



Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and Peoples' Rights:

Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment

April 2012

I. Introduction

1. The African Centre for Justice and Peace Studies, the Sudan Democracy First Group and REDRESS ('the Organisations') submit this alternative report to the African Commission on Human and Peoples' Rights in respect of Sudan's Fourth Periodic Report (2008-2012). Our alternative report focuses on violations of Articles 1 and 5 of the African Charter on Human and Peoples' Rights during the reporting period. It is based on interviews with victims of torture and ill treatment in Sudan, as well as reporting by the United Nations and international and national non-governmental human rights organisations. This Alternative Report highlights the continued and widespread use of torture and other cruel, inhuman or degrading treatment or punishment ('ill treatment or punishment') by Sudanese authorities, which have been committed with impunity during the reporting period.
2. The reporting period witnessed an increased recourse to torture in a number of contexts. This includes the application for, and issuance of an arrest warrant against President al-Bashir by the International Criminal Court (ICC) in 2008/2009, challenges to the Government of Sudan by rebel groups, political mobilisation surrounding the 2010 elections and thereafter, as well as protests by students, community groups, and others. It also reportedly includes resort to torture as part of military campaigns in the Nuba mountains and the Blue Nile, in addition to cases of torture in Darfur. The National Intelligence and Security Services (NISS) the police forces, the army and militia groups have reportedly been responsible for committing torture, using a range of methods, particularly beatings, often with sticks or other objects, electric shocks, rape, or the threat

thereof, mock executions, deprivations (sleep, food, medication) and incommunicado detention in poor conditions.

3. Selected cases (see II below) illustrate torture and ill treatment has been used predominantly to suppress opposition, to obtain confessions or to discriminate against marginal groups, including Darfurians and Southerners who are often also internally displaced persons (IDPs)). Political opponents, students, journalists and human rights defenders have been particularly at risk of torture because of their background, (perceived) affiliation, or conduct (or all of these factors taken together). In several instances, individuals are believed to have been tortured to death or tortured before being killed. The cases also show that the authorities have used excessive force during demonstrations that amounted to ill-treatment. These cases are not meant to provide an exhaustive account of reported instances of torture during the reporting period. Rather, they have been selected to illustrate the nature, context and consequences of torture, and the lack of adequate responses on the part of the Government of Sudan.
4. The widespread practice of torture and ill-treatment in Sudan is substantially facilitated by Sudan's inadequate legal and institutional framework (see III below). In its Concluding Observations and Recommendations on the Third Report of the Republic of Sudan (2003-2008), the African Commission found that torture by security forces persists, including torture of television and newspaper reporters, and raised concerns over sexual violence.¹ The Commission also highlighted the lack of Sudan's ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and identified immunity granted in the National Security Act as a further area of concern. It recommended that Sudan criminalises torture and all forms of violence against women, ends corporal punishment and repeal article 22 of the National Security Act that provides for immunity. To date, the Government of Sudan has failed to implement the Commission's recommendations.
5. In its jurisprudence, the African Commission found in 2009 that Sudan was responsible for a series of breaches, including of the prohibition of torture (article 5 of the African Charter).² In its decision, it requested Sudan, *inter alia*, to
 - a. 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;
 - b. undertake major reforms of its legislative and judicial framework in order to handle cases of serious and massive human rights violations;

¹ Consideration of Reports Submitted by States Parties under the Terms of Article 62 of the African Charter on Human and Peoples' Rights: *Concluding Observations and Recommendations on the Third Periodic Report of the Republic of Sudan (2003-2008)*, African Commission on Human and Peoples' Rights, Forty-Fifth Ordinary Session, 13-27 May 2009, Banjul, The Gambia.

² 279/03-296/05: *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*.

- c. take steps to prosecute those responsible for the human rights violations, including murder, rape, arson and destruction of property;
 - d. take measures to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation;
 - e. desist from adopting amnesty laws for perpetrators of human rights abuses.
6. This ruling followed earlier decisions that are yet to be implemented, particularly *Doebbler v Sudan*, in which the Commission requested Sudan ‘to abolish the penalty of lashes’.³ In addition, in the period 2008-2012, several cases alleging torture, a lack of effective remedies and other violations have been brought against Sudan before the African Commission that were pending at the time of writing.⁴
 7. The United Nations Working Group on Arbitrary Detention (“UN Working Group”) found in 2008 that Sudan was responsible for having arbitrarily detained a number of individuals suspected of having killed the journalist Mohamed Taha who were later convicted and executed on the basis of confessions extracted under torture (and revoked during the trial). The UN Working Group found that ‘[g]enerating evidence under torture not only violates article 7 of the International Covenant on Civil and Political Rights, but it also constitutes one of the most serious human rights violations. ... No judicial system, and in particular, the judicial system of a country that ratified the International Covenant on Civil and Political Rights on 18 March 1986 [which would apply equally to the African Charter], can consider as valid a confession obtained under torture and revoked before a court, and a sentence based on such confession.’⁵ Sudan subsequently failed to comply with the request of the UN Working Group to remedy the situation and to stay the execution of the sentence.⁶
 8. We urge the African Commission to use the opportunity of the Fourth Periodic Report to call on the Government of Sudan to comply with its obligations under the African Charter, to end the practice of torture and ill treatment and to fully implement the recommendations made by the Commission.

