

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	502
Land:	Sudan
Kilde:	World Organisation Against Torture
Titel:	(Post)-Covid19 era in Sudan; The urgency to unravel the torture and inhuman treatments system one year after the Transition
Udgivet:	16. juli 2020
Optaget på baggrundsmaterialet:	4. december 2020



Briefing paper

(Post)-Covid19 era in Sudan: The urgency to unravel the torture and inhuman treatments system one year after the Transition

The Covid-19 crisis is appearing in many African countries, including Sudan, as a revealing crisis which calls particular attention to the preexisting and worrying situation, mainly in the prison system marred by overcrowding, insufficient and inadequate sanitation and the lack of resources. In Sudan, torture and inhuman treatments have been used as a governing tool and prisons as dying houses for political activists and civil society organisation leaders.

This briefing identifies priorities for torture and reform in Sudan by the transitional government including law reform, accountability, rehabilitation and compensation of torture victims. It also critically looks at the measures adopted to prevent the propagation of Covid-19 in detention facilities and the capacity of authorities to protect the health of detainees.

July 2020

Table of Contents

1. Overview of Torture and ill-treatments in Sudan	3
2. Dismantling the torturous legal and institutional framework: low-hanging fruit?.....	4
a. Repealing torture laws: reassuring little steps especially for women	4
b. National Intelligence and Security Services (NISS) and the end of an ogre?.....	5
3. Keeping the legal roots of torture in Sudan: driving the changes with the handbrake?	6
a. Persisting legal structure for torture.....	6
b. Rapid Support Forces (RSF): Keeping the agent of torture alive?.....	7
4. The Sudanese's penitentiary system: a dying house?	8
a. Detention conditions and torture in detention	8
b. Covid-19 in prisons, Mutiny and releases of detainees	9
5. Accountability efforts by the Transitional government: The Gordian knot.....	10
a. A long history of impunity	10
b. The promise of a new era?	12
c. UN Convention against Torture: The next step toward eradicating torture in Sudan?	13

1. Overview of Torture and ill-treatments in Sudan

The use of torture across Sudan has been endemic during the last 3 decades¹. Sudanese authorities have used torture and other forms of ill-treatment to intimidate and silence political dissent. Victims of torture and ill-treatment included Human Rights Defenders, indigenous groups (known as Dams victims), migrants, political and other social activists, internally displaced persons (IDPs) and students. The African Center for Justice and Peace Studies (ACJPS) has documented and monitored four main contexts and situations that have served as a pretext to develop a torture system in Sudan². The first category includes cases in which torture has been perpetrated with the goal of extracting confessions mainly by the National Intelligence Security Services (NISS) in unofficial detention centers and inhumane prisons called 'ghost houses'³. The second refers to cases in which torture has also been used to discriminate against marginalized groups, members of ethnic minority groups; including Darfuris, and people hailing from Sudan's Blue Nile and South Kordofan states. A third group represents circumstances where torture has also been used to allegedly enforce public order laws which were recently repealed by the Transitional government. A last category refers to the use of torture, including sexual violence as a tool of war mainly in Darfur region.

The generalized use of torture during the transition

Torture and ill treatments have been widely used in the context of pro-democracy protests from the early beginning in December 2018. The periods of protests both before and after al-Bashir's ouster in April 2019 was marked by serious human rights violations against protesters. Several peaceful protesters were arbitrarily arrested, detained and subjected to torture and other ill-treatments for actual or suspected participation in the protests. Testimonies documented by the African Centre for Justice and Peace Studies (ACJPS)⁴ indicate that several detainees received rape threats, insults, beatings during interrogations, stood for long hours, slept on the floor and were subjected to inhumane conditions⁵. In December 2019, 25 NISS officers were sentenced⁶ to death for the murder

¹ Report from African Centre for Justice and Peace studies and Redress, *A way forward ? Anti-torture reforms in Sudan in the post-Bashir era*, December 2019, https://redress.org/wp-content/uploads/2019/12/REDRESS_Sudan-Report_final.pdf.

