YEARS IN PROLONGED DETENTION AND NO HOPE OF JUSTICE

A legal analysis of the events that occurred after the resumption of conflict in Blue Nile in September 2011.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INTRODUCTION:</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>BACKGROUND</strong></td>
<td>2</td>
</tr>
<tr>
<td><strong>METHODOLOGY</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>RIGHT TO LIBERTY AND SECURITY OF PERSON</strong></td>
<td>3</td>
</tr>
<tr>
<td>Arrest and detention</td>
<td>3</td>
</tr>
<tr>
<td>Right to defend oneself in person or through counsel</td>
<td>5</td>
</tr>
<tr>
<td>Prohibition against torture</td>
<td>7</td>
</tr>
<tr>
<td>The right to be promptly informed of reasons for arrest and detention</td>
<td>8</td>
</tr>
<tr>
<td>and of any charges</td>
<td></td>
</tr>
<tr>
<td><strong>UNFAIR TRIALS IN THE BLUE NILE TERRORISM COURTS</strong></td>
<td>9</td>
</tr>
<tr>
<td>Right not to be compelled to testify against oneself / right to</td>
<td>14</td>
</tr>
<tr>
<td>remain silent.</td>
<td></td>
</tr>
<tr>
<td>Equality of Arms:</td>
<td>15</td>
</tr>
<tr>
<td>Right to present at trial:</td>
<td>17</td>
</tr>
<tr>
<td>Rights of juveniles</td>
<td>17</td>
</tr>
<tr>
<td>Special Appeal Court</td>
<td>18</td>
</tr>
<tr>
<td>Forgotten detainees</td>
<td>19</td>
</tr>
<tr>
<td>Presidential pardon:</td>
<td>19</td>
</tr>
<tr>
<td><strong>CONCLUSION</strong></td>
<td>20</td>
</tr>
</tbody>
</table>
INTRODUCTION

Following the outbreak of conflict in Blue Nile state in September 2011, the African Centre for Justice and Peace Studies (ACJPS) documented hundreds of arbitrary arrests on the basis of perceived political affiliation and membership of particular ethnic groups to the Sudan Peoples’ Liberation Movement-North (SPLM-N). These arrests were carried out by officers from the police, National Intelligence and Security Services (NISS) and Sudanese Armed Forces. The arrested persons were held in prisons in Sennar, Singa and El-Roseires over one-and-a-half years while others were released shortly after the arrests.

In 2012, the Chief Justice at that time issued a special decree establishing various special terrorism courts to try those detained in relation to the 2011 events. The first court sessions the Blue Nile detainees were held in May 2013 following the establishment of the Special Terrorism Courts in Blue Nile state. ACJPS was able to follow seven cases before the Terrorism Court in Sinja town, Sennar State, involving 119 men who were detained by the NISS at the outbreak of conflict in Blue Nile in September 2011. The detainees were held incommunicado for over 10 months without access to lawyers or their families until the first lawyer visits were permitted in June-August 2012 with permission from the then Minister of Justice.

In October 2016, President Omar Al-Bashir pardoned 24 members of the SPLM-N who had been convicted during trials heard by the Special Terrorism Courts set up in Blue Nile state.

In 2017, ACJPS received information that all the Blue Nile detainees have since been released.

This report provides documentation of the Blue Nile trials followed by ACJPS, an analysis of the law on pre-trial detention and anti-terrorism in relation to the Blue Nile trials, as well as available updates since the conclusion of the trials.
BACKGROUND

On 1 September 2011, clashes broke out following a joint Sudanese Armed Forces/Popular Defence Forces attack on an SPLM/N convoy in Damazein. The following day, President Bashir declared a state of emergency in Blue Nile, suspending the application of the Interim Constitution in the state, sacking Governor Malik Agar and replacing him with a military commander Major General Yahya Mohamed Khair. On 3 September, the ruling NCP declared the SPLM-N to be an illegal political party and froze their assets. Their offices were closed around the country. Immediately after fighting broke out, makeshift detention camps were set-up to house persons suspected of affiliation with the SPLM-N in Ed Damazin and El- Roseires. The government called on all SPLM-N members to gather at these detention centers. More than 100 SPLM-N members and their affiliates were arrested.

Human rights violations reportedly committed in Blue Nile include extrajudicial killings, arbitrary arrest, torture and other forms of ill-treatment. There have been consistent reports by released detainees about inhuman detention conditions and of being interrogated with threats and intimidation by the NISS.

In April 2012, the Chief Justice of the Republic of Sudan issued a decree establishing special courts to combat terrorism in White Nile, Blue Nile, South Kordofan and Sennar states. These courts were given authority to try accused persons charged in accordance with the Customs Act 1986, Combating Terrorism Act 2001, chapter five of the Criminal Act 1991, Combating Narcotics Act 1994, and the Weapons and Ammunition Act of 1986.

These courts were to try those responsible for committing crimes during the South Kordofan and Blue Nile conflict. The detainees were held incommunicado for over 9 months, charged after spending a year and 6 months in detention with no judicial oversight or review. Some detainees were released after spending almost a year in detention owing to lack of evidence against them. Due to the prolonged detention, many detainees lost their jobs and have no recourse to compensation for the unlawful detention. The Blue Nile trials only started in 2013 when courts were finally set up to hear cases in accordance with the decree. ACJPS considers that the trial proceedings did not meet fair trial standards guaranteed in the 2005 Interim National Constitution and other relevant international human rights instruments.

