

Report on Pre-trial Justice in Sudan January 2012

I. INTRODUCTION

Approximately three million people suspected of committing crimes across the world are held in detention for extremely long periods of time before being brought to trial. Many of those detainees suffer severe rights violations during the pre-trial period.¹ Pre-trial detainees are often particularly vulnerable to abuse as this period typically constitutes the investigative phase of proceedings and various rights violating techniques such as torture may be invoked in order to extract information from suspects. This is also the period when detainees are most likely to be without legal representation. Prolonging the detention of those awaiting trial can constitute an offense in and of itself as many detainees, who have already suffered the loss of a job or family, acquire either mental or physical illnesses in these extensive periods of detention, which aggravate their time in isolation and their ability to reintegrate into society.

Despite consistent reports of violations committed against detainees in the pre-trial custody of police and the national security services in Sudan,² the Sudanese government has made no substantive attempt to address these abuses in violation of its constitutional obligation to investigate, punish and provide remedy for such abuses. In several cases monitored by ACJPS, the government ignored reports of violations that occurred during the pre-trial

¹ http://www.soros.org/initiatives/justice/focus/criminal_justice/projects/globalcampaign

² There is a tendency to use the term custody to refer to police detention and detention to refer to the national security detentions, 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, 28 November 2008, p. 15

The findings of this report

- (1) An arrest or detention which has no valid legal basis. An example would be an arrest based on an invented criminal charge that does not exist in the Penal Code. (2) An arrest or detention which is intended to deny the exercise of fundamental rights guaranteed by international or constitutional law such as the right to freely express an opinion. (3) An arrest or detention where essential procedural guarantees are not observed so as to give the deprivation of liberty an arbitrary character
- (2) An arrest or detention which is intended to deny the exercise of fundamental rights guaranteed by international or constitutional law such as the right to freely express an opinion
- (3) An arrest or detention where essential procedural guarantees are not observed so as to give the deprivation of liberty an arbitrary character

The African Centre for Justice and Peace Studies is dedicated to promoting human rights and the rule of law in Sudan through ongoing monitoring of human rights violations in the country, promotion of legal reform and the understanding of legal challenges facing Sudan and national and international advocacy on these issues.

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detention period. Efforts made by international human rights organisations³ and special rapporteurs on the human rights situation in Sudan to raise awareness of the violations committed by police and security services over the past twenty years have proven ineffective in changing the policies of the security services. Numerous campaigns organized by Sudanese activists aimed at reforming laws such as the 1991 Criminal Act, the 1991 Criminal Procedures Act, the 2010 National Security Act, the 2008 Police Forces Act, the 2007 People's Armed Forces Act and the 2001 Anti-terrorism Act have been unsuccessful in addressing the aspects of these laws which contribute to the atmosphere of impunity in the Sudanese legal system.

In every society, the safety of detainees and the rectitude of legal proceedings closely reflect the legitimacy and professionalism of the justice system. In the case of Sudan, various components of the justice system have failed to carry out their roles in a fair, appropriate and professional manner. They are no longer viewed as impartial actors by much of the population. The problem is not limited to police and other investigative organs. Judges and prosecutors are often seen as serving the interests of Sudan's executive power rather than the public interest. It has become an accepted norm throughout all levels of the judicial system that the job security of civil servants in the legal system rests on serving the interests of the Sudanese government, rather than implementing one's duties according to the letter of the law.

The judicial system of Sudan as a whole has failed to act in the interests of ensuring impartial justice since the 1991 Criminal Act was introduced. The police and the judiciary, in particular, have lost credibility following mass purges carried out by the NCP and justified in the name of the "public interest." In these purges, which started in the immediate aftermath of the military coup on June 30, 1989, qualified judges and police officers who were not affiliated with the NCP were dismissed en masse. The positions were then filled with those loyal to the new regime and were thus trusted to put the interests of the party before the interests of justice. These appointments marked the beginning of the Sudanese government's policies of prioritizing self-preservation over justice. These biased appointments contributed to the prevalence of institutional violence and an unprecedented amount of abuses committed by agents of Sudan's justice system.

The National Intelligence and Security Services (NISS) are responsible for a significant portion of the human rights violations that have been committed against suspects and detainees since the ascension of the ruling regime. The NISS has systematically used torture to extract information and to break the dignity of detainees. While the NISS has seen many changes to its structure since 1989, torture remains systematically used by its personnel against detainees and political dissidents. The secrecy enshrouding the operations of the NISS, including concealment of their detention facilities and the status of their detainees, have allowed them the latitude to act almost entirely without oversight or public scrutiny.