² African Center for Justice and Peace Studies, Sudan: On the international day in support of torture survivors, end torture and repeal enabling legislation, <https://www.acjps.org/sudan-on-the-international-day-in-support-of-torture-survivors-end-torture-and-repeal-enabling-legislation/>, 26 June 2015

³ Report from Amnesty international, *Agents of fear, the national security service in Sudan*, 2010, <https://www.amnesty.org/download/Documents/36000/afr540102010en.pdf>

⁴ African Center for Justice and Peace Studies, Sudan: Extrajudicial Killing and Incommunicado detention, A Report covering the events of December 13, 2018 to April 11, 2019, <http://www.acjps.org/wp-content/uploads/2020/01/Report-1.pdf>, 10 January 2020

⁵ Video report reveals what happens inside secret prison in Sudan, February 14, 2019, *Middle east monitor*, <https://www.middleeastmonitor.com/20190214-video-report-reveals-what-happens-inside-secret-prisons-in-sudan/>

⁶ Sudan: 29 security officers sentenced to death, <https://www.dabangasudan.org/en/all-news/article/sudan-will-sudan-finally-ratify-cat-29-security-officers-sentenced-to-death>, December 31 - 2019

of a peaceful protester while in their custody. A report released by a committee established to investigate the death indicated that the deceased suffered severe injuries and bruises caused by hitting with a solid instrument while in custody.

On June 3, 2019, in Khartoum, a joint military operation led by the Sudan Armed Forces (SAF) and the Paramilitary Rapid Support Forces (RSF) shot live bullets at protesters, beat them with sticks and batons, rounded up hundreds and subjected them to various forms of humiliation, including beating, rape and sexual assaults. This led to the enforced disappearance of 14 protesters that are still missing. Despite the establishment of an investigation Committee, by the prime minister, the responsibilities have still not been established.

2. Dismantling the torturous legal and institutional framework: low-hanging fruit?

a. Repealing torture laws: reassuring little steps especially for women

Sudan's Constitutional Charter for the 2019 Transitional Period prohibits torture and ill treatments. Article 50 clearly states that "No one may be subjected to torture or harsh, inhumane, or degrading treatment or punishment, or debasement of human dignity. The following provisions of the constitution protect the legal safeguarding recognized to people accused including the right to have a lawyer

The transitional government has overturned a moral policing law known as Khartoum Public Order Act 1998 which had penalties for infractions included whipping and imprisonment (Ch. 7). For many years this law has targeted mainly women accused of wearing 'indecent dress'. This has led to an excessive use of corporal punishment in which "lashes were carried out in public on the bare backs of the women using a wire and plastic whip, leaving permanent scars on the women"⁷. In fact, this law has highly targeted women by controlling how they acted and dressed in public, therefore exposing them to violence, abuses and ill treatments. The African commission considered it as a "*State sponsored torture under the [African] Charter and contrary to the very nature of this human rights treaty*"⁸. The law has also served as pretext to detain and abuse several women in police stations.

In May 2020, the transitional government has approved amendments to the criminal code that criminalizes female genital mutilation/cutting (FGM/C), with a three-year jail sentence for offenders. According to UNICEF, Sudan is considered to have a very high FGM/C prevalence rate, 86.6 per cent in 2014. This new law is a new turn mainly for Girls that

⁷ Joint publication of the Strategic Initiative for Women in the Horn of Africa (SIHA) and The Redress Trust, *Criminalisation of women in Sudan, A need for Fundamental Reform*, November 2017, p. 31. <https://redress.org/wp-content/uploads/2017/12/report-Final.pdf>

⁸ *African Commission of human and people's rights, Curtis Francis Doeblbler v Sudan, Communication 236/00, para. 42.*

are usually “cut” between the ages of five and 14. The FGM amendment to the criminal law was ratified on the July 10th, 2020.