1 ACJPS, “Perceived SPLM-Northern Sector Supporters Arrested throughout Northern Sudan”, 6 September 2014. For details of the incidents, see ACJPS, “Continuing Violations of Human Rights in South Kordofan and Blue Nile States”, 24 August - 8 September 2011, and “Update on Human Rights Violations in Blue Nile and South Kordofan”, January 2012.
2 Ibid. See also: Communication 402/11 and 410/12, Sudanese civilians in South Kordofan and Blue Nile (represented by Redress, Sudan Democracy First Group, Interights, Human Rights Watch and the Enough Project) v. Sudan, submission on merits, available at www.redress.org
METHODOLOGY

This report is based on information and monitoring data gathered from ACJPS’ monitors, desk research as well as interviews carried out with defence lawyers who participated in the trials. It covers the period of 2011 – 2013.

RIGHT TO LIBERTY AND SECURITY OF PERSON

- Arrest and detention

Article 3 of the Interim National Constitution 2005 (the Constitution) provides for the supremacy of the Constitution and further provides that all laws should comply with it. The Constitution contains a Bill of Rights and provides for among others, the right to personal liberty under Article 29. It states that, “(e)very person has the right to liberty and security of person: no person shall be subjected to arrest, detention, deprivation or restriction of his/her liberty except for reasons and in accordance with procedures prescribed by law.”

Article 29 does not explicitly include the word “arbitrary” in reference to arrest and detention. It also does not provide for procedural safeguards such as the right to be informed of reasons of arrest and criminal charges, the right to be brought promptly before a judge or other person authorized by law, right to challenge lawfulness of detention; right to release pending investigation; freedom from torture and other inhuman treatment; right of habeas corpus; right to silence and freedom from self-incrimination; right to prompt access to a lawyer; and right to compensation.

These safeguards can however, be read into the Bill of Rights through Article 27 (3) that provides that rights and freedoms enshrined in international human rights treaties ratified by Sudan form an integral part of the Bill. This provision makes the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (ACHPR) part of the Bill of Rights.3

Sudan’s legal framework and practice have further limited the protection against arbitrary detention. Article 29 of the Constitution provides that a person can be deprived of liberty for reasons prescribed under the law. However, the laws in question grant competent authorities with wide grounds for arrest and detention and lack the requisite safeguards against arbitrary arrest and detention.

---

3 Sudan is a state party to the International Covenant on Civil and Political Rights and the African Charter on Human and People’s Rights. Article 9 (1) of the ICCPR and Article 5 (1) of the ACHPR guarantee the right to liberty and security of person. Article 9 (2)-(5) sets out procedural safeguards unlike Article (5) of the ACHPR. However the African Commission issued Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa which set out procedural safeguards in regards to arrest, custody and pre-trial detention.
The Criminal Procedure Act, 1991 prescribes a period of three days within which a person is to be brought before a judge and also sets out a number of procedural guarantees in regards to treatment of arrested persons. However, pre-trial detention can be extended for a period of 6 months for purposes of investigation or trial, after which further extensions need to be approved by the Chief Justice. Another law that raises serious concern in relation to the right to liberty and security of person is the National Security Act of 2010 which grants NISS with broad powers to arrest and detain any suspect for up to four-and-a-half months for purposes of investigation and enquiry, with no oversight and judicial review.

The Blue Nile detainees were held in pre-trial detention for over a year and a half and procedures for extension of detention for purposes of investigation under the Criminal Procedure Act were not adhered to.

On 2 September 2011, President Al-Bashir declared a state of emergency in the Blue Nile state. According to the Constitution, the President has the power to suspend the Bill of Rights with exceptions of fundamental rights, namely the right to life, sanctity from slavery, sanctity from torture, the right of non-discrimination on the basis of race, sex, religious creed, the right in litigation or the right to fair trial. These fundamental rights cannot be restricted even in times of emergency. The Emergency and Protection of Public Safety Act 1997 provides the legal framework for emergencies. The Act when read in conjunction with Section 15 of the Emergency and Public Safety Bylaw 1998 permits preventive arrest and detention on the basis of vague grounds and with no provision limiting the duration of detention, or providing for judicial oversight. There is no obligation on the authorities to bring the detainee promptly before a judicial authority for the legality of his detention to be reviewed.

---

4 Article 83 of the Criminal Procedure Act states:

- An arrested person shall be treated in such way, as may preserve the dignity of the human being; he shall not be hurt physically, or mentally, and appropriate medical care shall be provided thereto
- An arrested person shall not be subjected, as restriction of his freedom, to more than may be necessary for preventing his escape.
- An arrested person shall have the right to contact his advocate, and the right to meet the Prosecution Attorney, or the Magistrate.
- An arrested person shall be placed into custody of the Police, which assumes arrest, or inquiry, and he shall not be transferred, or placed, in any other place, save upon the approval of the Prosecution Attorneys Bureau, or the court.
- An arrested person shall have the right to inform his family, or the body to which he belongs, and contact the same, upon the approval of the Prosecution Attorneys Bureau, or the court. Where the arrested person is juvenile, or suffering from a mental infirmity, or any disease, in such way, as he may not be able to contact his family, or the body to which he belongs, the Criminal Police, the Prosecution Attorneys Bureau or the court shall, of its own accord, notify the family, or the body concerned.
- An arrested person shall have the right to obtain a reasonable amount of food stuffs, clothing and cultural materials, at his own cost, subject to the conditions relating to security and public order.
- An arrested person shall abide by the rules of public morals, and sound conduct; and any regulations organizing custodies

5 Articles 79 and 80 of the Criminal Procedure Act, 1991.
6 Article 211 of the Interim National Constitution, 2005
This statutory legal framework has repeatedly given rise to concerns of arbitrary arrest and detention, and violation of fair trial rights, facilitated by the virtually complete absence of safeguards and judicial oversight.9

It is under this legal environment that arrests were carried out in Blue Nile and other parts of Sudan. These arrests targeted people who were known or suspected to be politically affiliated with the SPLM-N. The arrests were carried out by members of the Police, NISS and military intelligence. The grounds of arrest were based on actual or suspected political views rather than actual or suspected criminal activity.