The problems are not just in the actions of the security agents but also in the laws themselves as Sudanese laws do not provide appropriate protections for detainees. The 2010 Security Act grants NISS the authority to detain individuals without charge or trial, contradicting the 2005 Interim National Constitution (INC). In addition to these broad powers, immunities provided by the government for security personnel in the 1991 Criminal Act, the 1991 Criminal Procedures Act, the 2010 National Security Act, the 2008 Police Forces Act, the 2007

³ Amnesty International report "Agent of Fear the National Security Service in Sudan," <http://www.amnesty.org/en/library/asset/AFR54/010/2010/en/7b11e50c-3a0b-4699-8b6f-08a27f751c6c/afr540102010en.pdf>

People's Armed Forces Act, the 2001 Anti-Terrorism Act, and the 1993 Law of Evidence have eliminated all repercussions the NISS could potentially face for any actions they take that do contradict the laws.

This report aims to shine a light on the failings of the administration of justice in the pre-trial period in Sudan, the lack of appropriate protection for criminal suspects and detainees and the pattern with which abuses are committed against suspects and detainees by law enforcement and security actors, and to provide recommendations as to how to address these failings.

A. Background

Since 1989, and throughout the interim period, police and other security forces have committed numerous abuses against detainees. Many of those who have been detained and stripped of their freedom have suffered torture and abuse for months without charge or trial while being held in police custody or NISS detention. In 2005, in expectation of the new restrictions on the powers of NISS mandated by the Interim National Constitution (INC), the Sudanese government, led by the National Congress Party (NCP), began to shift the powers of the NISS to arrest and detain political activists to the police. However, the NISS retained powers of arrest under the 2010 National Security Act.

Pre-trial custody and detention in Sudan are not monitored by any non-governmental body and there is little oversight of the actions of police and the security forces. There is little public or official information about violations, which is an essential prerequisite to accountability. The government has rarely investigated allegations of human rights violations, and where they have, as in the case of the National Commission of Inquiry on Darfur, the results have not been made public.

B. Methods

The content of this report is based on information gathered through visits to persons held in police custody, interviews with ex-judges, prosecutors and lawyers. Interviewees who had been arrested and/or detained by the police and security services reported details about of poor treatment they had been subjected to during the pre-trial period.

In addition to conducting interviews, ACJPS researchers prepared this report by reviewing reports issued by the United Nations Special Rapporteurs on Sudan,⁴ the 10th periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in Sudan⁵ and other reports published by international and organisations monitoring violations against detainees in Sudan.⁶

ACJPS field researchers faced difficulties obtaining information about the detentions centres run by NISS. They also faced difficulties obtaining figures pertaining to the budgets of NISS detention centres and their expenditures, the number of accused, and the number of vehicles used to transport detainees. Questioned officials claimed that this information is confidential.

⁴ Report of the independent expert on the situation of human rights in the Sudan (A/HRC/18/40), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/155/41/PDF/G1115541.pdf?OpenElement>

⁵ 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, <http://www.ohchr.org/Documents/Countries/10thOHCHR28nov08.pdf>

⁶ Amnesty International report "Agent of Fear the National Security Service in Sudan"

This opacity contributes to the dearth of studies on pre-trial criminal justice and the general state of custody in Sudan.

Actors in the legal system spoke to ACJPS on the basis of anonymity. For their protection, the names of the victims and witnesses who have contributed testimony to this report have been changed.

II. THE LEGAL FRAMEWORK

Violations of political and civil rights remained prevalent in Sudan despite the promise of change offered by the Comprehensive Peace Agreement (CPA), interim period and the accompanying promise of democratic transition outlined in the CPA and the INC.

Following the secession of South Sudan in July 2011 and the end of the interim period, this legal framework is to be replaced by a permanent national constitution. At the time of writing, the process of development of the new constitution was underway and it was unclear what provisions might be made regarding the rights of detainees.

This section offers an overview of the legal protections, which are enshrined in the INC and other relevant international and national legislation.