Other important changes included apostasy law and alcohol ban for non-Muslims. In fact, until now Sudan had a series of Islamic rules adopted in the 1980s that provided physical punishments mainly against women and other minorities. Anyone convicted of renouncing Islam, or apostasy, could face the death penalty⁹.

b. National Intelligence and Security Services (NISS) and the end of an ogre?

NISS was the backbone of Bashir’s repressive apparatus. It has been the primary institution responsible for torture and ill-treatment in detention¹⁰. NISS was mandated by the National Security Act 2010 (NSA Act) with extensive powers to arrest, arbitrarily detain, and interrogate mainly perceived opponents. In many occasions NISS forces cracked down with lethal violence on several protests, including in 2019 during the Anti-Bashir demonstrations and in September 2013¹¹ when security forces opened fire on protesters killing more than 170 on the streets of Khartoum, Omdurman, and other cities¹². African Commission on Human and Peoples’ Rights’ (ACHPR) in the case of three Sudanese human rights defenders, recognized the central role of the NISS in arbitrary arrest and detention, torture and other ill-treatment¹³

There were many NISS detention facilities across Khartoum and most persons detained by the NISS would likely be taken to such a facility, rather than an unofficial place of detention. The NISS has been responsible for the development of secret place of detention called “Ghost houses”, infamous for the torture inflicted there¹⁴. The detention “facilities” may be former homes or offices. They are used to provide deniability, the first step on the unacknowledged detainee’s path to torture, murder and/or disappearance¹⁵.

The Transitional Government of Sudan (TGS) has put an end to the NISS as torture symbol. It has limited its role by downgrading its tasks to general intelligence work. Sudan’s

⁹ Sudan scraps apostasy law and alcohol ban for non-Muslims, <https://www.bbc.com/news/world-africa-53379733>, 12 July 2020

¹⁰ Report from Amnesty international, *Agents of fear, the national security service in Sudan*, 2010, <https://www.amnesty.org/download/Documents/36000/afr540102010en.pdf>

¹¹ HRW, “We Stood, They Opened Fire”, Killings and Arrests by Sudan’s Security Forces during the September Protests, <https://www.hrw.org/report/2014/04/21/we-stood-they-opened-fire/killings-and-arrests-sudans-security-forces-during>, April 21, 2014

¹² Article from Human Rights Watch, *Sudan : Heed Calls for Justice*, April 18, 2019, <https://www.hrw.org/news/2019/04/18/sudan-heed-calls-justice>

¹³ Decision on 13 February 2015

¹⁴ Report from Amnesty international, *Agents of fear, the national security service in Sudan*, 2010, p. 12. <https://www.amnesty.org/download/Documents/36000/afr540102010fra.pdf>

¹⁵ Report from Human Rights Watch, *Behind the red line, Political repression in Sudan*, May 1996, <https://www.hrw.org/reports/1996/Sudan.htm>

2019 Constitutional Declaration replaces the NISS with the General Intelligence Service (GIS):

Article 36 clearly states that the GIS is an “uniformed agency that is competent in national security. Its duties are limited to gathering and analyzing information and providing it to the competent bodies”.

“In addition, authorities downsized the staff of the agency; some joined the army, retired after severance pay, or continued to work in the organization under its new name, General Intelligence Service. Out of 11,700 staff, 5,800 chose to leave the agency with satisfactory compensation; however, the TGS has offered less pay than promised”¹⁶. Although it led to angering officers, provoking a mutiny on January 2020, the situation has come to normal very quickly.

The replacement of the NISS, is without any doubt to closing of one of the darkest pages of Sudan history. But this page cannot be fully turned without accountability. In fact, a wide number of former NISS leaders and agents could continue to threaten the country’s security to maintain influence in Sudan or undermine the work of the current transitional government¹⁷.

3. Keeping the legal roots of torture in Sudan: driving the changes with the handbrake?

a. Persisting legal structure for torture

Despite these little changes, the legal and institutional reforms needed to transform the longstanding history of State violence in Sudan are still important. The torture apparatus remains deep rooted and needs a long term and structural reform process.