II. Torture and ill-treatment (articles 1 and 5 of the African Charter)

³ 236/2000: *Curtis Francis Doebbler v Sudan* (2003).

⁴ Communication 368/2009: *Abdelhadi Ali Radi and others v Sudan*; Communication 386/10: *REDRESS (on behalf of Dr. Farouk Mohamed Ibrahim) v Sudan*; Communication 379/09: *Monim Elgak, Osman Hummaida and Amir Suliman v Sudan*; *International Refugee Rights Initiative (IRR), Sudan Democracy First Group (SDFG), INTERIGHTS, Human Rights Watch (HRW) and REDRESS v Sudan* (3 July 2011).

⁵ Opinion No. 38/2008 (The Sudan) *Communication addressed to the Government on 22 August 2008 Concerning Messrs. Ishag Al Sanosi Juma, Abdulhai Omer Mohamed Al Kalifa, Al Taieb Abdelaziz Ishag, Mustafa Adam Mohamed Suleiman, Mohamed Abdelnabi Adam, Saber Zakaria Hasan, Hasan Adam Fadel, Adam Ibrahim Al Haj, Jamal Al Deen Issa Al Haj, and Abdulmajeed Ali Abdulmajeed*, A/HRC/13/30/Add.1, paras. 47, 48.

⁶ See para.50 *ibid.*

9. The following exemplary cases, which are based on testimonies, witness statements and supporting evidence received by the Organisations, illustrate the persistent and pervasive use of torture and other forms of ill-treatment. They also demonstrate how the lack of remedies and culture of impunity help to perpetuate the practice. Reports (and videos) by the UN, NGOs, investigative journalists and others, as well as individual testimonies, provide reliable evidence from a range of sources that highlight the extent and consequences of torture in Sudan during the reporting period.⁷

2.1. Human Rights Defenders

10. A number of human rights defenders report having been targeted and subjected to torture and other forms of ill-treatment, in violation of the African Charter and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, 8 March 1999).
11. On 25 January 2011, Bushra Gamar Rahma, Chairperson of the Human Rights and Development Organisation (HUDO) working in the Nuba mountains, was arrested by NISS officers and held incommunicado for the first three weeks. He was handcuffed and blindfolded, his head was banged against the wall and he was beaten on his legs with a water hose, while being questioned about his human rights work. He was also threatened with rape. In addition, he was held in poor conditions of detention and denied medication. He was re-arrested by NISS upon his release even though the Criminal Court had found that there was insufficient evidence against him – he is still in detention at the time of writing. No investigation is known to have taken place into the complaints made in this case.⁸
12. On 16 January 2011, human rights defender Abdel Amajeed Salih was released after spending 6 months and 15 days within the political security section of Kober prison. In his first week of detention, he was subjected to torture and ill-treatment. He was not tried or charged with any crime during his six month detention. Upon his release, the NISS ordered him to report weekly to their offices and he reported receiving threatening phone calls.⁹
13. On 30 October 2010, around seven NISS officials arrested Abderahman Mohammed Gasim, a human rights lawyer from Darfur. For the first three days of his detention, he was beaten with water hoses on his back and face, placed in solitary confinement, deprived of sleep and interrogated for long periods about his alleged collaboration with the ICC, Radio Dabanga and the Hand Network. Officials put a gun to his head and threatened to kill him and to rape his colleague. They also blindfolded him and poured ice cold water over his head. After three months in detention, he was charged with crimes against the state

⁷ For further cases, see in particular the issues of ACJPS, *Sudan Human Rights Monitor*, March 2009- January 2012.

⁸ See also Amnesty International, *Health fears for detained Sudanese activist on hunger strike*, 12 October 2011.

