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Sudan: It's High Time to Ratify the UN Convention Against Torture

Background

Sudan signed the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1986,¹ but more than 30 years later, it is yet to ratify the Convention despite repeated government commitment to do so.

In May 2016, during Sudan's Universal Periodic Review at the UN Human Rights Council, the Sudanese government accepted for the second time, recommendations to ratify the Convention and strengthen efforts to prevent torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment).² Sudan had previously accepted similar recommendations during its 2011 review.³ The government also stated that they were taking steps to effect the recommendation to ratify the Convention.⁴

Amnesty International welcomes these commitments and encourages Sudan to implement them. By ratifying the Convention against Torture, Sudan will join the vast majority of states – 162 – who are party to this Convention.

Freedom from torture and other ill-treatment is a universally recognized human right. The absolute prohibition of torture and other ill-treatment is a rule of customary international law that is binding on all nations irrespective of whether or not they have signed the Convention,⁵ but the Convention provides useful content and detail to this general

¹ United Nations, *Treaty Series*, vol. 1465, p. 85. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&lang=en#3

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Sudan*, UN Doc. A/HRC/WG.6/25/L.5, 9 May 2016, recommendations 139.6-139.10.

³ Report of the Working Group on the Universal Periodic Review*, Sudan, Addendum, , UN Doc. A/HRC/18/16/Add.1, 16 September 2011,

http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SD/A_HRC_18_16_Add.1_Sudan_E.doc

⁴ See for instance Human Rights Committee, Fifth periodic report submitted by the Sudan, UN Doc. CCPR/C/SDN/5, 11 October 2017, para. 52

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiaRHSdhmd%2brlq%2bwz9j3ONcXb%2fj7kZWVmlMa%2fu6aDrgklzgE%2b8hFgEvP40i90FHU548vG4V2bgDrACNsSIB8uAgaUNipaG2eMODvCqll%2fnXrX>

⁵ See for example: International Court of Justice: *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, para. 99; *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Judgment of 30 November 2010, para. 87; UN General Assembly resolution 66/150, 27 March 2012, third preambular paragraph; *Prosecutor v Furundzija* (IT-95-17/1) ICTY, Trial Judgment (1998), paras.137-146.

prohibition. The ratification of the Convention and its implementation in law, policy and practice would be a major step towards improving human rights within Sudan and enhancing Sudan's reputation.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

International human rights law prohibits torture and all other cruel, inhuman or degrading treatment or punishment in all circumstances. As noted above, the prohibition is a rule of customary international law binding on all states.

Article 1(1) of the Convention against Torture defines torture as follows:

“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him[/her] or a third person information or a confession, punishing him[/her] for an act [s/he] or a third person has committed or is suspected of having committed, or intimidating or coercing him[/her] 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.”

Sudan, by signing the Convention against Torture in 1986, has legally committed itself to refrain from acts that would “defeat the objects and purpose of [the] treaty”.⁶ Sudan is additionally bound by Article 5 of the African Charter on Human and Peoples' Rights⁷ and Article 7 of the International Covenant on Civil and Political Rights (ICCPR)⁸, both of which prohibit torture and other ill-treatment in absolute terms. Article 10 of the ICCPR recognizes the right of all persons deprived of their liberty to humane treatment. Both Article 5 of the African Charter and Article 10 of the ICCPR provide for respect for the inherent dignity of human beings.

The prohibition of torture and other ill-treatment is enshrined in Sudan's Interim National Constitution (INC) of 2005.⁹

Article 33 of the Constitution provides that “No person shall be subjected to torture or to cruel, inhuman or degrading treatment.”¹⁰ This right cannot be suspended during times/[state] of emergency.¹¹ Article 29 guarantees the right of every person's right to liberty and security of person. Sudan's government argues in its recent report to the Human Rights Committee, the expert body charged with overseeing the interpretation and implementation of the International Covenant on Civil and Political Rights (ICCPR), that Article 115 (2) of

⁶ The Vienna Convention on the Law of Treaties, A/CONF.39/27 (1969), adopted 22 May 1969, entered into force 23 May 1980, Article 18. Sudan acceded to this Convention in 1980. **Error! Hyperlink reference not valid.**

⁷ African Charter on Human and Peoples' Rights, Article 5, www.achpr.org/instruments/achpr/

⁸ International Covenant on Civil and Political Rights, Article 7, www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

⁹ The text of the Interim National Constitution of Sudan [2005 available at](#): **Error! Hyperlink reference not valid.**

¹⁰ Constitution of the Sudan (2005, as subsequently amended), Article 33 (within the Constitution's Bill of Rights).