Article (27) of the INC provided, for the first time in the history of Sudan, assurances of all rights guaranteed by international conventions and agreements to which Sudan has acceded. These rights and freedoms are considered by the INC to be an integral part of the document upon adoption. These conventions include:

- The 1966 International Covenant on Civil and Political Rights,
- The 1986 International Covenant on Economic, Social and Cultural Rights,
- The 1977 International Convention on the Elimination of All Forms of Racial Discrimination,
- The Convention on the Rights of the Child,
- The 1986 African Charter on Human and Peoples' Rights.

A. Legal Provisions Against Torture

Sudan signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1986 but has not ratified the treaty or its Optional Protocol. In response to the Group of Experts' recommendation in 2007 that Sudan should ratify the CAT, Sudan replied that "the ratification or non ratification of any treaty is a sovereign matter on which the state alone must decide."⁷ The government went on to state that legal studies on the Convention had been completed and submitted for adoption, which would complete the procedures required for ratification. Sudan is nevertheless obligated as a signatory to ensure that its actions and omissions do not undermine the object and purpose of the CAT.

The right not to be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment is enshrined in the 2005 Interim Constitution of Sudan. Article 30 of the Bill of Rights guarantees the right of every person to humane conditions of detention, in

⁷ Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human rights Council," A/HRC/5/6, 8 June 2007, Annex II, para. 1. 4.5

accordance with Article 10 of the ICCPR. Article 33 of the Bill of Rights also reaffirms the absolute ban on torture and cruel, inhuman and degrading treatment.⁸

B. Pre-trial Arrest and Detention in Sudan

1. Arrest and Police Custody

According to international standards, arrest must be carried out on grounds that are clearly established in law and which accord with international standards for arrest and must not be motivated by discrimination of any kind (including but not limited to, race, gender, nationality or political views). International law also provides for a range of safeguards against arbitrary arrest by requiring clear communication of the relevant charges, judicial review of detention and prompt trial. Article 9 the International Covenant on Civil and Political Rights states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The INC provides similar protections of Sudan under Article 29 of the Bill of Rights, which stipulates that “every person has the right to liberty and security of the person; no person shall be subjected to arrest, detention, deprivation or restriction of his/her liberty except for reasons and in accordance with the procedures prescribed by law.”

On other hand, Article 79 of Criminal Procedure Act of 1991, which regulates pre-trial arrest, stipulates that:

1. A person arrested for inquiry, by police, may remain in detention for a period not exceeding twenty-four hours, for the purposes of inquiry.
2. The prosecution attorney, where the matter requires the same, may renew detention of the arrested person, for a period, not exceeding three days, for the purposes of inquiry.

⁸ Amnesty International report, “Agent of Fear the National Security Service in Sudan,” p. 17.

3. The magistrate, under the authority of the prosecution attorney, may order detention of the arrested person, for purposes of inquiry, every week, for a period, not exceeding, in total, two weeks, and he shall record the reasons on the case diary.
4. The superior magistrate, in case of the arrested person, who is charged, may order renewal of his detention, for the purposes of inquiry, every week; provided that the period of detention shall not, in total, exceed six months, save upon the approval of the competent head of the judicial organ.

Although the law observes the basic principle of judicial review, the fact that a number of actors can extend the detention in a broad range of cases undermines the protection against abuse and the effectiveness of judicial review. In addition, even with these broad discretions, the law is not always followed in practice. Police regularly fail to submit cases for review within the legal deadlines and wait instead until they have concluded their own investigation.

2. Arrest and Detention by National Security

Although the regular regime governing detention is hardly favourable to the rights of detainees, those who are detained by the NISS find themselves at even greater risk. Concern about the NISS' heavy-handed tactics was voiced during the negotiations of the CPA and the parties agreed to restrict the mandate of the security services to focus on the institution's intelligence gathering capacity.

As a result, the 2005 INC, does not give the power of arrest and detention to the members of the NISS. Article 151 of the INC specifies that: "the National Security Service shall focus on information gathering, analysis and advice to appropriate authorities." This vision of the NISS, which was created by the Comprehensive Peace Agreement and is aimed at narrowing the mandate of the NISS in Sudan, was contravened by the 2010 National Security Act, which maintains the extensive powers of NISS agents.

According to the 2010 National Security Act,⁹ members of the national security not only continue to exercise policing functions, they have expanded powers of arrest and detention including elimination of limits on the permissible period of detention without charge or judicial review.