Despite criminalizing torture, the transitional constitution maintained the criminal act that provides an inadequate definition of torture. In fact, Article 115 (2) of Sudan’s Criminal Act of 1991 mentions torture, without, however, defining it. “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.”

This definition poses several problems. First, it limits the definition of torture to extorting information, which is considerably narrower than the internationally recognized definition of torture. Second, it punishes torture only to 3 months like an offense and not as a crime.

¹⁶ Allo Tedla, “Threats Posed to the Sudan Transitional Government”, *Worldaware*, January 23, 2020, <https://www.worldaware.com/resources/blog/threats-posed-sudan-transitional-government>

¹⁷ Allo Tedla, “Threats Posed to the Sudan Transitional Government”, *Worldaware*, January 23, 2020, <https://www.worldaware.com/resources/blog/threats-posed-sudan-transitional-government>

In general, “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”¹⁸. Sudan’s criminal law also prescribes *Shari’a* punishments frequently used, for public order offences and leading sometimes to death penalty sentences.

By maintaining the laws issued from the 2005 Transitional Constitution of Sudan, the 2019 Transitional Constitution leave in place a number of laws that favor torture, such as the 2010 National Security Act (NSA) and 1994 Evidence Act, which creates conditions rendering detainees extremely vulnerable to torture and ill-treatments. The 2007-Armed Forces Act, 2008 Police Act, and 2010 National Security Act each grant immunities to state actors. Although such immunities can be waived by the NISS Director, in practice it creates a climate of impunity. Even in cases where the immunities have been lifted, victims have faced various barriers that make it extremely difficult to report cases of torture.

The 2010 NSA also grants extensive powers of the NISS to arrest and detain for up to four and a half months, as well as to search and seize. This long period of detention, usually incommunicado without judicial oversight has enabled NISS agents to commit gross human rights violations such as torture and other ill-treatment against detainees to extract “confessions” under duress. This is made possible by Sudan’s 1994 Evidence Act that allows judges to admit evidence obtained through torture.

b. Rapid Support Forces (RSF): Keeping the agent of torture alive?

RSF, is Sudan’s notorious paramilitary force under the command of the NISS, known for its role in committing rights abuses in Darfur. The RSF was created in mid-2013 to militarily defeat rebel armed groups throughout Sudan. Human Rights Watch has documented several gross human rights violations perpetrated by RSF in 2014 and 2015 during two military operations called “Operation Decisive Summer”. During these operations, “among the most egregious abuses against civilians were torture, extrajudicial killings and mass rapes”¹⁹. The RSF is also suspected of massacring protesters holding a sit-in in Khartoum on June 3, 2019, in an attack in which more than one hundred people were killed and 200 disappeared²⁰. The RSF violations of international humanitarian law amount to war crimes and in some cases to crimes against humanity including murder, torture and rape, committed as part of a widespread or systematic attack on a civilian population.

¹⁸ 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.

¹⁹ Report from Human Rights Watch, *Men with no mercy*, 2015 <https://www.hrw.org/report/2015/09/09/men-no-mercy/rapid-support-forces-attacks-against-civilians-darfur-sudan>

²⁰ Commentary from Carnegie Endowment for international peace, Ashley Quarcoo, *How Sudan may surprise everyone*, January 7, 2020 <https://carnegieendowment.org/2020/01/07/how-sudan-may-surprise-everyone-pub-80721>

Unfortunately, the transitional Constitution has maintained the RSF as one of the main forces despite its torture records. The NSA act protecting and giving immunity to members of the RSF has not been repealed. The Transitional government has not proposed a vetting process within the RSF to identify agents that have extensively practiced torture over years.

4. The Sudanese's penitentiary system: a dying house?

a. Detention conditions and torture in detention

During the Bashir's administration, NISS had the power to massively and arbitrarily arrest and detain political opponents and activists, on the basis of the Public Order Acts and the 1991 Criminal Act²¹.

