

Submission by Darfur Relief and Documentation Centre, UPR, Sudan

The situation of human rights in the Sudan has been a source of international concern since 1991 when the forty-seventh session of the former UN Commission on Human Rights was seized of the matter. In 1991 and 1992 the situation in the country was addressed under the Commission's confidential procedure 1503. On 10th March 1993 the forty-ninth session of the Commission on Human Rights decided, in its resolution 1993/60, to examine the situation of human rights in the Sudan under the public procedure. On 30 March 1993, the Chairman of the Commission on Human Rights appointed Dr. Gáspár Bíró as the first Special Rapporteur on the situation of human rights in the Sudan. Since then 6 independent human rights experts were entrusted with scrutiny of the human rights situation in the country.

In resolution 1993/60, the Commission on Human Rights expressed its deep concern at the serious and systematic human rights violations committed in the Sudan and called for their immediate cessation. The Commission identified a number of areas of concern including summary executions, arbitrary detention and detention without due process, forced displacement of persons and ill-treatment, torture and degrading treatment. The Commission called upon the Government of the Sudan to ensure that all individuals living within its geographic confinements and subject to its jurisdiction, including members of all religious and ethnic groups, are protected and fully enjoy universal human rights. It urged the Government of the Sudan to respect fully its obligations under international human rights treaties to which the Sudan is a state party.

Sudan is a state party to key regional and international human rights agreements including the Universal Bill of Rights and a Contracting Party to the four Geneva Conventions of 1949. In addition, Sudan is a state signatory to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Rome Statute of the International Criminal Court. Under customary international law which is governed by the Vienna Convention on the Law of Treaties, Sudan as a signatory state, is under obligation to refrain from committing any action that defeat the object and purpose of the Convention against Torture and the Rome Statute.

In 2005, Sudan adopted the Interim National Constitution of the Republic of Sudan which, for the first time in the history of the country, included a comprehensive Bill of Rights compatible with international human rights law. The Constitution emphasized the need for legal reform and stipulated that all domestic laws and legislations of the country should be amended in conformity with the Bill of Rights. However, the progress made in the country in the area of the promotion and protection of human rights and fundamental freedoms is disproportionate with the actual need to effect a meaningful change in this vital field. Following the adoption of the Interim National Constitution some limited reform in the area of legislation and constitutional arrangements were introduced, yet institutional building and practices remain the main challenge areas. For example in 2009 Sudan promulgated the law on the establishment of the National Human Rights Commission. However, members of this Commission have not been appointed to date.

The limited legal reform introduced in Sudan in 2008 including the new Press and Publications Act, the Criminal Procedures Act and the National Intelligence and Security Act, hardly constitutes a solid basis for the promotion and protection of human rights and fundamental freedoms in the country. The new laws are amended versions of old laws and have maintained most of the repressive provisions. Section 25, 50 and 51 of the National Intelligence and Security contravene the provisions of Sudan's Interim National

Constitution. The Act allows the arrest and detention of political opponents without charge or trial for long period renewable at the discretion of the authorities.

However, the actual situation of human rights and fundamental freedoms in Sudan reveals the existence of a serious deficit in the government respect of its binding obligations under regional and international human rights and humanitarian law. While violations of human rights seem to be widespread all over the country, the situation is especially dire in armed conflict ridden zones such as Darfur. Serious human rights violations are also reported in areas emerging from long years of armed conflict such as Southern Sudan and the Nuba Mountains.

The human rights and humanitarian situation in Darfur aggravated manifold following the eruption of the armed conflict between Darfur insurgent groups and the state in February 2003. The last seven years have witnessed the worst violations of human rights and international humanitarian law in the region. It is to be noted that since the present government seized power in Sudan in a *coup d'état* on 30th June 1989, Darfur has been under a State of Emergency Regulations. Under these regulations the military and security forces are exonerated from any accountability for violations of international human rights and humanitarian law. Countless violations of Sudan's obligations under international law were documented in Darfur including violations of Article 3 which is common to the Four Geneva Conventions and which applies to the protection of civilians and non-combatants in situations of conflict not of international nature.