Article 50/1/e/f/g/h/i of the National Security Act stipulates that NISS has the power to:

- (e) Arrest or detain any suspected person for a period not exceeding thirty days provided that his/her relatives are immediately informed.
- (f) After the elapse of the thirty days mentioned in Para (e) above, and if there are reasons that require more investigation, inquiry and maintaining the detained person in custody, NISS member shall refer the issue to the Director and make the recommendations he deems appropriate.
- (g) The Director may renew the detention period for not more than fifteen days with the purpose of completing investigation and inquiry.

⁹ The National Security Act was passed in December 2009 and entered into force in February 2010.

(h) If it comes to the knowledge of the Director that maintaining any person in custody is necessary for completion of investigation and enquiry in case of an accusation related to a factor threatening the security and safety of the people; intimidating society by way of armed robbery, racial, religious sedition or terrorism; disrupting peace; exercising political violence; or plotting against the country, he shall refer the issue to the Council which may extend the detention period for not more than three months.

(i) Without prejudice to paragraphs (f), (g) and (h), NISS authorities shall inform the competent prosecutor and hand over suspect and all documents and appendices thereof in order to complete the procedures. In case of absence of initial evidence, NSS shall release the suspect.

Although the duration of the allowed period of detention by NISS agents without judicial oversight in the 2010 National Security Act is less than that allowed under the previous regime, the new act maintains the extensive powers of NISS agents to search and seize, arrest and detain without judicial oversight. These provisions are a major impediment to respect for, and protection of, human rights in Sudan.¹⁰

An additional difficulty is posed by the fact that judges usually consider that national security detentions are not subject to the pre-trial safeguards of the Criminal Procedure Act. Moreover, they will typically not take into account periods spent in national security detention as time served.¹¹

“I was arrested by the criminal investigation police and accused of committing a murder. Five days later, after subjecting me to torture, they brought me in front of a judge for confession.”

Y. N. A., Kosti

III. VIOLATIONS OF RIGHTS IN DETENTION

International and Sudanese both law provide for conditions of detention. In practice, however, these standards are routinely violated, as demonstrated by the research conducted by the African Centre for Justice and Peace Studies. ACJPS researchers identified key trends of rights violations as they related to pre-trial detention, including torture and deaths in custody, lack of access to medical treatment and sub-standard prison conditions. ACJPS researchers also noted key institutional failures that contribute to the enabling environment for these violations including the failures of attorneys to properly investigate claims of torture, the immunity of security officials, and the corruption of investigators.

A. Torture is a Daily Practice

¹⁰ Amnesty International report “Agent of Fear the National Security Service in Sudan”, P. 20

¹¹ 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, 28 November 2008, p. 14

Despite the fact that the 1991 Criminal Procedures Act ¹² provides for the safety of those in custody, an examination of routine practices reveals that laws do not guarantee protection for detainees. Although the text of the law is progressive in that it provides guarantees for the rights of detainees, it is weak in that it does not articulate clear procedures that could place the responsibility of violations on specific persons. This ambiguity is a trend among the Sudanese laws that provide protection for detainees. They indicate a general obligation to guarantee rights but do not include specific details for practical implementation. Some provisions of the interim constitution contain phrases such as “subject to requirements of law” and “as determined by law” which are causes of confusion as to whether the rights in concern have been absolutely granted or can be derogated and restricted by legislation. Such phrases are mentioned in a number of provisions of the bill of rights such as the freedom of religion, freedom of expression etc.

Specific clauses of laws guaranteeing rights, such as those outlawing torture, are not enforced. These protective clauses are not included in training curricula. Torture is viewed as the easiest way to extract confessions from suspects. Training manuals for Sudanese policemen in charge of investigations (criminal investigation police) do not include any warning against using torture to extract confessions. Torture is a daily routine in the custody cells of Sudanese police stations. Many victims who have been interviewed have confirmed that it was the criminal investigation police who tortured them. In police stations, there is often an isolated room designated specifically for torture. Torture often takes place in the evening, when the criminal investigation policemen visit police stations and ask for suspects to be brought to these rooms. Suspects are often returned to the cells with marks of beatings.

In cities like Kosti and Port Sudan, criminal investigation police and other police departments have special places outside police stations to torture suspects in order to extract confessions. In Kosti, investigators often take suspects to a location outside the city to torture them.