ACJPS documented arrests of over 100 persons in September-October 2011.10 The arrested people were members and affiliates of SPLM-N, including government officials. Family members of SPLM-N were also targeted and faced harassment and intimidation. Some of those arrested were released after interrogations while the rest were detained in Police and NISS custody and later transferred to various prisons.

1. Right to defend oneself in person or through counsel

Article 34(6) of the Constitution guarantees the right to defend oneself in person or through a lawyer/ legal aid. By virtue of article 27 (3) of the Constitution, article 14 (3) (d) ICCPR and article 7 (1) (c) ACHPR that provide for the right to defend and to legal assistance also apply. In its Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, the African Commission on Human and Peoples’ Rights elaborated that, “Pre-trial detainees shall have regular and confidential access to lawyers or other legal service providers. Detainees must be provided with information about the availability of lawyers and, where appropriate, other legal service providers, the means to access them, and the facilities to prepare their defence.”11 Article 83 (3) provides for a general right of an arrested person to contact his advocate without specifying this right further.12 Article 135 of the Criminal Procedure Act stipulates the right to be defended by an advocate or state appointed counsel.

---

9 Article 50 (e) – (h) of the National Security Act, 2010.
The right of a suspect to consult a lawyer should apply from the start of an investigation, irrespective of whether the arrested person is subjected to an investigation or not. The Court of Appeal previously held that the right of the accused to meet his lawyer should always apply irrespective of the seriousness of the offence the accused is suspected of committing and whether the police investigation has been completed or not.13

Sudanese lawyers often face obstacles as they try to secure their clients' rights during investigation proceedings. Article 83 (3)14 of the Criminal Procedure Act provides an inadequate legal protection for the right to access a lawyer while in custody. The provision does not “specify timeline, purpose, frequency or confidentiality of such meetings.”15 Defence lawyers are also prohibited from reviewing the investigation record as the case diary is confidential. This practice was carried on from previous legislation despite no relevant provision in the current Criminal Procedure Act.16 The lack of access to the investigation diary impacts on the defence's right to prepare an adequate defence.

The Blue Nile detainees were held incommunicado for over 10 months until the first lawyer visits were permitted in June-August 2012 following an application to the Minister of Justice. During an interview with one of the defence lawyers, he told ACJPS that in March 2012 he received information that over 130 persons had been detained in Sennar, Sinja and El-Roseires prisons. Upon receiving this information, he and his team travelled to Sinja prison as the prison was reported to have held the biggest number of detainees and the Office of the Prosecutor was based in Sinja.

On 11 March 2012, a written application seeking permission to visit the Blue Nile detainees was submitted by the lawyers to the Office of the Prosecutor in Sinja. Their application was unfortunately rejected. On 1 April 2012, they appealed to the Office of the General Prosecutor in Khartoum but their appeal was rejected. They were only granted permission on 25 June 2012 after they appealed to the Minister of Justice at that time. The practice in Sudan is that lawyers submit a written application requesting for permission to visit a client to the relevant Prosecution Attorney. Article 83 of the Criminal Procedure Act provides for custodial safeguards for arrested persons. Article 83 (5) grants arrested persons right to inform their family or body to which they belong about the arrest and contact them thereafter, however this is subject to approval from the Prosecution Attorney. Article 83 (3) also grants the right to contact one's lawyer but does not provide clear provisions to ensure the effectiveness of this right.

The lawyer further mentioned that following this approval, a team of ten pro-bono lawyers headed to Blue Nile state to visit the detainees. The lawyers decided to divide themselves into three groups in order to cover the three prisons. His team visited Sinja prison

on 15 July 2012. He described the prison as a small prison that was built during the colonial times. He stated that there were about 80 detainees being held in Sinja.

Three accused persons were released from El-Roseires prison by the Office of the Prosecutor due to lack of sufficient evidence against them. The suspects had been detained for 9 months, since November 2011 and no investigations were carried out in relation to their cases. They include:

- Azraq Altom Mounir
- Alfaky Badal
- Sideeg James

2. Prohibition against torture

Article 33 of the Constitution guarantees the prohibition against torture, cruel, inhuman or degrading treatment. This right is guaranteed in article 7 ICCPR and article 5 ACHPR that apply on the basis of article 27 (3) of the Constitution.

Though not a party to the UN Convention Against Torture, the African Commission has found Sudan to have violated article 5 of the ACHPR in accordance with the definition of torture provided for under article 1 of the Convention Against Torture.17

The African Commission recognized that conditions of detention should conform to all applicable international law and standards and should guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.18 The African Commission also recognized that "[n]o detained person while being questioned shall be subject to torture or other ill-treatment, such as violence, threats, intimidation or methods of questioning which impair his or her capacity of decision or his or her judgment."19

91 of the Blue Nile detainees reported to their lawyers that they had been tortured in NISS custody in Sinnar, El-Roseires, and Sinja prisons.20 Testimonies from some of the tortured victims are below:

*Alnour Ahmed Juma*, a 38-year-old father of four children said that he was tortured whilst in detention. He was beaten all over his body and was sleep deprived. As a result of this treatment, he was forced into confessing that he participated in the attacks that occurred in September 2011.