Most of the Sudanese detention centers were also places of torture and ill treatments encouraged by the National Security Forces Act that "provides... procedural immunity for acts committed by national security officials that should be subject to criminal liability"²².

In addition to torture, Sudanese detainees are also forced to live in inhumane conditions, including rudimentary infrastructures, overcrowded cells, insufficient ventilation, no proper nutrition or hygiene. These conditions have particularly been highlighted in the pandemic context which has exacerbated the vulnerability of inmates. Indeed, parallel to many other countries, Covid-19 has exposed the structural fault lines in Sudan detention centers.

Covid-19 pandemic has placed a light on the urgent necessity to reform the penitentiary system in Sudan. Before the Covid-19 pandemic, prison conditions throughout the country were already harsh and overcrowded. Health care was often below standard; prisoners sometimes relied on family or friends for food²³. There were reports of deaths due to negligence in prisons and pretrial detention centers. "Cells in Khartoum North prisons were known as "refrigerator"²⁴.

The conditions of prisons and detention centers across Sudan still remains the same as they were during al Bashir's regime. The prisons and detention centers are overcrowded and insanitary with inadequate medical facilities. Detainees with serious health conditions are referred Military and Police hospitals.

The transitional government had already taken steps to limit the carceral population. On April 11, 2019, hundreds of civilian detainees were released following the ouster of

²¹ Report from Amnesty international, *Agents of fear, the national security service in Sudan*, 2010, p.38 <https://www.amnesty.org/download/Documents/36000/afr540102010en.pdf>

²² Final report of the Special Rapporteur on the situation of human rights in the Sudan, A/HRC/11/14, June 2009, §22.

²³ US Department of State country report for Sudan 2016

²⁴ U.S. Department of State, *2018 Country Reports on Human Rights Practices: Sudan*, 13 March 2019, section 1.c., Prison and Detention Center Conditions

President Omar Al Bashir after months of anti-government protests which started on 18 December 2018²⁵.

b. Covid-19 in prisons, Mutiny and releases of detainees

The Covid-19 awareness campaign that began two months ago in Sudan focuses mainly on civilians rather than those in detention. The only efforts by Sovereign Council to protect detainees is the release of 4,633 prisoners from overcrowded prisons all over the country hosting more than 21000 detainees, with a congestion rate of 255%²⁶.

On March 23, 2020, 4217 male prisoners were released from Alhuda prison located in Omdurman, Khartoum State, following a resolution issued by Sudanese Sovereign Council (SSC)²⁷. On May 8, 2020 another resolution issued by SSC ordered the release of additional 263 male prisoners from Alhuda prison and 131 Female prisoners from Omdurman women prison in Khartoum. Outside Khartoum, 65 male prisoners have been released from Al-Obid prison in North kordfan after a hunger strike organized by the prisoners demanding for their release. 23 prisoners have also been released from Shalla prison of North Darfur after hunger strike as well.

But the release of detainees did not appear enough to prevent contamination in prisons including for civil society organisations who recommended the release of some soldiers and political actors arrested during the revolution²⁸. This provoked mutiny in some prisons. Hence on the 8 May 2020 Prisoners rose up and tried to escape by climbing the perimeter wall of Shala prison in Darfur. The incident took place whilst another group of prisoners were being released. The supervisors stalled the movement but at least one person was killed and eleven were injured²⁹. Before that on 29 March 2020, people incarcerated in al-Hoda prison rebelled while the administration was making transfers to police stations and courts. Prisoners demanded their release for fear of contamination. The police were able to suppress the movement, but a prisoner was injured.