Special prosecution units intended to provide oversight of security bodies and the central criminal investigations department were established in Khartoum. These prosecution departments were established to allow security agents to bypass the standard legal procedures and amount to decreased scrutiny on the practices of security agents. There are also specific courts of law and judges assigned to try political cases brought against politicians and activists by NISS or the police’s criminal investigation department. These courts work contrary to the specialized system widely known in procedural laws.

“They used to take me in their car to a place outside Kosti, where they used to beat me with hoses on my head, back and feet. They tied and brought someone from Kinana, who has a dog that they used to torture me with day and night. I did not tell the officer in charge of the police station about the torture that I was subjected to, because he knew that they usually come and take me from custody during the day; the attorney never asked me about the reason why I was tied and never asked about the marks caused by the beatings. I did not tell the judge that I was forced to admit committing murder because I was tortured, as they were waiting outside the judge office listening to what I was saying to the judge; they also told me before bringing me to the judge that if I deny murder they would torture me once again and nobody would do anything to them, as they said.”

Y. N. A, Kosti

¹² Article 4 from the Criminal Procedures Act prohibits assaulting the suspect, his/her money; nor should they be forced to provide evidence against themselves; s/he should not be sworn in non-sharia law crimes.

“I was arrested from my home around 1 pm on 30 November 2010. I was taken to a Kosti police station where I was told to confess. I told them that I had nothing to admit. Then they took me near the toilets, where I was subjected to severe beatings. There were four plain-clothes police, who beat me in front of the investigating officer. Then they took me to the cells, where they beat my feet with sticks and black hoses. They carried on beating me on the second day; they also told me that they would take me to the judge and order me to confess in front of him, or they would kill me. I did not commit any crime, but I confessed because they threatened to kill me. I did not tell the officer, because they used to take me inside and beat me there.”

Al Jaili Al Noor, 19 years, Sudanese, Kosti

In Port Sudan the Security Police have their own cells. These cells are illegal according to the 1991 Criminal Procedures Act and there are no records to show who is arrested and for how long they are held in these cells. The Security Police usually arrest suspects and keep them in custody without permission from the local attorney. They often keep suspects for several days for investigation and torture unbeknownst to judicial authorities. Suspects are usually transferred to police stations after several days, where cases are made against them without mention of how long they have been in custody. While in custody, suspects are not allowed to contact their families or lawyers. Essentially they are not provided with any legal rights.

B. The role of the Attorney in Investigating Torture Claims

“The main reason behind failure to sue perpetrators is due to the complainers being unable to lift immunity from policemen. This never happens. The Attorney General’s office can contribute in limiting torture if it’s able to lift these immunities.”

M. D., Advisor to the Attorney General

According to the 1991 Criminal Procedures Act, local general attorneys are responsible for the investigation of criminal cases and overseeing the investigation procedures performed by the police. However local attorneys usually fail to provide adequate oversight of police investigations.

Lawyers informed ACJPS researchers that when they complain about corrupt practices, such as the delaying of procedures by investigators who seek bribes in exchange for performing their duties, local general attorneys often do not address the problem. Lawyers interviewed by ACJPS stated that they now simply avoid reporting disputes with criminal police and investigators. Many detainees also confirmed that they reported torture to attorneys visiting holding cells, but their claims were ignored. In the rare cases where an attorney directs the police to send a detainee to a doctor for an examination due to reports of torture, the police usually delay the examination until the physical signs of torture have healed.

Most of the actors interviewed by ACJPS researchers on this topic reported that local attorneys are not objective when it comes to political cases. They often take a biased position against students who oppose the National Congress Party. In the cases made against students arrested in demonstrations against the government, the performance of attorneys has been far from professional. When students have been arrested in Khartoum for protesting against the NCP, attorneys have deliberately delayed the bail procedures so as to keep students in custody for as long time as possible. They often file political cases against the student falsely charging them with crimes for which bail is not possible.

Article 80 of the 1991 Criminal Procedures Act requires the attorney general to conduct daily visits to police custody units to check and review the list of the detainees and listen to any complaints including requests for treatment. However, the attorney general's office has never disclosed information about cases of torture or other violations in its daily inspections. This is despite the fact that cases of torture and abuses are widely reported by those in police custody.