*Taban Garang Nyaal* mentioned that he was beaten on his hands, toes and stomach with a gun during detention. The beatings were so brutal that he had to be taken to hospital. He was transferred back to detention before he fully recovered.

*Idris Juma* stated that was cut all over his

---

17 Communication 379/09, Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan (2014), par.98. In its interpretation of Article 5, the Commission adopted the definition of torture contained in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.


19 Ibid. par. 9 (c).

20 Documentation on file with ACJPS, June 2014.
body with a knife until he confessed to having taken part in the September 2011 conflict.

Atim Atim Atim also said that he was tortured and told that if he confessed to having participated in the September 2011 attacks, he would be released. Atim confessed but was not released.

3. The right to be promptly informed of reasons for arrest and detention and of any charges against accused

Article 34 (2) provides that an arrested person has the right to be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her. Similarly, article 9 (2) of the ICCPR guarantees this right. Though the African Charter is silent on this, in its Principles and Guidelines on the right to a fair trial and legal assistance in Africa the African Commission expounded on guarantees of the right to a fair trial under the Charter stating that an arrested person has the right to be "promptly informed, in a language he or she understands, of any charges against him or her."21

The Human Rights Committee explained that "one of the most important reasons for the requirement of "prompt" information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority. It found that a delay of 46 days violates the principle of promptness under article 9 (2) of the ICCPR.22

The Human Rights Committee has also held that it is insufficient to simply inform a person that the arrest and detention were carried out on orders of the President of the country concerned. 23

The African Commission found that the failure and/or negligence of the security agents who arrested the convicted person to comply with the requirements to inform accused of reasons of arrest or charges, among others, is a violation of the right to fair trial as guaranteed under article 7 of the Charter.24

In a communication against Sudan, the African Commission interprets Article 6 as requiring an arrest to be carried out only "in the exercise of powers normally granted to the security forces of a democratic country."25 The Commission went on to find that the wording of the relevant decree which allowed for individuals to be arrested for vague reasons,

---

24 Communication 224/98, Media Rights Agenda v Nigeria, par. 44.
25 Communication Nos. 48/90, 50/91, 52/91 and 89/93, Amnesty International and Others, par. 59.
and upon suspicion, not proven acts, was not in conformity with the spirit of the African Charter. 26

In relation to the Blue Nile detainees, they were only informed of charges against them in February 2013. Of the 130 detainees, 28 of them were released by the Office of the Prosecutor owing to lack of prima facie evidence against them. The remaining detainees were charged with articles 21 (criminal conspiracy), 50 (undermining the constitutional system), 51 (waging war against state), 130 (murder), 186 (crimes against humanity), 187 (genocide), 189 (war crimes against properties and other rights) and 191 (crimes related to prohibited methods of warfare) of the Sudanese Criminal Act 1991; article 26 (possession of a weapon without a license) of Weapons and Ammunition Law, and articles 5 (Incitement to commit an act in furtherance of the purposes of a terrorist state) and 6 (committing an act of terrorism) of the Combating of Terrorism Act. Articles 50, 51, 130, 187 of the 1991 Criminal Act, article 26 of the Weapons and Ammunition Act 1986 and articles 5 and 6 of the Combating of Terrorism Act are punishable by death or life imprisonment.

The authorities failed to promptly inform the detainees of reasons of arrest, charges against them or grant them access to lawyers to challenge the legality of their detention. It should be further noted that grounds of arrest were based on actual or suspected political affiliation rather than actual or suspected criminal activity. This was in violation of their right to personal liberty.

UNFAIR TRIALS IN THE BLUE NILE TERRORISM COURTS

Article 34 of the Constitution guarantees the right to a fair trial. It states that, “In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by an ordinary competent court of law in accordance with procedures prescribed by law.” Article 34 also sets out the right to be presumed innocent, right of the accused to be promptly informed of charges, right of the accused to be present during trial and right to defence through a lawyer of one’s choice.

The Constitution further provides for non-derogation of right to fair trial among others, during a state of emergency. 27

In its General Comment 34, the Human Rights Committee stated that “guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights.” With regards to specialized courts, the Human Rights Committee further stated:

The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. The Committee notes the existence, in many countries, of military or special courts which try civilians. While the Covenant does not prohibit the trial of civilians in

26 Ibid
27 Article 211 (a) of the Interim National Constitution.
military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14.28

The African Commission has also found that the provisions of article 7 (right to fair trial) of the African Charter should be considered non-derogable.29

The Combating of Terrorism Act of 2001 establishes a system of ‘Special Courts’ set up by the Chief Justice, which have the power to impose and confirm the death penalty.30 In 2008 the Chief Justice and Minister of Justice formulated the Rules of Procedures for Anti-terrorism courts (Anti-Terrorism Rules) in violation of the principle of separation of powers.31 These rules also do not adhere to the fair trial standards in as far as they provide for the following:

1. The rules permit for persons to be tried in absentia contrary to provisions in the ICCPR and ACHPR which form a part of the Bill of Rights by virtue of Article 27 (3) of the Interim National Constitution. In relation to the Blue Nile incidents, there was a case where 17 accused persons who were tried and sentenced to death by hanging in absentia.32 The rules further permit the court to move on with the trial even in the absence or withdrawal of the defence counsel.