¹¹ See Constitution of the Sudan, Article 211(a).

the Sudan's 1991 Criminal Act provides a 'precise' definition of torture: "Anyone vested with public authority who induces, threatens or tortures a witness, suspect or party to a case to provide or withhold any information shall face a term of imprisonment of up to 3 months and/or a fine."¹² While Amnesty International welcomes the fact that torture is criminalised by this provision, Article 115(2) does not provide an adequate definition of torture, making it much narrower than the definition in Article 1(1) of the Convention against Torture mentioned above.

Legal protection against torture in Sudan

Under Articles 2 and 4 of the Convention Against Torture, state parties must criminalize torture effectively in domestic law. Other international treaties call for the criminalisation of other acts of ill-treatment. All complaints or reports of torture and other ill-treatment must be promptly, independently, impartially and effectively investigated. Where sufficient, admissible evidence exists, those suspected of committing the crime of torture or other acts of ill-treatment should be prosecuted in proceedings that meet international standards of fairness.

Some Sudanese laws include language that prohibits torture including Article 115(2), of the 1991 Sudan's Criminal Act mentioned above. Article 51 (3) of the National Security Act (NSA) 2010, states: "Persons who have been arrested, detained or imprisoned shall be treated in a manner that preserves their human dignity and they may not be subjected to any form of physical or mental abuse." Article 4(d) of the 1991 Sudan's Criminal Procedure Act also provides: "The person or property of suspects may not be violated. They may not be compelled to provide evidence against themselves or to swear an oath except in non-*hudud*¹³ cases that relate to private third-party rights."

According to Sudan's report to the Human Rights Committee,¹⁴ "evidence extracted under torture is inadmissible in courts." However, Sudanese law does not provide an absolute prohibition of the admissibility of such "evidence" as required, for instance, under Article 15 of the Convention against Torture. According to Article 20(2) of the Evidentiary Act: "Rulings in criminal cases are invalid if they arise from any form of inducement or coercion." Article 10 (1) of the same Act provides: "With adherence to provisions of confession and the inadmissible evidence, the evidence will not be inadmissible just because it was obtained through incorrect procedure provided that the court is confident that it is independent and acceptable." Article 10 (2) adds that, "the court may, when it consider it suitable for justice, to refrain from granting conviction on the basis of the evidence mentioned in part (1) unless it is corroborated by another evidence."

Some of these provisions are welcome, to the extent that they afford some protection from

¹² Sudan's report to the Human Rights Committee, UN Doc. CCPR/C/SDN/5, 11 October 2017, para. 53.

¹³ Non-hududs are any crimes that are not included in the definition of Article 3 of the Criminal Act 1991 which stipulates that hudud means: the offences of drinking alcohol, apostasy (ridda), adultery (zina), casting accusation of adultery (qazf), armed robbery (hiraba) and capital theft, see the Sudan Criminal Act 1991. www.moi.gov.sd/sudanlaws/#/reader/chapter/115

¹⁴ Sudan's report to the Human Rights Committee, Fifth periodic report submitted by the Sudan, UN Doc. CCPR/C/SDN/5, 11 October 2017, para. 92, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiaRHSdhmd%2brlq%2bwz9j30NcXb i7kZWVmLma%2fu6aDrgklzgE%2b8hFgEvP40i90FHU548vG4V2bgDrACNsSIB8uAgaUNIpaG2eMODvCqll%2fnXrX>

torture and other ill-treatment. However, this protection is not complete. Among other things, as already noted, there is no definition of torture in Sudanese law and its criminalisation is far too narrow. Further, Sudanese law also lacks clear provisions for prompt and impartial investigations into complaints. What undermines any attempt for redress by torture victims is NSA Act 2010 where agents are provided with protection from prosecution for any act committed in the course of their work, which has resulted in institutionalized impunity.¹⁵

