



SUDAN

Amnesty International submission to the UN Universal Periodic Review 11th session of the UPR Working Group, May 2011

B. Normative and institutional framework of the State

The 2010 National Security Act

The 2010 National Security Act (2010 NSA), passed in December 2009, goes against the vision in the Comprehensive Peace Agreement of the National Intelligence and Security Service (NISS) as an agency charged with “information gathering, analysis and advice to appropriate authorities” and maintains the extensive powers granted to NISS agents under the 1999 National Security Forces Act (1999 NSFA). The 2010 NSA renews the extensive powers of the NISS to arrest and detain, as well as to search and seize. NISS agents are now allowed to detain people for up to four and a half months without judicial oversight, as opposed to nine months under the 1999 NSFA. This period without judicial oversight enables NISS agents to commit human rights violations such as torture and other ill-treatment and to extract “confessions” under duress. The 2010 NSA also maintains the immunity of NISS agents from prosecution and disciplinary action for all acts committed in the course of their work. Although such immunities can be waived by the NISS Director, as was the case in the 1999 NSFA, in practice it creates a climate of impunity. There have been no cases to suggest that such immunities are waived in practice; NISS agents are seldom taken to court, even in instances where they are alleged to have tortured detainees.

The 2009 Press and Publications Act

The 2009 Press and Publications Act maintains the National Press Council (NPC) with broad regulatory powers over newspapers and journalists in Sudan. In a number of cases, the NPC has interrogated opposition journalists when their writing has been critical of the government or the NISS. The Act also provides for special courts for the press authorized to impose unlimited fines. The NPC can also suspend newspapers indefinitely, ban print houses, suspend editors, journalists and publishers and cancel their registration.

The 1997 Emergency and Public Safety Act

Under the 1997 Emergency and Public Safety Act (Emergency Act), the authorities, including the President, the Governor or someone delegated by the latter, can declare a state of emergency in part or all of Sudanese territory. Under the Act, the authorities can suspend a number of rights, place restrictions on freedom of movement and peaceful assembly, and extend the wide powers of arrest, search and seizure to other authorities. The Emergency Act also extends to relevant authorities “any other powers which the President of the Republic may deem necessary”.¹ Due to the vagueness of this clause it may lead to abuses and violations of human rights.

In 2006, the Governor of the State of North Darfur declared a state of emergency and delegated the powers given to him under the Emergency Act to the Commander of the Sixth Military Division, the NISS Director, the Director of the State Police, and the commissioners of various localities, for an initial period of three

¹ Powers of Emergency, Article 3 (i), 1997 Emergency and Public Safety Act.

months that has since been extended. These powers have allowed for numerous arbitrary arrests where detainees were held in incommunicado detention and without charge. Under the Emergency Act, the President or anyone delegated by him, in consultation with the Chief Justice, is charged with setting up special courts of both first instance and appeal to try those charged under the Act. Although a state of emergency was declared in 2006 in North Darfur, such courts are yet to be established, leaving those detained under the Emergency Act without access to justice.

The Public Order Regime

The Public Order Regime (POR) consists of Public Order Courts (POC), the Public Order Police (POP), and a set of laws under the 1991 Criminal Act and at state level under the Public Order Acts. The POP has power to arrest men and women considered to be acting “in an indecent manner, or a manner contrary to public morality”, or wearing an “indecent or immoral dress”. The vagueness of the laws, and the power granted to the POP to determine what constitutes “indecent or immoral” dress or behaviour adds to the arbitrary nature of the POR. Indecent acts are punishable by flogging. Victims are in most cases lashed within a matter of hours, often in the presence of a POC judge, but without access to a lawyer or to a regular court.

C. Promotion and protection of human rights on the ground

Human rights violations committed by the NISS

The NISS continues to use its powers to harass and intimidate, arbitrarily arrest and detain individuals, and subject them to torture and other forms of ill-treatment. Amnesty International has also documented cases of deaths in NISS detention. Following the April 2010 general elections, the NISS arrested and detained journalists, members of the opposition, and members of civil society groups. A number of those arrested are reported to have been tortured or otherwise ill-treated. Amongst those arrested were six doctors, who were members of a committee organizing a strike for better work conditions. The NISS reportedly tortured two of them, and released them only after the doctors resumed their work and the negotiations were dropped.