⁹ ACJPS, *Sudan Human Rights Monitor*, Issue 5, December 2009 –May 2010.

under article 50 of the Criminal Act of 1991. The trial court ordered his release after five months of prosecution due to insufficient evidence.

14. On 4 November 2010, Jafar Alsubki Ibrahim, a journalist who has worked with the Darfur Bar Association and Radio Dabanga was arrested by four NISS officers. He was held incommunicado for two months. During this time, he was subjected to various forms of torture, including being hung upside down, flogging with a water hose, electric shocks, mock execution and sleep deprivation. He was also subjected to racist insults for being Darfurian. He was released on 28 November 2011 on the grounds of insufficient evidence.¹⁰
15. In November 2008, Monim Elgak, Osman Hummaida and Amir Suliman, three human rights defenders who were working as independent researcher, human rights consultant and advocate, and director of the Khartoum Centre for Human Rights and Environmental Development (KCHRED) respectively, were arrested and detained by the NISS. Over the next four days, they were interrogated about their alleged cooperation with the International Criminal Court (ICC), and subjected to beatings, kickings, threats, witnessing the torture of others, sleep deprivation and denial of medical treatment, as well as beating with pipes and canes, including on bare feet (falaqa), stamping on face and threatening with rape and torture. Following their release, the three men left the country and brought a case before the African Commission on Human and Peoples' Rights which is currently pending.¹¹

2.2. Student and Political Activists

16. Over the last two years, the growth of a student movement and political opposition has met with increasing repression, taking the form of the excessive use of force during demonstrations and a series of arbitrary arrests, detentions, torture and ill-treatment of those (seen to be) belonging to these groups.¹²
17. On 13 February 2011, a university graduate and member of Girifna, a Sudanese non-violent resistance movement, was arrested by two men dressed in plain-clothes and taken to a building near the Shandi bus station (Khartoum north) known to belong to the NISS. Inside, three men subjected her to rape, beatings and verbal abuse. She filed a complaint against the authorities involved on 16 February 2010, but after an initial inquiry into her case was closed and following threats by the authorities, decided to leave the country. When five journalists

¹⁰ English Pen, *Sudan: Two journalists released, one still faces death penalty*, 13 September 2011, which also refers to allegations of torture of another journalist.

¹¹ Communication 379/09: *Monim Elgak, Osman Hummaida and Amir Suliman v Sudan*.

¹² See *Report of the independent expert on the situation of human rights in the Sudan*, Mohamed Chande Othman, UN Doc. A/HRC/18/40, 22 August 2011, paras.7 and 19, and *Police Clamp Down on Youth Protesters in Sudan amid Reports of Student Death*, Sudan Tribune, 31 January 2011, available at <http://www.sudantribune.com/Police-clamp-down-on-youth,37827>

- reported about her case and called for an investigation into the allegations, criminal charges were brought against the journalists by the NISS.¹³
18. In late December 2011, a political activist who had on several previous occasions been arrested, detained and ill-treated by the NISS, was beaten during his arrest by the NISS. His arrest was in connection with remarks made during an open student debate during which he criticised the National Congress Party's (NCP) policy and claimed that the government is responsible for the deterioration of Sudan's education system and for human rights violations. He was subsequently held incommunicado for three weeks before being released on 16 January 2012.¹⁴
 19. On 30 December 2011, a Khartoum University student was arrested by around six NISS officers while travelling to Souq Arabi by bus. He was taken to a building unknown to him, where he was beaten with wires all over his body. The interrogating officers threatened him with rape, and beat him on his back and feet for about one hour. He was placed in solitary confinement, and his first family visit took place 32 days after his arrest. He was later released without having been charged.
 20. On 1 January 2012, a political activist and member of the University of Khartoum Student's protest committee was arrested by the NISS while travelling on a bus. He was accused of being a member of the protest movement and of inciting students. During his interrogation, he was beaten, struck on the head and his back. He was threatened to be killed and thrown into the river. After about two months, he was forced to sign a document stating that he will not practice any political activities or incite students. He was released after spending 67 days in prison.
 21. On 27 January 2012, a political activist was arrested by security agents following the magreb prayers. He was threatened with execution twice. An NISS official held a weapon to his head and threatened to kill him, and on another occasion a scarf was wrapped around his neck violently, which he described as "it felt like being executed by hanging". Four days after his arrest, he was forced to sign a "promissory note" to exercise political activity in a "legal way" in the future. He was then released and immediately left Sudan.
 22. On 14 February 2011, Ali Mohammed Osman, a student and member of the Sudan People's Liberation Movement, was arrested by security forces. He was threatened, interrogated and beaten on his back and shoulders with sticks and a plastic pipe and forced to remain standing all night. The beatings caused severe injuries, requiring him to seek medical care upon his release.¹⁵

¹³ See 'UN decries jailing of Sudanese journalists', *Sudan Tribune*, 3 August 2011, available at <http://www.sudantribune.com/UN-decries-jailing-of-Sudanese,39729>.