Amending domestic laws

According to Sudan's report to the Human Rights Committee, the government is reviewing its Criminal Act of 1991, including provisions which allow flogging as a form of punishment. While this would be a step in the right direction, the report states that the punishment would be restricted "to three serious offences"¹⁶ rather than abolished completely, as required under international law. The current criminal code and the public order laws in Sudan, allow internationally banned corporal punishments including amputation and stoning, both of which invariably amount to torture, and flogging, which amounts to torture or other ill-treatment.¹⁷

For example, under Sudan's Criminal Act of 1991,¹⁸ about 20 offences are punishable by flogging. These cover a wide array of acts, ranging from abetment, theft, "obscene and indecent" acts, to breach of public peace, and include acts that should not be criminalized at all such as consensual sexual relationships between men and women or between men.¹⁹ Those found guilty of any of the above offences would receive between 20 to 100 lashes.²⁰

Sudan has justified corporal punishment, flogging in particular, according to its own interpretation of *Shari'a* law.²¹ Sudanese officials have justified flogging saying it was better

¹⁵ Amnesty International, *Sudan: excessive and deadly: the use of force, arbitrary detention and torture against protesters in Sudan*, (Index: AFR 54/020/2014). Amnesty International, Sudan: *courageous and resilient: activists in Sudan speak out* ([AFR/54/7124/2017](https://www.amnesty.org/en/documents/AFR/54/7124/2017/))

¹⁶ Sudan's report to the Human Rights Committee, UN Doc. CCPR/C/SDN/5, 11 October 2017, para.18.

¹⁷ See Amnesty International, *Combating torture and other ill-treatment: a manual for action*, (Index: POL 30/4036/2016), available at: www.amnesty.org/ctm, sec. 2.5.1. Saudi Arabia, Twenty-eighth session; 29 April-17 May 2002, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshvVcmWTul6%2fu%2bWI9YGTvqBSI5YgB0zGixPad4yoJVuCi%2f6M3bVPgQMuHxMR%2fyLGWC7aa8Wnh3fyIwQ4QtJ%2bzgaqHerZgGqNnr6Kv6kfK8QV>

¹⁸ Article 3 of the Criminal Act 1991 stipulates that hudud means the offences of drinking alcohol, apostasy (ridda), adultery (zina), casting Accusation of Adultery (qazf), armed robbery (hiraba) and capital theft.

¹⁹ Article (25) 'Abetment'; Article (47) 'Measures for Juveniles [that reached age of 10-year-old and less than 18-year-old]'; Article (68) 'Punishment of Disturbance'; Article (69) 'Breach of Public Peace'; Article (78) 'Drinking Alcohol and Nuisance'; Article (80) 'Gambling or Running a Gambling Place'; Article (81) 'Persistent offenders'; Article (125) 'Insulting Religious Believers'; Article (146) Adultery [unmarried]; Article (148) 'Sodomy (homosexual)'; Article (149) 'Rape'; Article (150) 'Offences of Incest'; Article (151) 'Indecent Acts'; Article (152) 'Obscene and Indecent Acts'; Article (153) 'Materials and Expositions Contrary to Public Morals'; Article (154) 'Practising Prostitution'; Article (156) 'Seduction'; Article (157) 'Slander' [Casting Accusation of Adultery (qazf)]; Article (160) 'Insults and Abuse'; and Article (173) 'Theft';

²⁰ Amnesty International, *Sudan: End stoning, reform the criminal law* (Index: AFR 54/035/2012).