2. The rules provide that the accused shall be served with notice of a charge sheet at least 48 hours before the date of the scheduled hearing. 48 hours before the date of the scheduled hearing does not meet the requirement of being “promptly” informed of charges and also robs the defence of adequate time to prepare an adequate defence.

3. An accused person is allowed to appoint his defence counsel as soon as he is informed of the date of trial. In this case, the accused persons were held in detention for over one-and-a-half years before a trial date was set. The accused persons were also held incommunicado detention for over 10 months before the first lawyer visits were permitted in 2012.33 The Rules further provide for continuance of trials in absence of the defence counsel or his withdrawal.34

29 Communication 218/98, Civil Liberties Organisation and another v. Nigeria, par. 27.
30 Section 13(2) of the Combating of Terrorism Act, 2001
32 Case no. 4176/2011, Republic of Sudan v. Minnallah Hussein Hudi and 113 others.
33 Interview with a lawyer on ACJPS file.
34 Rule 6 (d) of the Rules of procedures for Anti-terrorism courts, 2008.
4. A statement given by one co-accused during his examination can be accepted as evidence against any other accused person(s) without corroboration. The court also has the discretion to draw any inference it deems appropriate from the defendant’s refusal to answer a question.

5. During the hearing, once the prosecution’s case is closed and the court has confirmed the charges, the defendant is given 24 hours to present a list of witnesses and summary of their statements to the court in response to the charges. This rule affects the accused’s right to adequate time and facilities for preparation of a defence.

6. The court has the discretion to accept and attach weight to evidence adduced before it. The court may convict an accused on the basis of confessions without investigating circumstances under which such confessions were made or whether the accused understood the consequences. This has raised concerns in regards to admissibility of evidence that has been obtained through torture or statements obtained as a result of torture. Sudanese law does not provide for an explicit prohibition relating to the use of confessions or statements obtained through torture, or evidence obtained as a result of torture. The Evidence Act of 1993 provides that confessions in criminal matters will be invalid if they are the result of coercion. However under article 10 of the same Act, a court may admit evidence – even where it was obtained in breach of recognised procedures – if it is confident that the evidence is independent and acceptable. Courts have regularly dismissed allegations raised by defendants that confessions had been extracted under torture. This uncertainty raises concerns in relation to adequate prevention of admission of evidence obtained through torture resulting in a breach of the prohibition against torture or cruel, inhumane or degrading treatment.

36 Rule 18 (b) of the Rules of procedures for Anti-terrorism courts, 2008.
37 African Commission’s Principles and Guidelines on Right to Fair Trial and Legal Assistance in Africa, 2003
38 See section iii. Prohibition against torture.
7. The time period for appealing decisions of the special courts to the Appeals Court was reduced from two weeks to one week, contrary to what is provided for in the Criminal Procedure Act. The regulations also restrict the appeal procedure for confirmation of sentence from two stages, namely the Court of Appeal and then the Supreme Court, to that of the Special Court of Appeal only, thereby depriving convicted persons of their right of appeal (and revision) to the Supreme Court.

In Mohammed Saboon v. Sudan Government, a group of lawyers challenged the constitutionality of the rules of procedure mentioned above. This case was concerned with the trials of Justice and Equality Movement (JEM) suspects who were forced to stand trial before six Special Terrorism Courts in Khartoum in connection with the 2008 JEM attacks in Khartoum. It was argued that the accused had been denied a fair trial in accordance with the law, the Constitution and Sudan’s international obligations. The Constitutional Court dismissed the petition and upheld the legality of the rules in what was described as a typical political judgment.40

These rules of procedure raise serious concerns with regards to their compatibility with the right to defend oneself and the right to a fair hearing, including the inadmissibility of confessions obtained as a result of torture or ill-treatment.41


Following the transfer of the case file for the Blue Nile detainees to the courts for trial, the defence lawyers lodged an application with the Deputy Chief Justice requesting that special courts are set up in accordance with the 2012 decree. After an unsuccessful attempt to establish a court in El-Roseires due to lack of capacity to accommodate detainees along with their lawyers as well as provide security, the trials were moved to a special court in Sinja that had available infrastructure to hear the trials. The courts

---

40 Op. cit., Amin M. Medani, p.81. The opinion of the President of the Constitutional Court for upholding the regulation:
Yes, this Court is not a political one; but it is also not an island isolated from what is happening in the Country. It cannot, in my opinion, in considering the Regulations whose constitutionality is contested, do so without reconciling itself with some departure from usual norms. This is not an innovation. In Nuremberg the serious loss of lives and property, and the cruelty and brutality with which the war was conducted forced those in power to disregard one of the most settled principles of law, that is the retroactivity of laws. It is quite normal in times of disaster, invasion, war and other national crises to suspend some basic rights temporarily, property may be confiscated and persons may be detained in disregard of the normal law. Therefore I refuse to decide against Regulation 25, which requires the application of its provisions, notwithstanding the provisions of the laws of Criminal Procedure and Evidence. This would no doubt be in contradiction of the principles of jurisprudence and judicial precedent, which place constitutional provisions at the top of the pyramid, followed by laws emanating from the legislative authority. Any provision in any law or subsidiary legislation which contradicts the Constitution, and any legislation which contradicts with the law becomes void. Thus I should be impelled to pronounce the illegality of Regulation 25, had it not been for the exceptional circumstances and the exceptional crimes which prompted the adoption of the said Regulations, as I explained in this paragraph.

were finally set up on 6 May 2013. Judge Abdul Moneim Younis, a judge for the public court in Eldinel was nominated to preside over the trials.