Restrictions on freedom of expression

The NISS exercises tight control over newspapers and journalists in the north of the country. Between February 2008 and September 2009, a strict pre-print censorship was imposed by the NISS on newspapers in Sudan with articles banned from going to print. Although removed by presidential decree in September 2009, the censorship was reinstated in May 2010 after the general elections. Several newspapers, including a pro-government newspaper, were closed down or stopped from going to print because of articles they had published. Five journalists were taken to court in relation to their work. Abuzar Al Amin, deputy editor-in-chief at *Rai Al Shaab*, which was closed down in May 2010, was detained with four of his colleagues, tortured and then sentenced to five years in prison because of an article he had written. His colleagues Ashraf Abdelaziz, editor, and Al Tahir Abu Jawhara, head of the political news desk, who was also reportedly tortured in detention, were each sentenced to two years in prison. Amnesty International considers all three of them to be prisoners of conscience, held solely because of the peaceful exercise of their opinions. Despite the suspension of the censorship in August 2010, restrictions on freedom of expression remain through a “code of journalistic honour” which invites journalists to exercise self-censorship. Forms have been distributed to newspapers and are compulsory for journalists to fill in, thereby providing personal information such as family details and address, to the NISS. The National Press Council continues to exercise control over the registration of journalists and newspapers and to interrogate and criminally prosecute journalists in relation to their work.

Human rights violations in Darfur

The conflict in Darfur has intensified in 2010, with renewed confrontations between the government and various armed opposition groups, and fighting between communities, leading to thousands of new displacements and flows of refugees into eastern Chad. Civilians regularly come under attack as a result of aerial bombing by government forces, armed clashes inside IDP camps and renewed attacks on villages. The joint UN-African Union Mission in Darfur (UNAMID) and international humanitarian organizations have been denied access for months since February 2010 from areas such as Jebel Marra where civilians were trapped. Lack of access to vulnerable communities is one of the biggest challenges faced by UNAMID. Meanwhile, the government continues to not cooperate with the International Criminal Court (ICC). The three persons under warrant of arrest by the ICC remain in Sudan, and the authorities have not initiated effective investigations and prosecutions into crimes under international law committed in Darfur.

Human rights violations by armed opposition groups, government-led militias and law enforcement agencies, mainly the NISS, are widespread. Even when the conflict has been lower in intensity, such as in 2009, the NISS has continued to carry out arbitrary arrests and to hold people in incommunicado detention. Those in detention are reportedly subjected to torture and other forms of ill-treatment, particularly those suspected to be members of armed opposition groups and internally displaced people. In August 2009, 13 internally displaced persons from the AbuShok camp in North Darfur were arrested by the NISS following the killing of a sheikh in the camp. Although the charges against them were dropped, the detainees were transferred to Shalla prison and held under emergency legislation, without charge and without access to their families or lawyers. While seven were released in February and another two in September 2010, four of them, Adam Yahya Daw Al Bayt, Abu Al Basher Ali Ahmed, Hussein Ishag Yahya Adam (known Sago), and Adam Haroun Idriss remain in detention without charge as of 1 November 2010.

In July 2010, following the eruption of violence in the Kalma camp in South Darfur between supporters of the Doha Peace Agreement and those opposing it, scores of civilians were injured or killed. A number of civilians were reportedly arrested by the police and the NISS and some were ill-treated and injured during or after their arrest. Two of those arrested by the NISS and allegedly tortured in detention have since been held in incommunicado detention and without charge. Five men and one woman sought refuge at a UNAMID community policing centre. Although the government forces produced arrest warrants for the five men, UNAMID refused to hand them over without guarantees that they would not be subjected to ill-treatment or risk the death penalty.

Discrimination and violence against women under the Public Order Regime

The POR particularly affects women and girls, although men have also been affected by it. Members of the POP continue to harass and sexually abuse women in the street and in police custody. The most vulnerable groups, such as internally displaced women from south Sudan and Darfur, young girls, street vendors and tea sellers, are often targeted by the POP. Members of the POP, the prosecutor and POC judges regularly insult and intimidate women in their custody. The same police officers who carry out the arrests are in most cases also the plaintiff, as well as the only witnesses admitted in court. Women often receive over 40 lashes. In November 2009, a 16 year old girl from south Sudan was lashed 50 times for wearing a knee-length skirt. Amnesty International has also documented cases of sexual abuse and harassment and of blackmail during POP custody. No investigations have been opened into allegations of sexual harassment and abuse, and women continue to be flogged.