²¹ Letter dated 18 February 1994 from the Permanent Representative of the Sudan to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights, UN Doc. E/CN.4/1994/122, 1 March 1994, paras.72,73. Sudan's Bashir sees Islamic law, defends flogging, 19/December/ 2010: <https://af.reuters.com/article/topNews/idAFJOE6BIO4I20101219>. As of 2018, out of the 57 states member of the Organisation of Islamic Cooperation (OIC) only 11 countries implement *Hududs* in its penal code: Afghanistan, Brunei, Iran, Iraq, Mauritania, Pakistan, Qatar, Saudi Arabia, Sudan, United Arab Emirates, and Yemen. Also, main stream Sunni Islamic scholars had insisted on extreme conditions for the imposition of the *hudud* which is impossible to fulfil. For example, Yusuf Al Qaradawi, the chairperson of the International Union of Muslim Scholars in an interview with Al Jazeera TV, on (hudud),

for the victims to have been lashed rather than hold them in detention.²² REDRESS, an international organization that supports torture survivors to obtain justice, and the Sudanese Human Rights Monitor noted in their 2012 report that, “Corporal punishment therefore serves as a visible expression of state superiority and an instrument of repression.”²³ Despite various recommendations to Sudan to abolish flogging and corporal punishment by the UN Human Rights Committee and ACHPR,²⁴ flogging remains widely practised in Sudan, often on a daily basis, for a wide range of offenses, and following a summary trial, especially by the Public Order Courts.²⁵ Flogging is also widely used in prisons across Sudan as a disciplinary measure.²⁶

The death penalty is applicable to 15 offences, including, in some cases, death by stoning, which amounts to torture, but has never been applied.²⁷ Theft and armed robbery, are punishable by amputation. According to Sudan’s report to the Human Rights Committee, this punishment [amputation] has never been meted out or applied.²⁸ However, a judicial amputation was carried out on 14 February 2013 where doctors at Al-Rebat Hospital in Khartoum carried out cross-amputation (cutting off the right hand-left foot) on a 30-year-old man who was convicted of an armed robbery which took place in 2006.²⁹ An ‘eye for an

he stated that: “Before we implement the hudud, [we should feed] the hungry, employ the unemployed, educate the uneducated and train the worker. These are necessities before implementing the hudud”, on 04/January/2011, <https://tinyurl.com/y965khl9>. The current Grand Mufti of Egypt, Shawqi Allam in an interview, also stated that: “We are in a time of uncertainties that surrounding all issues,” He further explained that the application of hudud should only take place after all certainties [doubts] removed, on 24/March/2017, <https://tinyurl.com/y8d5h3tc>.

²² The African Commission had considered the practice of corporal punishment in the landmark case of Curtis Francis Doebbler v Sudan in 2000. In their oral submissions at the 33rd Ordinary Session, the Respondent State confirmed this by stating that it was the opinion of the Respondent State that it was better for the victims to have been lashed rather than hold them in detention for the said criminal offences and as such deny them of the opportunity to continue with their normal lives. Curtis Francis Doebbler v Sudan, African Commission on Human and Peoples’ Rights, Comm. No. 236/2000 (2003). www.pclrs.com/downloads/Corporal%20Punishment%20-%20English.pdf

²³ REDRESS and the Sudanese Human Rights Monitor, *No more cracking of the whip: Time to end corporal punishment in Sudan, March 2012*, www.pclrs.com/downloads/Corporal%20Punishment%20-%20English.pdf

²⁴ In 2014, ICCPR human rights committee, concluding observations “the committee regrets that, despite its previous recommendation (ccpr/c/sdn/co/3, paragraph 10), the state party’s legislation still provides for several forms of corporal punishment, such as flogging and amputation, that violate article 7 of the covenant, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/download.aspx?symbolno=ccpr%2fc%2fsdn%2fco%2f4&lang=en. The concluding observations of the Human Rights Committee (CCPR/C/SDN/CO/3), UN Doc. CCPR/C/SDN/CO/3/Add.1, 18 December 2009, para.14. The African Commission on Human and Peoples’ Rights, observation on Curtis Francis Doebbler v Sudan, Comm. No. 236/2000 (2003). www.pclrs.com/downloads/Corporal%20Punishment%20-%20English.pdf

²⁵ Netsanet Belay, Opinion: Sudan must end ‘cruel’ amputation punishment, 18 March 2013, <http://edition.cnn.com/2013/03/16/opinion/opinion-amnesty-international-sudan-amputations/index.html>

²⁶ The Strategic Initiative for Women in the Horn of Africa (SIHA) and the Redress Trust. (2017). *Criminalisation of women in Sudan, 2017*, <https://redress.org/publication/criminalisation-of-women-in-sudan/>. A regional non-governmental organization working on women rights noted that the Public Order Courts, in their summary trials, and in a complete contempt for the most basic principles of a fair trial, handle between 18-20 cases per day on ‘minor offenses – such as wearing ‘indecent dress’ in Greater Khartoum, most of the time offenders will be subjected to flogging. An email received from the NGO on 11 December 2017.