The administration of justice and respect of the rule of law are among the most critical areas identified throughout the last years. There is no meaningful reform in the institutions entrusted with maintaining and preserving the rule of law in Sudan including the judiciary, police and other law enforcement agencies. In 2005 the International Commission of Inquiry on Darfur concluded that *"The Sudanese justice system is unable and unwilling to address the situation in Darfur. This system has been significantly weakened during the last decade. Restrictive laws that grant broad powers to the executive have undermined the effectiveness of the judiciary, and many of the laws in force in Sudan today contravene basic human rights standards."* ICID Report, page 5. In its report of 29 October 2009, the African Union High-Level Panel on Darfur Chaired by President Thabo Mbeki, stated that *"... Sudan still retains legislation giving immunity to members of the police and armed forces for crimes committed in the course of their duties."* The report added that *"These obstacles to justice will need to be removed. In addition, the judiciary of Sudan needs to regain its credibility and esteem in the eyes of the people of Darfur and nationally."* AUPD Report, paragraph 19, page xvii.

Darfur, which is riddled by more than 7 years of internal armed conflict, has been the scene of countless violations of human rights and fundamental freedoms. According to available reports the armed conflict in Darfur has left more than 2 million civilians as internally displaced persons and forced more than 300,000 to leave the country into exile in neighbouring countries. Yet the history of systematic state-sponsored violations of human rights in Darfur dates back to June 1989 when a State of Emergency was declared in the Sudan. Unlike other parts of the country, the State of Emergency has not been lifted in Darfur and was further consolidated with the introduction of the Emergency and Protection of Public Safety Act of 1997 (Act Number (1) 1998). Under the State of Emergency the security forces were allowed *carte blanche* to commit all sorts of atrocities against civilians with total impunity. It also imposes serious restrictions on political and civil liberties.

Human rights violations in Darfur are committed with full impunity conferred by law that protect the enforcement agents and government officials against prosecution or judicial purview. On 10 April 2005, the President of Sudan issued two Presidential Decrees to amend the Criminal Procedure Act of 1991 and the People's Armed Forces Act of 1986. These amendments granted immunity to members of the police, security and armed forces against any criminal liability for committing crimes in Darfur including premeditated murder of civilians. According to section 73 (3) of the first amendment and section 79 (a) (3) of the second even in case that an agent is convicted of the commission of a crime then his liability will not exceed the payment of blood money which is to be shouldered by the state.

Torture has been systematically practiced by the security forces in Sudan since the beginning of the 1990s. The UN Special Rapporteurs on the Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have documented numberless cases of torture and of political opponents died because of torture in government custody. Torture and other cruel, inhuman or degrading treatment or punishment is widely used by Sudan's security forces within the context of the armed conflict in Darfur. Torture was intensively used in the aftermath of the attack the Darfur insurgent group Justice and Equality Movement (JEM) on Khartoum in May 2008. A large number of persons originating from Darfur, including women and children, were arrested in connection with attack and indiscriminately physical and psychologically tortured. A 10-month infant-boy (Hashim Abdel Shakour) was arrested by the security forces on 8th June 2008 together with his mother Ms. Zubaida Sandal Hajjar. On 21st June 2008 the Dubai-based news channel Al-Arabiya TV broadcast a videotape in which a group of children from Darfur accused by the government of participating in JEM's attack were severely tortured by the security forces. The video shows the children been badly beaten and humiliated without consideration of their young age. The children have their hands tied to their backs and forced to crawl and lay down on sand in open ground under dry summer temperature of over 40 degrees. Meanwhile a number of government security agents take turns in beating up the children and humiliating them.

Although torture is prohibited by Sudanese laws but it in reality the practice has been encouraged by many regulations for many years. These include the National Security Act, the Criminal Procedures Act, the Emergency and Public Safety Protection Act etc. Article 10 of the Evidence Act of 1993 advises Courts of Law that: "... *evidence shall not be rejected merely because it has been obtained by unlawful means whenever the Court is satisfied with the genuineness of its substance.*" While article 206 of the Criminal Procedure Act of 1991 expressly allows Courts of law to accept evidence and confession extracted under torture for all kinds of crimes including those crimes that carry the death penalty. Inhumane and degrading treatment including whipping and other physical punishments is the most common form of torture legally practiced in Sudan. It is ordained by the Criminal Code of 1991, the Public Order Act in Khartoum State and the Rules of procedure of Prisoners Treatment.

