

Sudan (the): Sudan: Khartoum Dragging Feet Over Immunity

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Laws on immunity should have been changed, but progress has been disappointing.

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As Sudan heads towards a 2011 referendum on self-determination for its breakaway southern state, there are growing calls for changes to laws that still grant immunity to government officials, in spite of recent amendments.

Laws governing the operations of Sudan's police, security and armed forces have not yet been brought into line with its interim constitution, which guarantees an individual's right to litigate and makes everyone equal before the law.

The 2005 Comprehensive Peace Agreement, which brought more than 20 years of civil war to a halt, calls for the reforms ahead of next January's scheduled referendum.

Although there have been some recent amendments to the laws, observers say they fall well short of what is needed.

"There were not many serious or genuine efforts to implement the provisions of the constitution during the whole interim period," said Salih Osman, a member of the Sudanese parliament and rights activist. "The amendments were very light and they were in no way significant."

The 1999 National Security Act, which granted procedural immunity to members of the security services, was redrafted in January this year. But observers say the changes were purely cosmetic.

For example, the National Security Act still holds that "no criminal or civil proceedings shall be taken against a member [of the security services] for any act related to his/her official work without the approval of the director general".

The law make it very difficult to bring a case against a government official who may commit a crime while serving, experts say.

"The result of this [immunity] in practice is that a number of cases have really failed at the first hurdle because, [if] the head of the police or head of security has not acted on a request to lift immunity then nothing further happens," said Lutz Oette, an international lawyer at the rights group Redress in London.

"The consequence of this is impunity: the perpetrators won't be held to account and the victims in turn won't receive justice."

Before a citizen can proceed with a case against a suspect from any part of government, immunity must first be lifted. The decision to lift it though lies not with an independent judicial body, but with the head of the government body involved, be it the security, military or police force.

Ali Agab, who formerly provided legal aid to plaintiffs at the Khartoum Centre for Human Rights, has struggled for eight years to get immunity lifted for a murder case in Blue Nile province.

The case involves a street shooting in Dinder town in 2002. After an initial investigation, the attorney general asked the security forces to lift immunity on a man accused of the crime, but his request has not yet been dealt with.

Human rights groups say the laws are symptomatic of the way the National Congress Party, NCP, governs Sudan and point to efforts made by the southern government led by the Sudan People's Liberation Movement, SPLM, to get the laws changed.

"It's an issue the SPLM has raised with the NCP and has fought very hard to change, but... the NCP will be very unwilling to

change [the law] as it has enabled them to keep such a tight grip on the country," Louise Roland-Gosselin, director of Waging Peace, told IWPR.

Sudan's government defends its continued use of immunity laws as necessary for its officials to do their work.

"As far as these forces are operating under certain discipline, by receiving and carrying out orders, no other bodies, judicial or otherwise, should be allowed to intervene in their work," Mohammed Ahmed Al Dirdeeri, a government legal adviser, said.

Dirdeeri emphasised that immunity was not absolute and could be challenged, "Every court has jurisdiction to issue an order to the head of the army or the minister who is responsible and ask him to remove the immunity.

"This is not something impossible or undo-able. You can easily obtain the permission needed in order to bring your case."

He pointed out that there are a number of examples where immunities have been removed, resulting in the prosecution of members of the police or security forces.

But some lawyers fear that since the final decision rests with government, the barrier to lifting immunity is still too high.

Agab says that the authorities often resist making a decision one way or the other, since a decision not to lift immunity could theoretically be challenged in an administrative court.

According to lawyers in Sudan, more than 500 cases are currently pending against members of the security services where immunity has not been lifted.

Commentators say that immunity laws are undermining confidence in the country's judicial system, leading to many crimes going unreported.

"This complication has forced many victims to give up their cases," Abdil Ghani, a legal expert from Khartoum, said.

One internally displaced individual living in Ryadh camp, West Darfur, said people no longer dared to report crimes that were committed by members of the police or security forces.

He alleges that a policeman searched his house and stole his driving licence and money, but pointed out the futility of reporting such a crime when officers are perceived to be above the law.

"That's why people don't go [to the police]," he said. "Even if you go, they will do nothing for you. They will send you away or accuse you of a crime."

The government accepts that members of the police or security forces may commit crimes, but says this is not driven by immunity.

"The victim should go to a lawyer or attorney general to bring his complaint," said Habib Adam Musa of the Sudanese Bar Association. "I don't understand why they should feel intimidated or afraid."

But Khartoum accepts that the laws do need to be changed.

"Certainly this is a goal that everybody is trying to achieve," Dirdeeri, the government legal adviser, said. "I cannot imagine lifting procedural immunity altogether but I can imagine facilitating the lifting of this immunity in cases of aggression and violation of citizens' rights, especially basic rights like the right to life."

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