²⁷ Article (50) ‘Undermining the Constitutional System’; Article (51) ‘Waging War Against the State’; Article (53) ‘Espionage’; Article (126) ‘Apostasy’; Article (130) ‘Murder’; Article (134) ‘Abetment of Suicide of Child or Insane Person’; Article (146) ‘Adultery’ [punished by execution by stoning for married person]; Article (148) ‘Sodomy’ [same-sex sexual relations]; Article (149) ‘Rape’; Article (155) ‘Running a Brothel’; Article (177) ‘Criminal Breach of Trust’. In addition to the introduction of seven crimes related to International Humanitarian Laws violations, five of which carry the death penalty. Article (186) ‘Crimes against Humanity’; Article (187) ‘Genocide’; Article (188) ‘War Crimes’; Article (191) ‘War crimes of use of Banned War Tactics’; Article (192) ‘War Crimes and Use of Banned Weapons’.

²⁸ Sudan’s report to the Human Rights Committee, UN Doc. CCPR/C/SDN/5, 11 October 2017, para. 55. Article (168) ‘Highway Robbery’ [punished by amputation of the right hand and left foot] and Article (171) ‘Theft’ [punished with amputation of the right hand from the wrist]. Sudan’s Criminal Act of 1991, www.ecoi.net/file_upload/1329_1202725629_sb106-sud-criminalact1991.pdf

²⁹ Sudan Tribune, Sudan doctors carry out court ordered amputation sentence, 27 February 2013, www.sudantribune.com/spip.php?article45672. Netsanet Belay, Opinion: Sudan must end ‘cruel’ amputation punishment, 18 March 2013, <http://edition.cnn.com/2013/03/16/opinion/opinion-amnesty-international-sudan-amputations/index.html>.

eye' form of retributive punishment is included in Sudan's Criminal Act for offenses causing serious bodily harm or injury.

Torture and other ill-treatment in Sudan

The Government of Sudan has repeatedly denied the existence of torture and describes any reports of such practices as fabrications or false reporting.³⁰ These denials are not genuine but it is at least an indication of the government disapproval of torture and its desire not to be associated with allegations of torture. Sudan's recent report to the Human Rights Committee, states that "During the reporting period no complaints of torture were received by any of the various national mechanisms, and no cases were brought before the courts."³¹ This raises concern if victims and their families are forced into silence and may also be indicative of the absence of independent human rights monitoring groups. Amnesty International has received reports that victims who attempted using legal complaint mechanisms have not been successful³² or told by the NISS legal advisors that the "procedures [torture] are legally correct."³³

Since January 2018, Amnesty International has documented an intensified crackdown on opposition political activists in connection with sporadic protests over the rise of cost of living in Sudan. Hundreds were arrested and detained solely for peacefully exercising their right to freedom of expression and peaceful assembly.³⁴ Many of those released reported that they had been subjected to torture or other ill-treatment while in detention.

In January 2017, Amnesty International published a report which focused on violations of the human rights of students from Darfur since 2014. The report highlighted six cases of torture and other ill-treatment of Darfuri students by the National Intelligence and Security Service (NISS) agents.³⁵ The report also highlighted the African Commission on Human and Peoples' Rights' (ACHPR) decision on 13 February 2015 in the case of three Sudanese human rights defenders, Monim Elgak, Amir Suliman and the late Osman Hummada, who were subjected to arbitrary arrest and detention, torture and other ill-treatment by the NISS

³⁰ Ibrahim Ghandour Sudan's Foreign Minister in interview by Deutsche Welle TV, on 27 February 2018, said: "there is no torture in Sudan", www.dw.com/en/ibrahim-ghandour-on-conflict-zone/av-42760364. Phil Cox, a British journalist, and Daoud Hari, a Darfuri translator and author, had been commissioned by the UK's Channel4 TV to investigate [reports](#) by Amnesty International that Sudanese security forces had used chemical weapons against civilians in Jebel Marra between January and August 2016. They were arrested and detained and tortured in Sudan. The Sudanese embassy representative in UK denied such allegations, www.channel4.com/news/sudan-interview-khalid-al-mubarak-and-rosalind-marsden.