ACJPS was able to document 7 criminal suits before the terrorism court in Sinja, Sennar state. The first court sessions were held on 20 May, 2013. There were about 92 accused persons present at trial and 17 accused tried in absentia before this court. This was the first time they were being arraigned before the court since their arrest in September 2011. There were 7 criminal suits that were initiated by the Prosecution: 4 of the criminal suits had one accused person per case; the 5th criminal suit had two accused persons; the 6th criminal suit had 6 accused persons and the 7th criminal suit had 95 accused persons.

The trials were conducted amidst heavy security, with personnel from the military, security and police surrounding the building. The trials were closed to the public, and journalists or other media personnel were not allowed to sit in or record proceedings. The detainees were handcuffed in pairs as they were transferred to court in a convoy with traffic police and armed security personnel and riot police officers.

The detainees were represented by a team of about 18 lawyers from the Sudanese for Human Rights and Freedom Association and Nuba Mountain Bar Association who provided legal aid services. In two criminal cases, the judge released the accused due to lack of sufficient evidence to base a conviction in accordance with article 141 of the Criminal Procedure Act, 1991.

On 27 July 2013, the court dismissed two criminal suits and ordered for the release of the accused in accordance with under article 141 of the Criminal Procedure Act due to insufficient evidence. Details of the dismissed criminal suits include:

**Case number 4325/2011**: Mr. Atrasheed Alumada was charged with crimes under articles 21 (criminal conspiracy), 50 (crimes against the state), 51 (war against the state), 130 (murder), 186 (crimes against humanity), 187 (genocide), 189 (war crimes), 191 (crimes related to prohibited methods of warfare) of the Criminal Act 1991; articles 5 (incitement to commit an act in furtherance of a terrorist state) and 6 (committing an act of terrorism) of the Combating of Terrorism Act; and article 26 (possession of a weapon without a license) of the Weapon and Ammunitions Act.

**Case number 5276/2011**: Mr. Juma Hamed, a former police officer was charged with crimes under article 21 (criminal conspiracy), 50 (crimes...
against the state), 51 (war against the state), 130 (murder), 186 (crimes against humanity), 187 (genocide), 189 (war crimes), 191 (crimes related to prohibited methods of warfare) of the Criminal Act 1991; articles 5 (incitement to commit an act in furtherance of a terrorist state) and 6 (committing an act of terrorism) of the Combating of Terrorism Act; and article 26 (possession of a weapon without a license) of the Weapon and Ammunitions Act.

The court also dismissed the case against Mr. Sheikh Ali Elnour after hearing from the defence. Mr. Elnour was subsequently released.

1. Right not to be compelled to testify against oneself / right to remain silent.

Sudanese law does not provide for the right to remain silent nor does it place a duty on authorities to inform a person in custody of his right to remain silent or right to consult a lawyer. It is practice in Sudan to not have a lawyer present during interrogations and therefore a lawyer is unable to advice his or her client on the right to silence. Under the Criminal Act 1991, a person can face up to one month imprisonment or a fine for refusing to answer questions posed to him or her.47

On the basis of article 27 (3) of the Constitution, article 14 (3) (g) of the ICCPR that guarantees the right not to be compelled to testify or confess guilt should apply. While expounding on fair trial guarantees under the African Charter the Commission has stated that:

"(d) The accused has the right not to be compelled to testify against him or herself or to confess guilt."

1. Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion.

2. Silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent." 48

A violation of the right not to be compelled to confess has been found where a person was forced by means of torture to confess guilt.49

As earlier mentioned, some detainees reported to their lawyers that they had been forced by means of torture to make confessions. According to the Anti-terrorism rules, empower courts to accept non-judicial confessions which could have been made as a result of coercion. There is no obligation on the court to investigate circumstance under

YEARS IN PROLONGED DETENTION AND NO HOPE OF JUSTICE

A legal analysis of the events that occurred after the resumption of conflict in Blue Nile in September 2011.

which such confessions are made or whether the accused understood the consequences. 50

2. Equality of Arms:
The principle of equality of arms is essential to the right to fair trial. This principle requires that there should be a balance between the prosecution and defence. The African Commission has explained that:

"In criminal proceedings the principle of equality of arms imposes procedural equality between the accused and the public prosecutor:

1. The prosecution and defence shall be allowed equal time to present evidence.
2. Prosecution and defence witnesses shall be given equal treatment in all procedural matters." 51

The African Commission recalled that "the right to fair trial involves fulfillment of certain objective criteria, including the right to equal treatment, the right to defence by a lawyer, especially where this is called for by interests of justice as well as the obligation on the part of courts and tribunals to conform to international standards in order to guarantee a fair trial to all." The African Commission explained that, "the right to equal treatment by a jurisdiction especially in criminal matters, means, in the first place, that both the defence and the public prosecutor shall have equal opportunity to prepare and present their pleas and indictment during the trial. Simply put, they should argue their cases before the jurisdiction on equal footing." 52

In another case, the principle of equality of arms was explained as each party being "afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent." 53

During an interview with a member of the defence team for the Blue Nile detainees, it was pointed out that there was differential treatment between the prosecution and defence during the trials. The lawyer mentioned one case where the prosecution was helped in securing witnesses to attend proceedings through court summons whereas the defence was never offered this same help in securing witnesses during trial. The defence lawyers did not have access to the investigation diary or a list of evidence to be adduced by the prosecution. 54 As earlier mentioned, the investigation (case) diary which includes the prosecution’s evidence is treated as confidential. 55

In September 2013, the Special Terrorism Court of Sinja heard the case of Minnallah Hussein and 94 others. Of the 95 accused, the 78 were present at trial whilst 17 were tried in absentia. The court listened to testimonies from 26 prosecution witnesses.