The fear of covid19 contamination also concerned almost 50 former leaders of the National Congress Party (NCP) who remain in Kober prison in Khartoum Bahari in prisons. They are detained in overcrowded and unsanitary cells. with the exception of the former president Omar al-Bashir and his former vice president Ali Osman Taha, who were

²⁵ Jehanne Henry, Sudan's Game of Catch and Release. Publicized Prisoner Release Distracts from Ongoing Arrests and Detention, <https://www.hrw.org/news/2019/02/01/sudans-game-catch-and-release>, February 1st, 2019

²⁶ COVID-19, Prisons and Drug Policy, Global Scan – March-June 2020, <https://www.hri.global/covid-19-prison-diversion-measures>

²⁷ Sudan releases 4,217 prisoners as coronavirus precaution - state news agency <https://www.reuters.com/article/health-coronavirus-sudan/sudan-releases-4217-prisoners-as-coronavirus-precaution-state-news-agency-idUSL1N2BI16V>, MARCH 25, 2020

²⁸ Sudan: Free border guard detainees and review the condition of detention centers to prevent the spread of COVID-19 amongst the prison population, <https://www.acjps.org/sudan-free-border-guard-detainees-and-review-the-condition-of-detention-centers-to-prevent-the-spread-of-covid-19-amongst-the-prison-population/>, 9 April 2020

²⁹ Africa: coronavirus, prison fever, Sudan, <https://www.prison-insider.com/en/articles/afrique-coronavirus-la-fievre-des-prisons#soudan>, last update July 10th, 2020

transferred to a private hospital for medical treatment, the others have remained in detention and some of them were tested positive of covid-19.

Mr Ahmed Haroun, the chairperson of the NCP, has tested positive for COVID-19 while detained in Kober prison. He is one of the five Sudanese wanted by International criminal Court: his warrant of arrest was issued on March 9th, 2009. An anonymous source told ACJPS that the federal Sudanese minister of health has apologized and the police hospital where he was admitted at first has no section designated for COVID-19 patients. Further, the military hospital also refused to admit Mr. Haroun because he is out of their mandate. There has been no official information on how Mr Haroun contracted COVID-19 while in detention.

On May 15, 2020, Mr. Alsharief Ahmed Omer Badur, another NCP leader died of COVID-19 while in detention in Kober Prison for a corruption case involving Sudan airways.

Family members and supporters of incarcerated NCP leaders demonstrated on the 29 April 2020 in front of the presidential palace demanding their immediate release from Kober prison.

Sudanese authorities accused of "neglecting the prisoners' legal and health rights, were helped by International Committee of Red Cross (ICRC) who installed 83 washing stands in the ten prisons identified as being the most in need³⁰.

5. Accountability efforts by the Transitional government: The Gordian knot

a. A long history of impunity

The National Security Act 2010 gives to NISS broad powers of arrest and detention, systematically used as an instrument to intimidate, silence and punish political opponents. It gives the power to detain suspects for up to four-and-half months without judicial review³¹. 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 threats³².

³⁰ ICRC, Sudan: Helping prison authorities keep COVID-19 at bay, <https://www.icrc.org/en/document/sudan-helping-prison-authorities-prevent-covid-19-spread>, 27 April 2020

³¹ Ahmed Elzobier Le Soudan va-t-il mettre fin à la torture ?, Op-ed by Amnesty International's Regional Researcher for the Sudan, 3 April 2018 <https://www.amnesty.org/fr/latest/news/2018/04/op-ed-will-sudan-end-torture/>

³² The parliament endorsed the constitutional amendments, 25 April 2017, www.parliament.gov.sd/ar/index.php/site/getNewsbyId/66666803

Impunity has been for long the brand of the Bashir regime. This absence of justice, accountability and reparation was made possible by the immunity enjoyed by torturous agents of the NISS and RSF. In fact, 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 impunity³³.

Article 52(3) of the 2010 Act grants exemption from prosecution to NISS agents for all acts committed within the scope of their duties, unless the Director of the service decides to waive immunity. Article 52(1) provides that any act committed by an officer in the service in the course of his duties should be seen as a "good intention" and should not be considered as a crime³⁴. This Act shows the will of the Al Bashir's administration to normalize an inhuman practice in order to extract "confession". The Al Bashir's administration created, during interrogations, a real system of torture used as method by NISS agents to weaken the mental state of their victims and make them more vulnerable and hence more willing to "confess".