³¹ Human Rights Committee, Fifth periodic report submitted by the Sudan, UN Doc. CCPR/C/SDN/5, 11 October 2017, para. 54 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7vhsiaRHSdhmd%2brlq%2bwz9j3ONcXbI7kVZVmlMa%2fu6aDrklzgE%2b8hFgEvP40i90FHU548vG4V2bgDrACNsSIB8uAgaUNipaG2eMODvCqll%2fnXrXIbid>, page 11.

³² According to two lawyers interviewed by Amnesty International in 2016, they explained why victims of torture rarely lodge complaints against police or NISS agents, they cited two reasons; fear of reprisal and that they put off by complex procedures for reporting police or NISS officers and their guaranteed immunities

³³ Abdala Abdel Alqyoum Abdala, 54, is a father of four, a farmer and a founding member of El Gedaref Salvation Initiative in El Gedaref city in Eastern Sudan. He was arrested and detained on 17 March 2013 for participating in a peaceful protest against the rigging of the elections in El Gedaref State. He was subjected torture and ill-treatment during his detention. Following his release, he submitted a complaint to the Attorney General office in El Gedaref City on 14 April 2013. In the submission, he alleged violations of his rights and that four NISS agents tortured him. After two years in 2015, Abdala received a verbal response from NISS, which say that the procedures were legally correct.

³⁴ Amnesty International, *Sudan: hundreds arrested, whereabouts unknown*, (Index: AFR 54/7886/2018)

³⁵ Amnesty International, *Sudan: 'uninvestigated, unpunished': human rights violations against Darfuri students* (Index: AFR 54/4848/2017).

in November 2008, including severe beatings, threats and sleep deprivation.

The ACHPR found that Sudan had violated a number of Articles of the Charter, including Article 5, which prohibits, among other things, torture and other ill-treatment. The Commission called on Sudan to investigate and prosecute the security and intelligence officers alleged to be responsible for the arbitrary arrest, torture and other ill-treatment of the three human rights defenders.³⁶ It gave the Government of Sudan 180 days to inform it of measures taken to implement its decision. Sudan has not responded to the ACHPR as of March 2018.

In September 2017, Amnesty International published a briefing describing the treatment of opposition political party members, trade unions activists, human rights defenders and students who were arrested and detained between October 2016 and April 2017. Seven of them were subjected to torture while in detention, including severe beatings, exposure to extreme heat and cold, threats of death and rape, and humiliation.³⁷ Amnesty International also documented cases of individuals at risk of torture in Sudan to draw attention to the continuing risk of torture.³⁸

Other human rights organizations have also reported on practices of torture in Sudan. For example, the African Centre for Justice and Peace Studies' (ACJPS) report on torture, published in May 2017, which covered the period from 2011 to 2015, presented the experience of nine victims of torture and stated that "The majority of the victims that were interviewed by ACJPS were subjected to torture while in detention. The detention is usually a result of arbitrary arrests that are carried out without arrest warrants targeted at political opposition party members, human rights defenders and activists. Many of these cases included torture of detainees from members of marginalised ethnic groups with perceived support to armed rebel movements. Torture was primarily used as a tool to extract information or confessions."³⁹ The report described a wide array of torture methods, including severe beatings, electrocution, rape, holding in painful position, and burning.

None of the cases presented were investigated by the Sudanese authorities and none of the perpetrators prosecuted.

Most of these acts of torture were allegedly committed by the NISS and other law enforcement agencies. The NISS in particular maintains broad powers of arrest and detention under the NSA Act, which allows suspects to be detained for up to four-and-a-half months without judicial review. NISS agents often use their broad powers of arrest and detention to arbitrarily arrest and detain individuals for long periods of time and subject

³⁶ ACHPR, *Communication 379/09 – Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan*, decision of 14 March 2014, www.achpr.org/files/sessions/15th-eg/comunications/379.09/achpr15eos_decision_379_09_eng.pdf.