In Darfur the questions of the administration of justice and respect of the rule of law are among the key challenge areas and need comprehensive reform and attention. It is widely believed that the judiciary as well as other law enforcement agencies and personnel are being used as tools to suppress political opposition in Darfur. A large number of the law enforcement agents, especially members of the Popular Defence Forces (PDF), the Borders Intelligence Guard, the Central Reserve Police, the Popular Police and the Nomadic Police, are believed to be part and parcel of the Janjaweed militia groups and

have been drafted into the regular security forces by the government to conceal their real identity. The Janjaweed are being accused of committing serious crimes under international criminal and humanitarian law including war crimes and crimes against humanity.

Criminal justice in Darfur has been entrusted upon Special Criminal Courts that are largely lack the minimum standards of justice and fair trial. In the Special Criminal Courts the process is summary and defendants are deprived of their basic rights to fair trial and guarantees of due judicial process. More often than not the punishments are harsh and disproportionate with the crimes committed. On 21 October 2010, the Special Court in Nyala, South Darfur State, sentenced a group of nine individuals to death for a carjacking incident committed on 13 May 2010. The defendants were allegedly members of Justice and Equality Movement (JEM) and four of them are believed to be children under 18 years old at the time of the sentence.

On Monday 13th April 2009 the authorities in Sudan hanged to death nine individuals convicted of the murder of a journalist and Editor-in-Chief of Al Wifag daily. These persons originate from the war-ravaged Darfur region. The prosecution and conviction of these nine defendants were based on evidence extracted from them under duress. All the defendants informed the court that they were tortured to confess to the murder and that they were forced to sign false confessions. They also informed the court that their bodies carried visible torture marks. The court rejected requests of the defendants and their lawyers for medical examinations to verify the torture marks on their bodies.

On 29 May 2008 the Chief Justice of Sudan issued Decree No. 28 (2008) by which the government established 4 Anti-Terrorism Special Courts (ATSCs) to try individuals accused of participating in JEM's attack against Khartoum. The ATSCs were invested with Exceptional Rules of Procedure.

The Anti-Terrorism Special Courts' Rules of Procedure (ATSCRPs) are inconsistent with universal human rights standards and short of meeting minimum standards of justice and fair trial both in customary and international law. The ATSCRPs practically prohibits the accused and their lawyers of bringing *habeas corpus* petitions to challenge the legal basis for their detention or the evidence used for their prosecutions. Hundreds of presumed JEM members including juveniles were produced before these Courts. The defendants were practically denied proper access to legal counselling or lawyers of their choice. The defendants were charged and prosecuted collectively under the provisions of different Sudanese laws mainly the Anti-Terrorism Act of 2001 which is being used for the first time in Sudan's history. So far 111 individual were sentenced to death by ATCRPs. These sentences were confirmed by the Anti-Terrorism Special Court of Appeal and awaiting the signature of the President of the Republic for the execution to be carried out. ATSCs are empowered to use a "plea of guilty" as a basis for conviction on crimes that carry capital punishment. Defendants are allowed only 24 hours to bring all their defence witnesses before the court. The ATSCs judges have based their rulings mainly on evidence taken from the defendants under duress and extortion. The ATSCs judges systematically rejected requests of the defendants to meet in private with lawyers of their choice or to investigate allegations of torture and ill-treatment that they suffered.

In November 2007, the UN Experts Group on Darfur expressed its concern on the seriousness of the ongoing violations of human rights and international humanitarian law in Darfur. The Group compiled 45 key recommendations to enhance the human rights situation in Darfur. It urged the Government to implement fully the prioritized recommendations without further delay. In his presentation before the 13th ordinary

session of the Human Rights Council the Interdependent Expert on the human rights situation in Sudan (Mohammed Chande Othman) indicated that out of the 45 recommendations made by the Group of Experts only 4 were fully implemented, 11 partially implemented while 30 were not implemented at all.