Although the transitional government had shown a will to eradicate the NISS as a torture symbol and to improve human rights standards, the philosophy of punishment by detaining people remains the same. The Covid-19 pandemic has illustrated the failure of the penitentiary system.

Accountability for torture in Sudan remains a big challenge and near impossible for many victims given existing legal barriers in particular laws granting immunities to officials, statutes of limitation, lack of adequate victim and witness protection and a system of special courts for the police and security forces. Authorities have repeatedly failed to ensure prompt, thorough, impartial and effective investigations into allegations of torture and ill-treatments and have failed to ensure effective remedies or provide reparation to the victims.

The African Commission on Human and Peoples' Rights (ACHPR) has repeatedly identified and recommended urgent and concerted steps for the Sudanese Government to take which it viewed as necessary to ensure the protection of rights, as well as accountability and justice for violations. However, to date, Sudan has failed to adhere to any of the ACHPR's recommendations and decisions. This increases the climate of impunity and exacerbates the denial of justice for victims. There is not a single case where an alleged perpetrator of torture has been held accountable in Sudan.

www.amnesty.org/en/latest/campaigns/2015/03/sudanese-national-intelligence-service-empowered-to-violate-human-rights/

³³ Report from Amnesty international, *Sudan: It's high time to ratify the UN Convention Against Torture*, April 9, 2018, p. 8.
<https://reliefweb.int/sites/reliefweb.int/files/resources/Sudan%20It's%20High%20Time%20to%20Ratify%20the%20UN%20Convention%20Against%20Torture.pdf>

³⁴ *Ibid.*, p. 24.

The end of impunity in Sudan will certainly be triggered by accountability for almost 15 years of international crimes under the Bashir regime. In fact, despite accusation of war crimes and crimes against humanity including torture and rape by the International Criminal Court (ICC), Omar El Bashir himself and his closest officers enjoyed impunity for almost 15 years³⁵. Although authorities said the former president, and others charged by the ICC, should appear before the court, there are significant counter-interests and fears among Sudanese officials, if al-Bashir is handed over to the ICC³⁶.

b. The promise of a new era?

The 2019 Constitutional Charter contains wide commitments for accountability, legal reform and developing the human rights and justice system to ensure the independence of the judiciary and law reform. The Charter provides for the establishment of several independent commissions including those that will investigate human rights violations committed on 3 June 2019 in Khartoum and those committed during former President Omar al Bashir's regime. A national investigation committee has already been created and established for the 3 June 2019 violence. On 23 September 2019, Hon. Prime Minister Abdallah Hamdok appointed seven members to the National Investigation Committee. The Committee was given three months to complete its work and granted prosecutorial powers. Mr Nabil Adib, a prominent Sudanese human rights lawyer was appointed the head of the Committee.

Several concerns have been raised in connection to the Investigative Committee. Among them are lack of gender representation, limited expertise of the Committee members in handling sexual violence cases, limited information on the procedure to be followed, etc. There were also requests that the Committee include a representative from the families of the victims and need for regional supervision.

The Charter also mandates the transitional bodies to hold accountable members of the former regime for all crimes committed against the Sudanese people since 30 June 1989. In November 2019, the National Prosecutor initiated investigations and several prominent members from the fallen regime were summoned and interrogated for their involvement in violations that occurred during the previous regime's reign. These investigations are on-going.

A Transitional Justice Commission as required under the Charter is yet to be established. Like other Commissions, the Charter does not provide further guidance on its modalities. However Transitional state authorities are tasked with implementing transitional justice and accountability measures for international crimes including pursuing prosecution before national and international courts based on the application of the no-impunity principle.