C. Death in Custody and Impunity

In March 2008, two people died of torture in al Faiha police station while in custody, in the northern borough of al Haj Yousif in Khartoum. The post-mortem report states that the first victim, Mohamed al Jaili, died as a result of skull fractures caused by repeatedly being struck by a blunt tool. The second victim, Babikir Sulaiman, died as a result of respiratory and blood circulation failure due evidence of severe beating found on different parts of his body. The reports also stated that both victims were severely beaten with a blunt tool, such as a strong hose or thick whip. Also the evidence report stated that sticks, whips, and hoses have the potential to cause the marks and signs found on the bodies of the two victims.

In the few cases that have been brought against police and security personnel, the courts' rulings have not reflected the severity of the crimes committed. For example, in the case referred to above, the court acquitted the ten policemen accused of killing the two victims on March 28, 2010.¹³ The court's decision to acquit the defendants was based on the argument that it could not determine exactly who had assaulted the two victims, despite the post-mortem reports confirming they were tortured.

The authorities in charge of custody often demonstrate extreme ambivalence towards the health of detainees and avoid carrying out medical examinations of them, whether upon arrest or before release. This dearth of pre-detention medical information jeopardizes the ability to hold police responsible for deaths that occur during detention. A number of policemen who were charged in connection with the deaths of detainees have relied on the absence of any medical examinations of detainees when asserting their innocence. They were able to claim that the detainees inflicted fatal harm on themselves due to drunkenness or mental illness, or that detainees were harmed before they were taken into custody.¹⁴ Detainees' requests to see doctors are always ignored, even when they intend to pay for the examination themselves. The 1991 Criminal Act lacks specific language on health care procedures necessary to guarantee detainees' safety. Medical examinations are only mentioned in the law in connection with revealing crime-related evidence.

In November 2010, the Omdurman Criminal Court found two policemen guilty for beating a detainee to death in 2007 at al Kabajab General Order Police Station, a police station that has a notorious reputation for abusing detainees. The judge based his decision on the fact that the detainee died in custody while the two defendants were at work. However, he stated that the act was not premeditated and as a result they were convicted of the lesser charge of manslaughter. Their pre-trial detention was considered as adequate punishment, and the Ministry of Interior was ordered to pay "blood money" to the victim's family, in accordance with the 1991 Criminal Law.

¹³ <http://alsahafa.sd/details.php?articleid=3595#359.5>

¹⁴ <http://www.alrakoba.net/nres-action-show-id-9687.htm>

Article 52(3) of National Security Act 2010 provides members of the NISS and their associates with immunity from criminal and civil procedures for acts connected with the official work of the member, while Article 52(1) states that any act committed by the NISS while pursuing their duties and with “good intentions” should not be considered a crime. In response to the Human Rights Council Group of Experts’ recommendation to remove immunities for national security members, the government reportedly stated that the immunities were “procedural rather than substantive” and that “the practice was to waive a person’s immunity whenever there is prima facie evidence to justify the laying of charges against the person.”¹⁵ In many cases ACJPS has followed, despite the existence of prima facie evidence of abuse by NISS officials, the government has failed to lift their immunity.

Although many detainees have died in police custody and security detention as a result of torture in the last twenty years, court rulings in the few resulting trials, did not reflect the severity of the crimes. Those convicted were often released afterwards and in some cases the authorities paid “blood money” or compensation for the release of the detained.

D. Inadequate Access to Medical Examinations

Despite the fact that Article 83(1) of the 1991 Criminal Procedure Act and Article 51(7) of the 2010 National Security Act give detainees the right to medical care, field researchers found out that those who were subjected to torture or any other type of ill-treatment in custody or detention in Sudan are often prevented from receiving medical attention, since medical visits are subject to approval by the police authorities. For example, one detainee who reported being seriously beaten on his feet reported:

“I told them to take me to hospital because of the pain in my feet, but they refused to take me to a doctor. I told the prison police to take me to a doctor because of the pain in my feet, but they told me that they have to tell the police station that transferred me to prison. No one come to take me to the doctor.”

Al Jaili Al Noor, 19 years, Sudanese, Kosti

Even when victims manage to get an approval from the attorney’s office to see a doctor, the police often delay examinations until the disappearance of evidence (scars, marks, etc.) that proves a detainee had been tortured. Many victims, who were arrested and detained by NISS, stated that they had only been taken to hospital after their health seriously deteriorated. Even when detainees are taken for medical examinations, they may not receive appropriate treatment. The police and NISS have their own hospitals, and testimonies given to field researchers indicate that administrators and doctors operating these hospitals are loyal to the NISS and the police. For example, a number of persons interviewed by ACJPS researchers indicated that they were taken to the NISS al Amal Hospital in northern Khartoum where they saw doctors who are members of NISS and seem to take their orders from NISS. For instance, these doctors did not write down detainees’ names, nor did they provide them with a statement about the status of their health. In some cases they refused to provide detained patients with treatment once finding out that they may still be subjected to further torture.

