Act 1991, art 144(1)-(5), available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf>. In practice, even where defendants retract their confessions during legal proceedings, Sudanese courts have nonetheless accepted their confessions as evidence. See for e.g., Amnesty International, “Nine men executed in Sudan following unfair trial,” 14 April 2009, available at: <https://www.amnesty.org/en/latest/news/2009/04/nine-men-executed-sudan-following-unfair-trial-20090414/>.

59 REDRESS interview with Sudanese lawyer.

60 REDRESS interview with Sudanese lawyer. See also Al-Taghyeer, 25 October 2020, “بإمام اللال” يمهتم ئربت ةينادوس ةمكحم، “عيرس لال”، available at: <https://www.altaghyeer.info/ar/2020/10/25/%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%B3%D9%88%D8%AF%D8%A7%D9%86%D9%8A%D8%A9-%D8%AA%D8%A8%D8%B1%D8%A6-%D9%85%D8%AA%D9%87%D9%85%D9%8A-%D8%A7%D9%84%D8%A7%D9%85%D8%A7%D8%A8-%D9%85%D9%86-%D8%AA/>.

61 Criminal Procedure Act 1991, art 4(b), available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf>.

62 Criminal Law Act 1991, art 115, available at: <https://redress.org/wp-content/uploads/2021/09/Criminal-Act-1991-English.pdf>.

63 In theory, it is possible under Sudan’s Civil Transactions Act 1984 (CTA) to initiate an action for damages in civil proceedings, including for torture. Article 138 of the CTA provides for ordinary tort liability, stating that “[e]very act whether committed by an adult or minor which causes injury to another binds him to pay compensation.” Some exceptions to this general rule are set out in subsequent articles, including in article 144: “[t]he public servant shall not be liable for his act that harmed others if he did it in obedience to the order of his superior, provided that he is legally bound or he believes [himself] to be legally bound to obey his superior, and proves that he believed in the legality of the act committed by him and his belief was reasonable, and that he took due care.” In practice, lawyers REDRESS spoke to were not aware of any civil cases regarding torture, and highlighted several reasons for this, including the difficulty in proving a case in tort, high judicial fees, the length of civil proceedings, and limitations on possible compensation for damages, which cannot exceed the set dia amount (currently, less than \$1,000 USD). REDRESS interview with Sudanese lawyer, 1 August 2022. See the Civil Transactions Act 1974, available at: <https://redress.org/wp-content/uploads/2021/09/1984-Civil-Transaction-Act-Arabic.pdf>.

Challenges for defendants in alleging torture

As previously noted by REDRESS and Fair Trials,

[t]he requirement for the state to bear the burden of proof in establishing that evidence was not obtained by torture recognises the fact that the state has responsibility for the treatment of individuals in its custody [and] the state should be able to demonstrate that appropriate safeguards against mistreatment have been complied with. A defendant, on the other hand, would not normally be in a position to establish how they were treated.⁶⁴

This challenge is particularly acute in the Sudanese context. First, specific (onerous) requirements for victims of physical injuries related to criminal acts often limit the available evidence in cases of torture, as required under the procedural rules stemming from article 48 of the Criminal Procedure Act. For example, Form 8, a document produced by the Ministry of Justice to provide limited information about medical evidence, can only be issued in police stations and some public hospitals and clinics, preventing many victims of crimes such as torture and sexual violence from completing it—and from corroborating their testimony during later criminal proceedings.⁶⁵ As the mother of a young man killed during protests in Khartoum in early January 2022 told REDRESS and the Sudan Human Rights Monitor, the police refused to give her Form 8, preventing the family from filing a case.⁶⁶

Due regard must also be given to the difficulties of obtaining evidence of torture and proving allegations of torture.⁶⁷ For instance, torture of detainees in Sudan is often practised in secret by skilled and experienced interrogators, in a range of sanctioned and unsanctioned detention centres (e.g., police stations, unmarked detention centres operated by the security services, and prisons). Detainees often struggle to recall names, badge numbers, or are interrogated by individuals using false names or wearing the uniforms of security or armed forces other than their own, making it difficult to identify perpetrators or provide other needed evidence.

Finally, detainees who have suffered torture and ill-treatment are often denied access to a doctor or lawyer for lengthy periods of time, particularly during the crucial initial period of detention when torture mainly

64 REDRESS and Fair Trials, “Tainted by Torture: Examining the Use of Torture Evidence,” May 2018, p 31, available at: <https://redress.org/publication/tainted-by-torture-examining-the-use-of-torture-evidence/>.