---

52 Communication 231/99, Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v Burundi, par 26-27
54 Interview on ACJPS file.
55 P. 7
The prosecution also presented 24 documents as evidence in its favor. The court also had testimony from the defendants. The defence presented 64 witnesses in their favor. After the closing arguments from the prosecution and the defence were heard, on 13 March 2014, the court ruled as follows:

- Charges were dismissed against 31 of the detainees and the court ordered for their immediate release.

- In regards to the first co-accused, Mr. Minnallah Hussein, the court found him guilty under article 21 (joint acts in execution of criminal conspiracy), 50 (crimes against the state), 51 (waging war against the state), 130 (murder), 187 (genocide) of the Criminal Act and articles 5 (incitement to commit an act in furtherance of a terrorist state) and 6 (committing an act of terrorism) of the Combating Terrorism Act 2001 and article 26 (possession of a weapon without a license) of the Weapons and Ammunition Law. The court sentenced him to death by hanging.

- For the 17 absentee accused, the court found them guilty of crimes under articles: 21 (joint acts in execution of criminal conspiracy), 50 (crimes against the state), 51 (waging war against the state), 130 (murder) and 187 (genocide) of the Criminal Act 1991; articles 5 (incitement to commit an act in furtherance of a terrorist state) and 6 (committing an act of terrorism) of the Combating Terrorism Act 2001 and article 26 (possession of a weapon without a license) of the Weapons and Ammunition Law. The court sentenced them to death by hanging.

The Appeal Court upheld the conviction but changed his sentence from death to life imprisonment. On further appeal to the High Court, the court maintained Minnallah’s conviction but reversed his sentence from life imprisonment to death. Minnala was transferred to Medani Prison and is awaiting execution.
3. Right to present at trial

Sudanese Courts are empowered to allow for trial in absentia contrary to international and regional standards.

Article 34 (5) of the Constitution provides that trial of individuals shall be regulated by law. Article 134 (1) of the 1991 Criminal Procedure Act permits trials in absentia in the following circumstances: if one is accused of any offence against the state; if he/she is represented by an advocate or agent; and when the court believes that the absence will not prejudice the defence in anyway. The Rules of Procedure for the Terrorism Courts condone secret trials and trials with the accused in absentia.56

In March 2014, the Special Court in Singa presided over by Abdel Moneim Younis sentenced 17 people in absentia to execution by hanging, including the SPLM-N leader Malik Agar.57

4. Rights of juveniles

International standards call for detention of juveniles to be a measure of last resort. The African Commission has stated that, “a child may only be detained in police custody or pre-trial detention as a measure of last resort and for the shortest possible period of time.”58

The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty also state that deprivation of liberty for juveniles should be a last resort and for a minimum necessary period, limited to exceptional cases.59

The Rules further state that cases against juveniles must be expedited to ensure the shortest possible duration for detention.60

In case number 1325/2011, 6 accused persons including a minor were charged with crimes under the Criminal Act and the Anti-terrorism law. After hearing the defendant’s case, the court dismissed charges against three of the co-accused. The court found Sadam Abass and Ali Idris Mida guilty of crimes under articles 21 (joint acts in execution of criminal conspiracy), 50 (crimes against the state) and 51 (waging war against the state) of the Criminal Act 1991 and article 6 (committing an act of terrorism) of the Combating Terrorism Act 2001. They were sentenced to three years imprisonment for violating articles 21 (joint acts in execution of criminal conspiracy) and 51 (waging war against the state) of the 1991 Act and article 6 (committing an act of terrorism) of the 2001 Act. For violating article 50 (crimes against the state) of the 1991 Act, they were sentenced to four years imprisonment.

Nabil Taha Amir, a minor, was found guilty of crimes under articles 50 (crimes against the state), 51 (waging war against the state) and 52 (dealing with an enemy state) of the Criminal Act 1991 and article 6 (committing an act of terrorism) of the Combating Terrorism Act. The court sentenced him to 4 years imprisonment at Alhuda reformatory. Nabil was detained since September 2011, amongst adult males in violation of the Child Act 2010 and Sudan’s international obligations. The

56 Rule 3 and 5 of the Rules of Procedure for the Terrorism Courts.
60 Ibid, Rule 17.
Child Act provides that children may not be detained with adult persons.\(^{61}\) The Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa provide for children to be detained separately from adults unless it is in their best interest to be kept with family members also detained.\(^{62}\) Nabil was held in detention for over a year before the commencement of trial. His co-accused appealed against their prison sentences which were overturned and replaced with the death sentence by the Appeal Court.

5. Special Appeal Court
The Anti-terrorism court rules provide for a Special Court of Appeal that has the power to, among others:

1. Confirm the conviction, and alter the penalty, by diminution or by substituting the same by any other penalty authorized by the Anti-terrorism Act.

2. Alter the conviction decision, of an offence, to a conviction decision of another offence, which the accused would have been convicted of committing the same, upon the charge, or evidence; on condition that the commission of the other offence shall not be punishable with a severer penalty, and alter the penalty accordingly.

Following the conviction from the court of first instance, some of the convicted persons chose to exercise their right to an appeal in accordance with the law. However, on appeal many of the penalties were altered and substituted for higher penalties.