Unfair trials and the death penalty

Death sentences continued to be handed down, often following unfair trials. Amnesty International has documented the execution of 16 men between 2008 and 2010 following convictions based on “confessions”

reportedly extracted under torture. On 21 October 2010, ten men, including four believed to be under 18, were sentenced to death by a Special Court in Nyala, South Darfur, following unfair trials. Only one was reportedly considered a child and had his sentence commuted by the court.

Lack of investigation of torture and other human rights violations by the courts

A number of cases documented by Amnesty International indicate that allegations of torture and other ill-treatment are not investigated by the courts in Sudan. The lack of adequate investigation into torture allegations has even been accepted in certain cases by the Constitutional Court. Following violent confrontations in May 2005 between residents of the Soba Aradi camp in Khartoum and the security forces, six internally displaced persons were executed after the Constitutional Court simply responded to their allegations of torture by commenting that “they had not been convincing to the lower courts”. Amnesty International is not aware of any investigation into allegations of torture, made during a trial, against members of the NISS.

Lack of cooperation with UN human rights mechanisms

The Human Rights Council regretfully terminated the mandate of the Special Rapporteur on the situation of human rights in Sudan in 2009. This was later replaced by an Independent Expert and despite efforts to terminate his mandate in 2010, the Independent Expert is today the only mandate that can provide a comprehensive overview of the human rights situation in Sudan. Requests in 2005, 2008 and 2009 for a visit by the UN Working Group on Enforced or Involuntary Disappearances have been disregarded by the government. Out of the 45 recommendations made by the Group of Experts on Darfur in 2007, 11 have yet to be implemented and 30 remain in the process of implementation.² According to the Independent Expert, some of these could have been fulfilled already, such as ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Restrictions on freedom of expression and other human rights violations by the NISS

- To repeal the 2010 National Security Act and ensure institutional and legislative reform of the NISS, particularly to reduce its powers of arrest and detention, and to establish a judicial oversight mechanism;
- To remove all immunities provided to members of the NISS and their collaborators under article 52 of the 2010 National Security Act and article 33 of the 1999 National Security Forces Act;
- To reform the 2009 Press and Publications Act in line with its international human rights obligations and commitments.

Unfair trials

- To ensure that all detainees are brought promptly before a judge to review the legality and conditions of their detention and have the right to challenge the lawfulness of their detention before a court;
- To ensure rigorous compliance with international standards of fair trial, including in cases punishable by the death penalty;
- To ensure the immediate and unconditional release of all prisoners of conscience in Sudan, including Abuzar Al Amin, Ashraf Abdelaziz, and Al Tahir Abu Jawhara.

² Statement by the Independent Expert on the situation of human rights in Sudan at the 15th session of the Human Rights Council, 17 September 2010.

Discrimination and violence against women

- To repeal the Public Order Regime and to bring all public order regulations in line with Sudan's international human rights obligations;
- To investigate without delay all allegations of sexual harassment and abuse, as well as other human rights violations, by the Public Order Police and to hold the perpetrators to account;
- To provide reparation, including compensation, for women and men who have been subjected to torture and other ill-treatment under the Public Order Regime;
- To ratify without limiting reservations the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and to repeal all laws that discriminate against women.

The death penalty

- To immediately establish a moratorium on executions with a view to abolishing the death penalty as provided by UN General Assembly resolution 62/149, adopted on 18 December 2007, and resolution 63/168, adopted on 18 December 2008;
- To commute without delay all death sentences to terms of imprisonment;
- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

Impunity for human rights violations

- To ensure that those suspected of being responsible for crimes under international law in Darfur are investigated and prosecuted before independent and impartial courts, without resort to the death penalty;
- To cooperate with the International Criminal Court and enforce the warrants of arrests issued by the Court against Ali Kushayb, Ahmed Haroun, and President Omar Al Bashir;
- To continue to implement the recommendations by the Group of Experts, including to ratify without limiting reservations the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- To ensure that all allegations of unlawful killings, enforced disappearances, torture and other ill-treatment, as well as other serious human rights violations are promptly and effectively investigated by an independent and impartial authority and their perpetrators prosecuted without delay before ordinary and independent courts in accordance with international standards of fairness and without resort to the death penalty;
- To ratify the International Convention for the Protection of All Persons from Enforced Disappearance and accept the competence of the Committee under articles 31 and 32.

Lack of cooperation with UN human rights mechanisms

- To continue to cooperate with the Independent Expert on the situation of human rights in Sudan, including on the implementation of the recommendations by the Group of Experts;
- To accept without delay outstanding mission requests by the Special Procedures, in particular the Working Group on enforced or involuntary disappearances.