Additionally, when a suspect or detainee is given the rare opportunity to see a medical professional, their recommendations for further treatment are sometimes not followed.

¹⁵ Report on the situation of human rights in Darfur prepared by the group of experts mandated by Human Rights Council resolution 4/8. A/HRC/5/6, 8 June 2007, Annex II, para.1.4.2(3).

“When in custody I was suffering from shoulder dislocation, which I reported then, but the police ignored it. When taken to plead in front of the judge six months later I told him about my shoulder problem; he ordered them to transfer me to the prison hospital. In July 2010, I had a renal tubular infection. I reported it to the prison administration, and was taken in shackles to hospital in the same day. The doctor asked the prison to take me for an ultra-sound check, but they did not. I am still suffering from this problem. I had no lawyer; my family sought a lawyer after the trial started.”

M. S. L, While Nile

Sudanese law does not call for a mandatory medical examination for those who are detained or are in custody. The law provides a medical exam for detainees or prisoners only if an attorney or police officer feels medical attention is necessary or if they feel the exam will reinforce evidence.¹⁶

E. Poor Custody and Transport Conditions

There are two types of detention cells, holding cells inside police stations and cells run by the Courts Police. The latter are cells to which suspects are transferred from police station holding cells and where they are held during trial.

Both types of cells have cement floors and contain no mattresses or blankets. There is no ventilation, which can be extremely brutal in Sudanese summers where temperature reaches 45° C. There are only 12x12cm openings at the top of cell blocks for light.

“When asked about the reason why the police authorities do not provide mattresses and covers for those in custody, police officer Y. K. answered saying that there is no interest in spending on justice in general. Providing mattresses, he said, means providing cleaning services as well as extending custody cells, whose space is generally not more than 3 square metres. The government, he said, is not interested in even providing them with a meal, how come you expect that they provide them with such services. He also said: ‘...you may not believe if I say that we ask suspects to provide paper sheets to write the investigation in...The attorney office does the same’. Clear evidence that there is no serious interest in providing justice and services that support justice.”

Anonymous

Holding facilities in Sudan do not meet even the most basic of standards of living conditions. Moreover, those in custody are usually not provided with food and health services and are often abused by ill-trained guards. Those detained in police holding cells often prefer to go to prison instead. Detention in NISS cells and offices is even worse, since torture is routinely used to extract information from detainees:

“We were arrested in a humiliating way by plain-clothed agents. We did not know what security service they belonged to. I was thrown on the ground and forced into a pick-up van. I was later taken to a cell in a police station in Khartoum. We were more than 40 women forced into a ward-like cell stinking with a urine smell. There was

¹⁶ Article 49 of Criminal Procedure Act 1991: if someone is arrested on suspicion of involvement in a crime, the attorney, or the officer in charge, has the right to send the suspect for medical check by a doctor, or medical assistant, if appropriate to reinforcing evidence.

nothing to sit on, apart from the stench-filled floor. We were all abused with obscene language.”

N. B.

ACJPS researchers interviewed Y. B. S., who had been in custody for a period of one month, where he spent time between police holding cells and prison cells while awaiting his trial. He said:

“When courts stop working on weekends –Friday and Saturday- the number of those in custody cells sometimes reached three times their capacity. We had to stand on our feet day and night; we sometimes sit in shifts. Those who are vulnerable or sick suffer greatly, and they often fall unconscious due to lack of adequate ventilation. Any time spent in these cells, no matter how short, is a severe physical torture. Body odors are a real problem, as the floor is already stinking with urine and sweat, due to the rising temperature. To avoid staying in these cells, many give up defending the cases against themselves and settle on whatever the other side states in court. Police custody cells in Sudan are widely known to be places where it is extremely difficult to remain for any length of time, and those detained will do anything to get out of them.”

Y.B.S.