- In a case of Mr. Alsir Amir Alzaki and Mr. Abdullah Al-Zein Rajab, an appeal was lodged before the Special Appeal Court in Sennar. The Appeal Court confirmed the conviction of the first court and altered the sentence from 9 years imprisonment to life imprisonment. Mr. Alzaki and Mr. Al-Zein lodged a further appeal with the National Supreme Court in Khartoum. The Supreme Court upheld their conviction and repealed the sentence of life imprisonment. The case file was sent back to the trial court for re-sentencing.

- On 27 August 2013, the Special Terrorism Court in Sinja found Mr. Alsir Amir Alzaki and Mr. Abdullah Al-Zein Rajab guilty of crimes under articles 21 (joint acts in execution of criminal conspiracy) and 51 (waging war against the state) of the Criminal Act and article 6 (committing an act of terrorism) of the Combating Terrorism Act and article 26 (possession of a weapon without a license) of the Weapons and Ammunition Law. The Court sentenced them to four years imprisonment for violating the Criminal Act, two years for violating the Weapons and Ammunition Law and three years for violating the Combating Terrorism Act.

- Mr. Musa Jahallah was found guilty of crimes under article 51 (waging war against the state) of the Criminal Act and article 6 (committing an act of terrorism) of the Combating Terrorism Act.  

\(^{61}\) Article 58 (4) (a) of the Sudanese Child Act 2010.  
Act by the Special Terrorism Court in Sinja on 27 August 2013. The Court further sentenced him to four years imprisonment for violating article 51 and three years for violating article 6. Mr. Jahallah appealed against his sentence to the Special Appeal Court who upheld his conviction and altered his sentence to life imprisonment. He made a further appeal to the National Supreme Court in Khartoum. The Supreme Court upheld his conviction and repealed his sentence. The case file was sent back to the trial court for re-sentencing.

- Minnalla Hussein and 46 others appealed against their convictions to the Special Appeal Court in Sennar. The Appeal Court upheld their convictions and sentences and changed Minnallah’s sentence from death to life imprisonment. They lodged a further appeal to the Supreme National Court in Khartoum. On 12 January 2015, the Supreme Court confirmed the conviction of the Special Court of Sinja and reversed Minnallah’s sentence from life imprisonment to death sentence. The decision also upheld the life imprisonment sentence of the 46 others and the death sentence for the 17 absentee convicts.

Forgotten detainees
After the commencement of trials, there were 9 detainees who were discovered in El-Roseires prison who had not been charged or added to the ongoing criminal suit. They had spent two years in detention without being informed of charges against them or reasons for their arrest. One of the lawyers brought their situation to the attention of the Office of the Prosecutor in Ed Damazin who later ordered for their release.

Presidential pardon
In October 2016, President Omar Al-Bashir pardoned 24 members of the Sudanese People’s Liberation Movement-North (SPLM-N) who had been convicted and sentenced to death among others during trials heard by the Special Terrorism Courts set up in Blue Nile state. Under article 208 of the Criminal Procedure Act 1991, the President has the discretion to rescind conviction or penalties for offences other than hudud offences.

The prisoners were subsequently released.

The stricter penalties handed down at the Appeal Court level discouraged others from exercising their right to appeal for fear that they might have a stricter sentence handed down at appeal stage.
CONCLUSION

ACJPS is aware that at the time of publishing this report, all persons convicted during the Blue Nile Terrorism trials have been released. However it should be noted that the legal framework governing these trials is still in force. ACJPS recognizes the need for comprehensive legal reform to ensure compatibility with the Bill of Rights and Sudan’s international commitments.

Adherence to due process and fair trial guarantees are essential in ensuring one’s right to liberty and security as well as respect for rule of law. Persons deprived of liberty even in cases related to counter terrorism measures should be afforded the opportunity to challenge the legality of their detention before an independent judicial body, right to consult a lawyer at all stages from arrest to trial, protected from torture and other forms of ill-treatment at all stages among others.

Sudan should ensure human rights protections for all including persons charged with criminal offences related to terrorism. Sudan should review its law on counter-terrorism and the procedure of the anti-terrorism courts with a view of ensuring due process and fair trial guarantees are in line with its regional and international obligations.

ACJPS urges the Government of Sudan to:

i Repeal the Rules of Procedure of Anti-Terrorism Courts and ensure that the Criminal Procedure Act governs the procedure before the Anti-Terrorism Courts;

ii In the alternative, amend the Rules of Procedure of the Anti-Terrorism Courts to ensure safeguards in relation to lawful arrest and detention as well as fair trial guarantees under Sudan’s constitution, the International Covenant on Civil and Political Rights and African Charter on Human and Peoples’ Rights are adhered to;

iii Amend the Evidence Act to ensure exclusion of evidence obtained through torture or other ill-treatment in line with international standards;

iv Amend the Criminal Procedural Act and other procedural laws to ensure right to fair trial and other safeguards as guaranteed in the Constitution, the International Covenant on Civil and Political Rights and African Charter on Human and Peoples’ Rights such as:
   a) Access to a lawyer of one’s choice from the outset of pre-trial proceedings until the completion of criminal proceedings
   b) An obligation on the police officer carrying out an arrest to inform the arrested person of his or her rights including right to access a lawyer
   c) Provision of legal assistance during questioning and interrogation proceedings
   d) Right to review of the case/investigation diary by the defence in advance of the trial
   e) Provision of the right to habeas corpus
   f) Provision of the right to compensation for unlawful arrest or detention
YEARS IN PROLONGED DETENTION AND NO HOPE OF JUSTICE

A legal analysis of the events that occurred after the resumption of conflict in Blue Nile in September 2011.