65 See for e.g., United Nations High Commissioner for Human Rights, Access to Justice for Victims of Sexual Violence: Report of the United Nations High Commissioner for Human Rights, 29 July 2005, available at: <https://www.ohchr.org/sites/default/files/Documents/Countries/darfur29july05.pdf> (noting that “Form 8 only requests limited information . . . and does not allow for a comprehensive medical report to be written by the doctor. In the majority of cases the full extent of the injuries are not documented . . .”).

66 REDRESS, Sudanese Human Rights Monitor, and SOAS, “Your life isn’t worth the price of a bullet: Examining serious human rights violations in Sudan since 25 October 2021,” June 2022, p 18, available at: <https://redress.org/wp-content/uploads/2022/06/Sudan-Serious-Ongoing-Human-Rights-Violations-Briefing.pdf>.

67 Juan E. Méndez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” (10 April 2014), para 31.

takes place.⁶⁸ For example, in a recent case, a detainee arrested on 5 May 2022 who was reportedly subjected to severe torture in a Khartoum area prison did not receive access to a lawyer for 15 days.⁶⁹ He was denied medical treatment for an additional 35 days (50 days in total).⁷⁰ Delays in medical examinations often prevent the documentation of physical signs of torture, or the outcomes of such examinations may be of poor quality, rendering them unusable.⁷¹

Lack of access to relevant evidence and case files

Compounding the challenges described above, lawyers in Sudan are also often denied access to relevant case files concerning criminal defendants, including in the “Tupac” case addressed at the beginning of this briefing.

Several elements are required by fair trial principles, as set out under international law, including the right of the accused to know the criminal charges against himself/herself and the evidence on which such criminal charges are based, and the right to respond to such evidence and any submissions made by the opposing party.⁷² This includes the requirement that all those charged with a criminal offence be given “adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”⁷³ As interpreted by the Human Rights Committee, “‘adequate facilities’ must include access to documents and other evidence [. . . including] all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”⁷⁴ The Human Rights Committee has further stated that “exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g., indications that a confession was not voluntary).”⁷⁵

These fair trial principles are not enshrined in Sudanese law. Sudan’s Criminal Procedure Act 1991 (as

68 As Former UN Special Rapporteur on torture Juan E. Méndez noted, “[w]here independent medical examinations must be authorized by investigators, prosecutors or penitentiary authorities, those authorities have ample opportunity to delay authorization, so that any injuries deriving from torture have healed by the time such an examination is conducted. Additionally, such medical and forensic reports are often of such poor quality that they provide little assistance to judges or prosecutors when deciding whether to exclude statements.” UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc A/HRC/25/60 (10 April 2014), para 25.

69 REDRESS interview with the family of the detained protestor, conducted 12 July 2022.

70 REDRESS interview with the family of the detained protestor, conducted 12 July 2022.

71 As noted in the Istanbul Protocol, “[t]he timeliness of such medical examinations is particularly important. A medico-legal examination should be carried out regardless of the length of time since the alleged torture or ill-treatment and be arranged urgently before acute signs fade. The examination should include an assessment of the need for treatment of injuries and illnesses, psychological help, advice and follow-up.” Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc HR/P/PT/8 Rev.2, available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>, para 229. See also REDRESS and Fair Trials, “Tainted by Torture: Examining the Use of Torture Evidence,” May 2018, p 40, available at: <https://redress.org/publication/tainted-by-torture-examining-the-use-of-torture-evidence/>; Juan E. Méndez, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” (10 April 2014), para 25.

72 Human Rights Committee, General Comment No. 32 (Article 14: Right to equality before courts and tribunals and to a fair trial), UN Doc CCPR/C/GC/32 (23 August 2007), para 31.

73 International Covenant on Civil and Political Rights, art 14(3)(b).

74 Human Rights Committee, General Comment No. 32 (Article 14: Right to equality before courts and tribunals and to a fair trial), UN Doc CCPR/C/GC/32 (23 August 2007), para 33.

75 *Ibid.*

amended in 2009), includes as “principles to be regarded” only that “[a]n accused is presumed innocent until his conviction is proved, and he is entitled to be subject to fair and prompt inquiry and trial,”⁷⁶ but is silent on the right of a defendant to hear evidence against him or her in advance of a trial date. Similarly, the Evidence Act does not include provisions concerning access to documents and other evidence.