The vehicles used to transport suspects to custody facilities are not fit to carry human beings. They lack all measures of safety and are obviously designed for transporting goods. They are roofed with steel ceilings and have modified sides lined with iron bars, making them look like a mobile cages with steel roofs. They are often filled to double the truck’s capacity. They tend to be stuck in traffic jams, which exacerbate the suffering for those inside due to crowdedness and a lack of ventilation. The conditions in which suspects are transported to and from the court are, in fact, an additional type of torture.

F. Corruption and the Role of Investigators

Police investigators are the main beneficiaries of the deplorable conditions in police custody cells. They often refuse to carry out any investigation unless they are bribed. The bribe guarantees a speedy investigation. The miserable condition of the police custody cells, which are small, overcrowded and extremely hot, puts pressure on the detainees to pay the bribe as they cannot be granted bail unless the initial investigation is completed. After paying the bribe, the suspect will then be released on bail and the case may be dropped in cases of insufficient evidence.

The police investigator can, and at times does, deliberately delay the investigation procedure for 24 hours as provided for in the 1991 Criminal Procedures Act in order to ensure that he receives a bribe. He also is legally allowed to recommend a custody extension for a further three days, and investigators often use this tactic if they have not been paid a bribe. Lawyers interviewed by ACJPS indicated that bribing the police investigator is a must because without which, procedures will be deliberately mishandled.

The attorneys often find it difficult to make investigators expedite investigations as investigators can justify delays as the result of their huge backlog of cases.

In this situation, the defense lawyers as well as the victims are negatively affected. Some lawyers say that their success and ability to get clients released as soon as possible lies in their ability to convince clients to expedite the investigation through a bribe. The only way to

be successful in these pursuits is to bribe not only the investigators, but also heads of police stations. In addition to further damaging the credibility of the justice system in the country, this type of endemic corruption makes justice inaccessible for poor detainees, as the priority is always given to those who can afford a bribe.

Conclusion and recommendations

Despite laws providing some minimal guarantees of rights to suspects and prisoners awaiting trial, abuses proliferate throughout Sudan. Lack of proper enforcement of safeguard provisions, the impunity with which police and NISS operate, corruption and the opacity of the system contribute to a prevailing sense of lawlessness when it comes to the rights of those held in pre-trial detention. Prolonged pre-trial detention in police or NISS custody is a serious violation of human rights and often leads to torture and deprivation.

Practices allowing extensive pre-trial detention in Sudan should be immediately terminated. Detention facilities should be monitored by neutral bodies that have the capacity to both analyze conditions and act to prevent violations. It is necessary to provide legal and administrative guarantees to stop torture and abuse. It is also imperative to end over crowdedness, lack of ventilation, and other unsuitable conditions in holding cells. The provision of food to detainees should also be reviewed in order to ensure adequate nutrition. Lastly, all NISS-run secretive detention centers where detainees are deprived of all civil rights should be immediately closed.

Recommendations:

- There should be a minimal use of pre-trial detention in Sudan given the poor treatment and corruption of practice illustrated in this report. Pre-trial detention should be confined to the cases where the detainee is proven to be dangerous to the community, hazardous to the conduct of an investigation or a flight risk. Bail should be granted in all cases without delay.
- The Government of Sudan should establish independent bodies to monitor custody cells in order to guarantee the rights of detainees and to address the problem of corruption of police investigators.
- The Government of Sudan should incorporate separate provision in the penal code prohibiting torture and abolish all provisions contrary to recognized detainee rights. It should also abolish Article 10 of the 1993 Evidence Act, which allows for the judiciary to accept confessions extracted under torture.
- The Sudanese judiciary should investigate all allegations of torture revealed to judges by victims during any proceeding and dismiss any evidence extracted under torture.
- The Government of Sudan should make public all arrests made by the NISS and reveal the location of all detention centers.
- The NISS, the Ministry of Interior Affairs and the judiciary should take immediate steps to prevent torture and abuse of detainees.
- The Ministry of Interior Affairs should train local attorneys, police and security and custody supervisors on the international standards of detainee's rights.

- The NISS and Ministry of Interior Affairs should rebuild and reequip police custody cells to ensure that human rights standards in relation to custody are met.
- The NISS and Ministry of Interior Affairs should provide detainees with appropriate food and health services.
- The NISS and Ministry of Interior Affairs, Judiciary system, National Assembly, and should draw up adequate measures to guarantee the protection and rights of detained women.