¹⁴ See Amnesty International, 'Sudanese Activist Released Without Charge', 17 January 2012.

¹⁵ Picture from <http://namaa09.blogspot.com/2011/02/sudan-torture-victims-released-tens.html>

23. On 3 February 2011, a student from the Engineering School of Sudan University was arrested near Agrab Square in Khartoum North and detained at an NISS detention centre until 14 February 2011. During his interrogation, he was beaten with a black plastic water pipe, kicked in his sexual organs and tortured with electrical shocks through a taser. His long hair was cut with a sharp razor. He was subjected to torture over a period of 10 days. After he was forced to sign a pledge not to participate in future protests, he was released on 14 February 2012.
24. On 30 January 2011, an art student from the University of Khartoum was arrested by NISS officers, together with some other students. He was taken to an office near Khartoum North police station, where he was hit with a black plastic water pipe. He was threatened with rape and death if he did not confess that he was a member of Sudan Liberation Movement (SLM/Abdel Wahid). He was forced to sign a paper pledging that he would not participate in future meetings, and released after he had signed the pledge

2.3. Marginalised Communities

25. 13 members from the Alababda and Jaleein tribes from the River Nile state were arrested by police on 3 July 2011. All were accused of robbery, and different methods of torture and ill treatment were used to extract their confessions, including threats of rape, putting hot chili in sensitive body parts, blackmailing them to obtain money and breaking of fingers. Legal action was commenced on behalf of four of them against police members. The administrative inquiry to lift the immunity of the police members took eight months, with the immunity of the concerned officials being lifted in regards to the cases of four victims. All other cases are still being considered.
26. On 25 December 2011, an art student from the University of Khartoum, was arrested on campus by police officers belonging to the riot police. The arrest followed a demonstration of the Al-Manasir community against the Merowe Dam.¹⁶ The student did not resist arrest, yet was kicked and beaten with sticks on different parts of his body, in particular on his legs, shoulders and face. He lost consciousness as a result but was not provided with any medical assistance. An initial investigation was opened before the prosecutor in Khartoum in January 2012 and the case was ongoing at the time of writing.
27. On 4 January 2012, a graduate student from Omdurman Islamic University, at Atbara River Nile state, was arrested by police on 4 January 2012 after he had spoken on the 'Manasir issue' with a number of students in a discussion group. During the interrogation about his political affiliation, he was beaten by officers

¹⁶ Al-Manasir is one of three tribes protesting against severe losses of properties suffered due to the construction of the Merowe Dam in their homelands on the Fourth cataract of the River Nile, about 350km north of Khartoum.

belonging to the NISS. He was taken to Shendi, where he was kept for 12 days in a tiny cell without ventilation and light.

2.4. Conflict related torture and ill treatment

South Kordofan

28. The UN, national and international human rights organisations, and media reported that the Sudan Armed Forces (SAF) and other security forces have been responsible for torture, disappearances and ill treatment throughout Southern Kordofan state. Specifically, the report of the Sudan Democracy First Group documents the arrest, torture and disappearance of 90 civilians taken from Hay Mwazafin in Kadugli, and the arrest of another 26 identified civilians, whose whereabouts remain unknown.¹⁷ According to the UN, four UN peacekeepers were arbitrarily detained and abused by SAF personnel in Kadugli.¹⁸ In another reported incident, an Al Jazeera TV team was detained by security forces when trying to access Deling city on 8 June 2011. The team, consisting of one reporter, one photographer, one engineer and a driver, was beaten with rifle butts and threatened to be killed. The team was temporarily detained at the Security Authority Headquarters and a police station before being released.¹⁹
29. A communication and a request for provisional measures in respect of the situation in Southern Kordofan was submitted to the African Commission in July 2011. On 7 November 2011, the Commission transmitted the communication and request for provisional measures to the Government of Sudan, calling on the Government of Sudan to prevent harm to civilians.
30. However, widespread violations, including torture and ill treatment of those believed to be affiliated to opposition movements, have continued after November 2011. The ACJPS reported that on 2 December 2011, three youth belonging to the Misseriya tribe were arrested by the NISS between Hajlij and Muglad in South Kordofan, held in Kadugli and subjected to torture.²⁰
31. According to the International Rescue Committee, an increasing number of women and girls were raped while fleeing Nuba Mountains in South Kordofan.²¹

¹⁷ See the SDFG report, 'Ethnic Cleansing Once Again: Southern Kordofan/ Nuba Mountains', 13 June 2011, 3-4, for a detailed list of people allegedly arbitrarily detained, disappeared and tortured. See also report of the independent expert on the situation of human rights in Sudan, UN Doc. A/HRC/18/40, 22 August 2011, paras.37, 39.