³⁵ The Prosecutor v. Omar Hassan Ahmad Al Bashir, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09, 4 March 2009, https://www.icc-cpi.int/CourtRecords/CR2009_01514.PDF

³⁶ Chantal Meloni, Sudan: What Options for Omar Al-Bashir's Trial?, <https://www.ispionline.it/en/pubblicazione/sudan-what-options-omar-al-bashirs-trial-26192>, 22 May 2020

c. UN Convention against Torture: The next step toward eradicating torture in Sudan?

With the recent changes in political leadership, the Transitional government should uphold Sudan's commitment to an absolute ban on torture and cruel, inhuman or degrading punishment or treatment, as set out in the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR), both treaties to which Sudan is a state party. 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 Against Torture and strengthen efforts to prevent torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). Sudan had previously accepted similar recommendations during its 2011 review. The government also stated that they were taking steps to ratify the Convention ³⁷. Sudan signed but has not ratified the UN Convention against Torture. The ratification of the Convention is a commitment to reform its legal system and align it to international standards. Unlike the ICCPR and the ACHPR, the Convention provides a clear definition and more detailed provision on the prohibition and prevention of torture. By ratify the UN Convention against Torture, Sudan will commit to adopt a revision of its Criminal Code and:

- Define torture in line with the article 1 of the Convention
- Make torture an imprescriptible crime
- Punish torture as a crime and not as an offense

The ratification of the Convention will also automatically induce the revision of the security laws such as the NSA that gives extra powers to RSF and encourage impunity through immunities.

6. Recommendations to the Transitional government

The World Organisation Against Torture (OMCT) and the African Center for Justice and Peace Studies call on the Sudanese Transitional government to:

- Continue prioritizing a comprehensive law reform, with an emphasis on ratifying key international human rights treaty bodies especially the Convention Against Torture (CAT) and its Optional Protocol.
- Enact a law against torture in Sudan that is align with the CAT and prohibit corporal punishment and repeal any laws prescribing such punishments. The

³⁷ Report from Amnesty international, *Sudan: It's high time to ratify the UN Convention Against Torture*, April 9, 2018, p. 8. <https://reliefweb.int/sites/reliefweb.int/files/resources/Sudan%20It's%20High%20Time%20to%20Ratify%20the%20UN%20Convention%20Against%20Torture.pdf>

evidence Act must be amended to repeal provisions that permits judges to admit confessions obtained through torture;

- Repeal provisions granting immunity from prosecution for human rights violations committed by State officials, including the police, NISS, armed forces and the Rapid Support Forces, and subject officials to the jurisdiction of ordinary courts;
- Collaborate with the Office of the High Commissioner of Human Rights and the African Commission of Human Rights to establish a fact-finding mission that will investigate on all the massive human rights violations that have taken place during the last 30 years;
- Establish a transitional justice mechanism that will guarantee to victims of torture and ill treatment a full access to justice, reparation, rehabilitation and reconciliation;
- Ensure that the investigation committees established to investigate human rights violations are Independent and Impartial and, the process should be public and transparent;
- Carry out a comprehensive review of the security laws including the 2010 NSA to ensure that the mandate and powers of security forces and entities are in line with provisions of the 2019 Constitutional Charter and human rights treaty bodies. The amendment must ensure that the NISS have a clear mandate limited to information gathering and analyzing. Any other powers including arrest, search and detention among others must be repealed;
- Establish a mechanism to collaborate with and implement decisions and recommendations of international and regional human rights treaty bodies including the African Commission on Human and People's and Rights and the Human Rights Committee;
- Abolish NISS detention centres and NISS-controlled sections of prisons, improving conditions of detention and ensuring access to lawyers and doctors for detained individuals;
- Develop and adopt a disaster preparedness plan for prisons that include a better management of health and security risk in prisons;
- Strengthen the capacity of the human rights Commission of Sudan and create a National Preventive Mechanism with the mandate to visit prisons and develop a human rights education program integrated with the Educational curriculum.