³⁷ Amnesty International, Sudan: *courageous and resilient: activists in Sudan speak out*, 20 September 2017, (AFR 54/7124/2017)

³⁸ Amnesty International, Sudan: *Further Information: Sudanese student held in solitary confinement: Naser Aldeen Mukhtar Mohamed*, 27 November 2017 (AFR 54/7489/2017)

³⁹ The African Centre for Justice and Peace Studies (ACJPS) "I WAS ELECTROCUTED": TORTURE IN SUDAN FROM 2011-2015, www.acjps.org/wp-content/uploads/2017/05/TORTURE-IN-SUDAN-v4.pdf

them to torture and other ill-treatment.⁴⁰

Under the NSA Act, NISS agents are provided with protection from prosecution for any act committed in the course of their work. This has resulted in a pervasive culture of impunity. The NISS powers were further expanded under an amendment to Article 151 of the Interim National Constitution of Sudan 2005, passed on 5 January 2015. It gave the NISS wide range of discretion to decide what constitutes a political, economic or social threat and how to respond to such threats.⁴¹

Under international law states have obligations to respect, protect and fulfil human rights. In practice this means that states must:

- Respect: by ensuring that state organs, officials and agents do not violate human rights themselves.
- Protect: by taking measures aimed at protecting individuals and groups against human rights abuses committed by state officials or agents, as well as by non-state (private) actors, and,
- Fulfil: by taking positive steps that enable people to receive the full benefits they are entitled to receive under these rights⁴²

Recommendations

Amnesty International strongly reiterates its previous calls and urges Sudan to ratify the Convention against Torture without any further delay, in line with its acceptance of relevant recommendations during the Universal Periodic Review at the UN Human Rights Council. Amnesty International also recommends that the Sudanese authorities to:

- Adopt in full the definition of torture in Article 1(1) of the Convention against Torture in defining the crime of torture;
- Criminalise torture and other acts of ill-treatment and adopt other legislation and policy measures to ensure full compliance with the Convention against Torture;
- Amend the 1991 Criminal Act to remove all provisions that allow corporal punishment;
- Amend the National Security Act 2010 to effect institutional and behavioural reform of the NISS, remove its powers of arrest and detention, repeal provisions for arbitrary arrest and detention and establish a judicial oversight mechanism;
- Remove all immunities provided to members of the NISS under Article 52 of the National Security Act 2010;
- Provide for an absolute prohibition of *refoulement*;
- Refrain from subjecting the crime of torture to any statute of limitations;
- Provide for prompt, impartial, independent and effective investigations into all

⁴⁰ Sudan: Human Rights Defenders Detained, Face Death Penalty, 7 July 2017, <https://www.hrw.org/news/2017/07/07/sudan-human-rights-defenders-detained-face-death-penalty>

⁴¹ The parliament endorsed the constitutional amendments, 25 April 2017, www.parliament.gov.sd/ar/index.php/site/getNewsbyId/66666803.

⁴² For more detailed recommendation see Amnesty International, *Combating torture and other ill-treatment, a manual for action*, (Index: POL 30/4036/2016)

complaints and reports of torture and other acts of ill-treatment, be they from victims, witnesses, NGOs, officials or any other source;

- prosecute those suspected of committing the crime of torture or other acts of ill-treatment in fair trials and without resort to the death penalty or corporal punishment;
- Ensure that inappropriate defences such as “necessity” or “Orders from superiors” do not apply;
- Ensure that amnesties and immunities from prosecution for torture and other acts of ill-treatment are not granted;
- Make provisions for universal jurisdiction to bring to justice anyone accused of responsibility for torture, regardless of the nationality of the person or where the torture occurred;
- Ensure that under no circumstances would any statement established to have been made as a result of torture be invoked as evidence in any proceedings,
- Ensure that penalties for torture and other acts of ill-treatment take into account their grave nature;
- Ensure all victims and their families have the right to an effective remedy, including full reparations for the harm suffered.