¹⁸ UN News Centre, 'Sudan: UN condemns harassment of its peacekeepers in Southern Kordofan', 17 June 2011, at <http://www.un.org/apps/news/story.asp?NewsID=38758&Cr=sudan&Cr1=>; UNMIS statement, 'Bombs dropped near UNMIS in Kadugli', 17 June 2011, at <http://unmis.unmissions.org/Default.aspx?tabid=511&ctl=Details&mid=697&ItemID=14119>

¹⁹ Arabic Network for Human Rights Information, 'ANHRI condemns attack on Al Jazeera team in South Kordofan, 15 June 2011, at <http://reliefweb.int/node/420875>.

²⁰ ACJPS, *Sudan Human Rights Monitor*, December 2011-January 2012, 13

²¹ Katie Nguyen, 'Women raped while fleeing South Kordofan', 1 March 2012, available at: <http://www.trust.org/trustlaw/news/women-raped-while-fleeing-south-kordofan-conflict>

Blue Nile

32. Armed clashes broke out in Blue Nile on 1 September 2011 following a joint SAF and Popular Defence Forces (PDF) attack on an SPLM-N (Sudan People's Liberation Movement-North) convoy in Damazein. On the following day, President Al-Bashir declared a state of emergency in Blue Nile, dismissed the then governor Malik Agar and replaced him with a military commander Major General Yahya Mohamed Khair.
33. Human rights violations reportedly committed in Blue Nile include extrajudicial killings, arbitrary arrest, torture and other forms of ill-treatment.²² The majority of victims are opposition activists, in particular members or perceived members of the SPLM-N. There are consistent reports by released detainees about inhuman detention conditions and of being interrogated with threats and intimidation by the NISS.

Darfur

34. A number of Darfurians were reportedly subjected to torture and ill-treatment on the grounds of their political affiliation, their human rights work or their ethnic origin. In Khartoum, several Darfurians were tried and sentenced to death (and executed in some cases) following proceedings that relied on confessions allegedly extracted under torture during incommunicado detention.²³ A number of cases of torture continue to be reported from Darfur, including instances of rape and sexual violence, during the reporting period.²⁴

3. Legal and institutional framework

35. Sudan is obligated under article 5 in conjunction with article 1 of the African Charter to take measures to give effect to the prohibition of torture, particularly by taking measures with a view to preventing torture, and effectively responding to allegations of torture by means of prompt, impartial and effective investigations and prosecutions, and of providing effective remedies, as set out in detail in the Robben Island Guidelines.²⁵
36. Over the last decade, national, regional and international actors have identified a series of problems in the Sudanese legislative and institutional framework and

²² For details of the incidents, see ACJPS, *Continuing Violations of Human Rights in South Kordofan and Blue Nile States*, 24 August - 8 September 2011, and *Update on Human Rights Violations in Blue Nile and South Kordofan*, January 2012.

²³ See in particular text above para.7.

²⁴ See on torture and ill-treatment, reports of the independent expert on the situation of human rights in Sudan, UN Doc. A/HRC/18/40, 22 August 2011, para.54, and UN Doc. A/HRC/14/41, 26 May 2010, paras.67-70, and, on rape and sexual violence, A/HRC/18/40, para.55, and A/HRC/14/41, paras.67-70.

²⁵ *African Union's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)* (2002).

practice in relation to the prohibition of torture.²⁶ However, there is very limited evidence that the Government of Sudan has taken measures to effectively combat torture. There is no discernable anti-torture policy or coordinated efforts to tackle the causes of torture through legislative and institutional reforms or adequate responses (accountability and reparation) in individual cases.