As a result, defence lawyers in Sudan must often prepare to represent clients in court without relevant information and evidence, including medical reports. These issues are sometimes contested in court, often without satisfactory resolution. In the “Tupac” case discussed earlier, for example, though the trial judge ordered a medical examination on the question of torture and granted the defence access to relevant information, at the time of writing defence lawyers have not received the police report or other evidence. The medical examination has not yet been conducted, and the trial has been indefinitely postponed for unclear reasons.⁷⁷

76 Criminal Procedure Act 1991, art 4, available at: <https://redress.org/wp-content/uploads/2021/09/1991-National-Criminal-Procedure-Act-English.pdf>.

77 See TIMEP, “In Sudan, Western Officials Fail to Condemn Sham Trials,” 23 June 2022, available at: <https://timep.org/commentary/analysis/in-sudan-western-officials-fail-to-condemn-sham-trials/>.

Reforms needed

With the support of international actors, any future legitimate democratic Sudanese government should develop a comprehensive anti-torture policy, beginning with a mapping of its laws and policies which permit the reoccurrence of torture and other forms of ill-treatment. This should include the absolute prohibition of torture under Sudanese law, the provisions of safeguards to prevent torture in all circumstances, including in custodial settings, and measures to ensure accountability.

As a preliminary step, Sudan's authorities must amend the Criminal Law Act 1991 to make torture a distinct criminal offence, as required by the UNCAT. As discussed above, this is necessary to ensure compliance with the State obligation to investigate and prosecute instances of torture, and to ensure that all victims of torture are able to pursue justice for violations suffered. The standalone crime of torture must not be drafted as a "principle to be regarded" under Sudan's Criminal Law Act 1991 (see article 4), but as a specific and separate crime. To comply with Sudan's obligations under international law, no exceptional circumstances may be invoked as a justification for torture or other forms of ill-treatment, including a declared state of emergency, because the prohibition against torture is non-derogable. In the same way, existing immunities for acts conducted by the police, security services, and members of the Sudanese Armed Forces must also be abolished.⁷⁸

Sudanese authorities must also take urgent action to institute critical legal and procedural safeguards against torture, including by closing all unlawful detention centres and maintaining an official register of detainees. Amendments are needed to the Criminal Procedure Act 1991 to ensure that all detainees are informed of the reasons for their arrest promptly, and afforded access to a lawyer at the interrogation stage. Amendments to the Criminal Procedure Act 1991 should also remove the requirement that an arrested person's right to inform a third party or family member is subject to the approval of the Public Prosecution or a court.

Legal reforms are also urgently needed to the Evidence Act 1993 and Sudan's Criminal Procedure Act 1991,

78 In July 2020, Sudan's transitional government removed article 52 of the NSA 2010, abolishing the immunities enjoyed by members of NISS. However, members of the other forces are still afforded broad immunities. Article 34 of the Armed Forces Act 2007 provides immunity from criminal prosecution for soldiers and officers who conduct any act "in good faith" in the course of their duties. Article 42(2) of the Armed Forces Act 2007 further prohibits the investigation or prosecution of any "officers of the Military Judicature" unless approved by the head of the army. Similarly, article 45(1) of the Police Act 2008 extends immunity from prosecution to police officers who commit criminal offences while performing their official duties. In all cases, individuals can only be subjected to a full investigation or prosecution for criminal offences if the head of their respective forces lifts these immunities. During the pre-coup transitional period, the security and regular forces have not responded to requests by the Public Prosecution to waive legal immunities, making investigation and prosecution of any cases of torture, ill-treatment and other human rights violations functionally impossible. This problem has only been exacerbated since the coup. See REDRESS and PLACE, "Sudan: Human Rights Two Years after Al-Bashir's Removal," April 2021, available at: <https://redress.org/news/sudan-two-years-post-bashir-progress-made-but-more-to-be-done/>; See also REDRESS, Darfur Bar Association, PLACE, and Emergency Lawyers Group, "'Taken from Khartoum's Streets:' Arbitrary arrests, incommunicado detentions, and enforced disappearances under Sudan's emergency laws," March 2022, available at: <https://redress.org/news/new-joint-briefing-highlights-ongoing-arbitrary-arrests-and-enforced-disappearances-in-sudan/>.

codifying an explicit exclusionary rule which covers evidence elicited through torture and derivative evidence. Specifically, such a rule must cover the exclusion of evidence or extrajudicial statements obtained through torture or other ill-treatment of the defendant or a third party (e.g., a witness) at any stage of any proceedings, as well as documentary or other evidence obtained as a result of torture or other forms of ill-treatment, regardless of whether such evidence has been corroborated or is not the only decisive evidence in the case. To this end, articles 10(1) and 20 of the Evidence Act 1993 should in particular be amended to provide for an explicit exclusion of torture-tainted evidence, limiting the exercise of judicial discretion in determining whether evidence is “independent and acceptable,” even where obtained through “incorrect procedures.”