3.1. *Prevention*

37. Sudanese criminal law does not contain a criminal offence of torture in line with article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Provisions governing rape and sexual violence, including the absence of a criminal offence of female genital mutilation, are inadequate and fail to effectively repress gender-based violence against women.²⁷
38. The Criminal Procedure Act provides some custodial safeguards.²⁸ However, it does not stipulate a right to access a lawyer of one's choice from the beginning of criminal proceedings. Also, the prosecuting attorney can extend the initial 24 hours period of arrest to 96 hours, which is an unduly long period compared to the 24-48 hours that are widely seen as best practice.²⁹ The period enhances the risk of torture at a time when arrested and detained persons are known to be most vulnerable.
39. The new National Security Act (NSA) adopted in 2010³⁰ largely fails to address the concerns that had been expressed in respect of its predecessor, the 1999 National Security Forces Law.³¹ The Act gives NISS members the power to arrest and detain a person on vague grounds for an initial period of up to thirty days (45 days upon renewal) and a possible total of four and a half months. As detainees do not have an unequivocal right to communicate with family member or lawyers, and do not have the right to appear before a judge to challenge the legality of detention or lodge a complaint within the period set out above (up to four and a half months), they are frequently subject to incommunicado detention.³² Being cut off from the outside world considerably enhances vulnerability to being subjected to torture, and also constitutes a form of ill-treatment in its own right.³³ The lack

²⁶ See reports by the UN Special Rapporteurs and Independent Experts on Sudan; reports of UN Commissions of Inquiry and African Union fact-finding missions on Darfur, and *Concluding observations of the UN Human Rights Committee: Sudan*, UN Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007, paras.9-11, 14-16, and REDRESS and SOAT, *National and International Remedies for Torture, A Handbook for Sudanese Lawyers*, March 2005.

²⁷ See REDRESS/KCHRED, *Time for Change: Reforming Sudan's Legislation on Rape and Sexual Violence*, November 2008.

²⁸ Article 83 Criminal Procedure Act of 1991.

²⁹ General Recommendations of the Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68, para. 26 (g).

³⁰ Its text is available at www.pclrs.org/smartweb/english/bills-and-laws.

³¹ See Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, *Arbitrary arrest and detention committed by national security, military and police*, Geneva, 28 November 2008, 3; REDRESS/SORD, *Security for All-Reforming Sudan's National Security Services*, October 2009, www.pclrs.org/downloads/Resources/Resources/Security%20for%20all%20Final.pdf

³² *Ibid.*

³³ Communication 275/2003: *Article 19 v Eritrea* (2007), paras.101, 102.

of substantial reforms of national security legislation constitutes a visible failure to enhance much needed protection against the well documented practices of torture and ill-treatment at the hands of NISS members.

3.2. *Use of evidence alleged to have been extracted under torture*

40. There have been a number of recent cases, including death penalty cases, where the Constitutional Court effectively dismissed allegations raised by defendants that confessions had been extracted under torture.³⁴ This jurisprudence, which concerned cases where defendants had been held in prolonged incommunicado detention during which the risk of torture and ill-treatment is particularly evident, fails to act as disincentive so that investigating authorities refrain from using torture to extract confessions or obtain evidence.

3.3. *Accountability*

41. There has been almost complete impunity for torture, including acts of rape and sexual violence. This impunity is attributable to a series of interrelated factors: lack of a criminal offence of torture, rape and other forms of sexual violence 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.

42. The granting of immunity is 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. This institutionalised lack of accountability is deeply engrained. Immunities were maintained in the Armed Forces Act of 2007, the Police Act of 2008, and the National Security Act of 2010, notwithstanding repeated calls to abolish immunity laws by the UNHRC, the African Commission, various UN bodies, the AU High-Level Panel on Darfur and others.³⁵ Immunities continue to act as reassurance that officials are above the law, also because the judiciary, including the Sudanese Constitutional Court, have upheld immunities in practice.³⁶ This situation has frequently led to impunity, including for serious human rights violations, as legal remedies are neither clear nor effective.³⁷ By maintaining the

³⁴ See *Paul John Kaw and others vs (1) Ministry of Justice; (2) Next of kin of Elreashedh Mudawee*, Case No. MD/QD/51/2008, Constitutional Court, Judgment of 13 October 2009, confirming the death sentence of six men accused of murder committed in the Soba Aradi riots of May 2005. *Isahq al-Sanusi and others vs Successors of deceased Mohamed Taha Mohamed Ahmed*, Case No MD/QD/121/2008, Constitutional Court Order of 23 March 2009, confirming the death sentence of nine men convicted for the murder of the journalist Mohamed Taha.

³⁵ See e.g. *Concluding observations of the UN Human Rights Committee: Sudan*, above note 26, para.9 (e) and *Darfur: The Quest for Peace, Justice and Reconciliation*, Report of the African Union High-Level Panel on Darfur (AUPD), PSC/AHG/2 (CCVII), 29 October 2009, xix, para.25 (c) and (d); 56-63, paras.215-238; and 91, 92, para.336.

³⁶ *Farouq Mohamed Ibrahim Al Nour v (1) Government of Sudan; (2) Legislative Body*; Final order by Justice Abdallah Aalmin Albashir President of the Constitutional Court, 6 November 2008.

³⁷ Human Rights Committee, above note 26, para.9 and Tenth Report, above note 31.

current system, the state party fails in its positive obligation to prevent, investigate and prosecute serious violations, and to provide effective remedies to victims thereof.

43. The lack of accountability is fostered by a climate in which victims, witnesses and human rights defenders increasingly face repercussions for bringing or raising complaints about torture and other human rights violations. For example, several journalists who called for a full investigation into Safia Ishag's allegations of rape (see above at para.17) were prosecuted for the offence of publication of false news. Moreover, protesters demonstrating against violations, such as in Lubna Hussein's case (see below at para.49), or demanded legislative reforms to prevent further violations, such as during demonstrations against the National Security Bill in 2010, repeatedly faced excessive use of force.³⁸

3.4. Lack of effective remedies and reparation

44. There have been some isolated out of court settlements in torture cases, and the Government of Sudan has agreed to providing some form of reparation in relation to the conflict in Darfur. However, in practice 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, in combination with systemic shortcomings that undermine effective access to justice, render existing remedies ineffective. In addition, there are no effective national human rights institutions or administrative mechanisms providing at least some form of reparation for torture survivors.

III. Corporal punishments, with a particular focus on whipping (articles 1 and 5 of the African Charter)

45. Corporal punishments are provided for in the 1991 Criminal Act for offences subject to hudud, qisas and ta'zir punishments, as well as in various other laws, particularly public order acts. Tellingly, article 33 of the Bill of Rights in the Interim National Constitution prohibits torture and other ill-treatment but omits any mention of punishment. In practice, the punishment of whipping has been the main focus of concern as there seems to be a de-facto moratorium on other forms of corporal punishment such as stoning and amputation. While there are no regularly published figures on the extent of whipping in Sudan, public statements, interviews and anecdotal evidence indicate that it is frequently imposed as a judicial punishment.³⁹

³⁸ *Report of the independent expert on the situation of human rights in Sudan*, UN Doc. A/HRC/14/41, 26 May 2010, para.22.

³⁹ See for further details, REDRESS and Sudanese Human Rights Monitor, *No more cracking of the whip: Time to end corporal punishment in Sudan*, March 2011. The section on corporal punishment is taken from, or based on this report.

46. Whipping is provided for as hudud punishment for adultery, wrongful accusation of adultery and drinking of alcohol, and for 18 other offences in the 1991 Criminal Act. Public order laws, which are enacted by the localities, also provide for whipping as one of the punishments for infractions of prohibitions. For example, the Khartoum Public Order Law allows for the imposition of whipping in respect of 17 prohibitions set out in the Law, including for a failure of men and women to queue separately.
47. Available evidence points to the following typical practice: many of those subjected to whipping appear to belong to marginalised groups, such as impoverished women, tea-sellers, and those from certain backgrounds, including Southern Sudanese and Darfurians, particularly for alcohol related offences or for alleged adultery. However, the sentencing of a well-known football player to forty lashes for drinking alcohol, the whipping of students and the targeting of a journalist and those in her company for wearing ‘indecent dress’ shows that societal status is not the only factor. Gender and certain types of conduct, often in combination, appear crucial factors. Arrests for public order offences are frequently carried out by the public order police who come to know about what they consider ‘morally deviant’ behaviour. Crucially, the large number of vaguely worded offences gives police officers considerable leeway and power in determining whether anyone is suspected of having breached the law. Upon arrest, which is often carried out in form of collective raids known as *khasa*, the suspects are frequently detained overnight and brought before the judge for a summary trial the next day. The proceedings tend to be short, commonly not more than half an hour, with the police or security officer setting out the case for the prosecution. Defendants frequently have limited awareness of the law and no legal assistance, and may also be anxious to minimise the societal fallout of drawn-out legal proceedings over charges of ‘indecent’ behaviour. As a result, their willingness and ability to defend themselves is seriously undermined and many defendants, following conviction, waive their right to appeal to put the experience behind them as quickly as possible. The punishment of whipping is then carried out on the spot.
48. Interviews conducted with officials, lawyers and those subjected to corporal punishment indicate that officials carrying out the whipping regularly do not adhere to the rules. The number of lashes is exceeded, parts of the body are hit that should be exempt, and those lashed are sworn at. In short, the limited safeguards of monitoring by a magistrate or someone else acting on his/her behalf, are frequently disregarded. The whipping video that surfaced in December 2010 therefore appears to reflect reality rather than constitute an aberration. In practice, a punishment forming part of broader notions of a state imposed morality and security becomes a licence to lash out and insult marginalised members of society, thereby reinforcing hierarchies of power, ethnicity and gender.
-