Reforms to Sudan’s Criminal Procedure Act 1991, and any other related rules of procedure, must ensure that a defendant need only provide a credible complaint (or “plausible reason”) that evidence in question was obtained through torture or other ill-treatment. The burden of proof must then shift to Sudan to show that evidence was not obtained through torture or ill-treatment. The requirement to investigate allegations of torture must be made non-discretionary. To avoid conflicts of interest, the investigation regarding allegations of torture should be carried out by a prosecutor and/or independent investigator other than the one in charge of the initial criminal investigation. Similarly, reforms should ensure that a court cannot solely rely on testimony from the investigating officer to demonstrate that evidence has not been obtained by torture.⁷⁹

Further reforms to Sudanese practice are needed to overcome barriers to the effective implementation and enforcement of an exclusionary regime. These include training for justice sector professionals (including lawyers, judges, and prosecutors) on relevant domestic and international legal standards. For example, prosecutors must be trained on the duty to “refuse to take into account evidence that they know or believe on reasonable grounds was obtained through recourse to torture or ill-treatment,” and should “inform the court about the existence of such evidence.”⁸⁰ Similarly, law enforcement and other security actors should be trained on the absolute prohibition of torture and other forms of ill-treatment, including alternatives to oppressive interrogations, such as through the use of investigative and information gathering methods as set out in the Principles on Effective Interviewing for Investigations and Information Gathering (also known as the “Mendez Principles”).⁸¹ For example, Sudanese authorities should require audio-visual recordings of all police interviews and other interrogations, which is an important safeguard against ill-treatment and can provide a complete, authentic record of the interview. Finally, lawyers should be trained to know and understand the absolute prohibition of torture to be fully in a position to represent their clients, including the most effective

79 See UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc A/HRC/25/60 (10 April 2014), para 82(e), recommending that “[a]ll States should . . . [e]nsure that, in order to show that evidence has not been obtained by torture or other cruel, inhuman or degrading treatment or punishment, a court must rely on evidence other than the testimony of the investigating officer and further enhance the admissibility of independent and impartial medical evidence.”

80 Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc HR/P/PT/8 Rev.2, available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>, para 254.

81 To this point, the Human Rights Council has called upon States to undergo “[t]raining of police and other law enforcement personnel [on the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment].” Human Rights Council, “Forty-sixth session,” 15 March 2021, para 24, available at: https://cti2024.org/wp-content/uploads/2021/03/HRC46-Resolution-torture_Role-and-responsibilities-of-police.pdf. For the Mendez Principles, available in English and Arabic, see here: <https://www.apt.ch/en/resources/publications/new-principles-effective-interviewing-investigations-and-information>.

methods to challenge confessions obtained by torture.

Clinical practitioners can also play an essential role in ensuring the effective investigation and documentation to corroborate allegations of torture and other forms of ill-treatment. The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), which was updated in 2022, provides guidance in this respect and should be incorporated into national policy and practice in Sudan.⁸²

82 Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc HR/P/PT/8 Rev.2, available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>.

Conclusion

As a party to the UNCAT, Sudan has made a binding commitment to prohibit, prevent, and punish and provide reparations for acts of torture and ill-treatment. Ensuring that evidence elicited through torture is excluded from any domestic legal proceedings is a core part of this commitment, by disincentivising one of the most frequent purposes of torture: extracting confessions. Prohibiting reliance on torture evidence is also a key safeguard for due process and other fair trial rights. In this regard, Sudan must amend as a matter of priority several key laws, including the Evidence Act 1991, Criminal Procedure Act 1991, and Criminal Law Act 1991, to include an explicit exclusionary rule which does not permit any judicial “balancing” in considering torture-tainted evidence.

In addition to implementing a clear exclusionary rule in law, Sudan must take other steps to preclude reliance on “torture evidence” in practice, including by training justice sector and law enforcement personnel on the absolute prohibition of torture and the exclusionary rule, and removing the legal barriers which prevent victims of torture from seeking justice for torture (such as longstanding immunities provisions in various laws). Sudan must also take urgent action to institute adequate legal and procedural safeguards for detained persons, such as ensuring that detainees promptly receive access to independent legal assistance and that their right to request and receive a medical examination is guaranteed.

Taken together, these steps are essential to comprehensively prohibit, prevent, punish, and repair acts of torture and ill-treatment. Given Sudan’s long history of the use of torture, including into the present day, Sudanese authorities and the international community must place these reforms at the top of their to-do list.

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