49. This practice makes it clear why the stance taken by the journalist Lubna Hussein made her case so exceptional. She was arrested in July 2009 for ‘wearing an indecent dress’ (i.e. trousers). However, unlike her friends who were with her at the time, she refused to stand trial and publicly protested against her treatment. Her case generated publicity around the world, casting the spotlight on arbitrary law enforcement and administration of justice in the context of Sudanese public order laws. This may have been crucial in influencing the court’s determination of punishment, namely convicting her to payment of a fine instead of the customary whipping (ten of the women arrested together with Lubna Hussein were given ten lashes each).⁴⁰
50. The African Commission has already had the opportunity to consider the compatibility of the punishment of lashing (whipping) with article 5 of the Charter in *Doebbler v Sudan*. In that case, the Commission dismissed the argument that the punishment was justified because the acts for which it was imposed were criminal under domestic law. Its position on the question of the imposition of corporal punishment was unequivocal, namely that:

*there is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty.*⁴¹

51. Accordingly, the Commission found that the punishment had violated article 5 of the African Charter. The decision in *Doebbler v Sudan* constitutes a strong and clear statement on the prohibition of corporal punishment under the Charter.

Recommendations

Based on the analysis of Sudan’s deficient legislative and institutional framework and evidence of continuing violations of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the Organisations urge the African Commission to recommend that the Government of Sudan:

1. Adopt an anti-torture policy designed to effectively preventing torture, based on

⁴⁰ See Human Rights Council, *Report of the independent expert on the situation of human rights in the Sudan*, Mohammed Chande Othman, UN Doc. A/HRC/14/41, 26 May 2010 on the application of Sharia laws to non-Muslims, at para.29: ‘On 3 July 2009, the Public Order Police arrested 13 Muslim and non-Muslim women from a privately-owned restaurant and charged them with “indecent dressing”. Some of the women were allegedly slapped and harassed. A judge in a Public Order Court found most of them guilty and sentenced them to lashing and the payment of fines or, in the alternative, imprisonment. On 18 November 2009, a 16 year old non-Muslim Sudanese girl was sentenced by a Public Order Court to 50 lashes for “indecent dressing” for having worn a skirt and blouse.’

⁴¹ *Doebbler v Sudan*, para.42.

legislative and institutional reforms, measures to ensure accountability and justice for torture victims, and a public commitment to refrain from any form of torture, cruel, inhuman or degrading treatment or punishment;

2. Undertake the following legislative reforms:

Make torture a criminal offence in line with the definition of article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and subject to punishments commensurate with the seriousness of the offence;

Remove the reference to adultery in article 149 of the Criminal Act (rape), enact legislation that adequately criminalises other forms of sexual violence, including female genital mutilation, and make involvement of a public official an aggravating circumstance in case of rape and other sexual violence;

Ensure adequate custodial safeguards in the Criminal Procedure Act, including access to a lawyer of one's choice from the beginning of proceedings and the right to be brought before a judge within 48 hours;

Remove the power of the NISS to arrest and detain individuals; or reform the National Security Act to ensure adequate custodial safeguards, including the prohibition of arbitrary arrest and detention, including incommunicado detention, access to a lawyer of one's choice from the beginning of proceedings and the right to be brought before a judge within 48 hours;

Amend the 1993 Evidence Act to stipulate an unequivocal prohibition of using evidence extracted as a result of torture or other ill-treatment;

Remove barriers to accountability for torture by (i) repealing immunities provisions in the Armed Forces Act, the Police Act and the National Security Act; (ii) extending if not removing altogether statutes of limitation for the offence of torture; and (iii) enacting laws providing adequate protection against threats, harassment and assaults on victims, witnesses and human rights defenders;

Enact legislation providing for an explicit right to reparation for torture and related human rights violations, including effective access to justice.

Promote a culture of accountability within the NISS, the police and the army by adopting codes of conduct prohibiting torture and ill-treatment, the breach of which is subject to disciplinary sanctions, and making human rights training an integral part of their curricula.

3. Establish an independent oversight body vested with sufficient resources and mandated to investigate allegations of torture and ill-treatment in line with best practices, including the Istanbul Protocol.

4. Abolish all forms of corporal punishment in Sudanese laws.