

**ALTERNATIVE REPORT**  
**To Sudan's Periodic Report Before the 43<sup>rd</sup> Session of the African**  
**Commission on Human and Peoples' Rights**  
**(Swaziland, May 2008)**



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## Introduction

Sudan ratified the African Charter on Human and Peoples' Rights (ACHPR) on 18 February 1986. The Sudanese government is therefore obliged to respect and protect the internationally recognised human rights contained therein. The Sudan Organisation Against Torture (SOAT) hereby presents an alternative report to *The Third Periodical Report of the Republic of the Sudan* due to be considered at the 43<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) in Ezulwini, Swaziland, from 7 to 22 May 2008. This report reviews Sudan's compliance with the ACHPR, article by article, with a focus on the period from the beginning of 2006 to the present day.

## Human Rights and the Comprehensive Peace Agreement

In January 2005 the signing of the Comprehensive Peace Agreement (CPA) by the Government of Sudan (GoS) and the Sudan People's Liberation Movement (SPLM) marked the end of a 22-year civil war in the South that saw the displacement of over 4,000,000 people and destroyed the livelihoods of many thousands more. It was hoped that the CPA would usher in a new era of peace and stability throughout the country and would be a turning point in ending Sudan's long history of human rights violations.

The CPA made way for the adoption of a new Interim National Constitution (INC) on 9 July 2005. The INC includes a Bill of Rights, which contains a list of constitutionally-guaranteed rights and freedoms and also provides that "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill" (Article 27 (3)). Hence, pursuant to Article 27 of the INC, the ACHPR is binding and may be invoked as a constitutional text.

Besides the ACHPR, Sudan is also a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child (CRC) and both Optional Protocols to it, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Slavery Convention of 1926. Sudan is a high contracting party to the Geneva Conventions of 12 August 1949 and acceded to the two Protocols Additional to the Geneva Conventions in 2006.

The CPA also calls on Sudan to endeavour to ratify other human rights treaties it has signed. These include the Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Rome Statute of the International Criminal Court (ICC). As a signatory to these acts, Sudan is bound to refrain from acts which would defeat their object and purpose.

Three years after the signing of the CPA, very little has been done by the new Government of National Unity (GoNU) to harmonise national legislation with the INC and international human rights standards. Along with this lack of legislative reform, the human rights situation across the country remains an issue of serious concern. The authorities continue to arbitrarily detain individuals for long periods, often without charge and without access to lawyers, and torture and other forms of ill-treatment in custody remain common. Those who are particularly vulnerable to such abuses include human rights defenders, political opponents, students and displaced persons. In the past few months the Sudanese authorities, in particular the National Intelligence and Security Services (NISS), have also launched a harsh crackdown on the country's media, which has included daily pre-print censorship, bureaucratic obstruction and arrests and summonses of journalists. While national elections scheduled for next year should mark a key milestone in Sudan's transition towards stability and democracy, this lack of respect for human rights represents a major stumbling block.

## The Conflict in Darfur

After three years of war and massive and widespread violence and human rights abuses, the Darfur Peace Agreement (DPA) was signed in Abuja in May 2006 between the GoS and the faction of the Sudan Liberation Army loyal to Mini Minnawi (SLA-Minnawi). Other major rebel movements, the Justice and Equality Movement (JEM) and another faction of the SLA loyal to Abdel Wahed al-Nur (SLA-Abdel Wahed), refused to sign the peace agreement.

Two years after the signing of the DPA, Darfur is yet to witness any significant move towards peace and the situation in the region remains critical. Peace talks were convened in Sirte, Libya, at the end of October 2007 and the GoS announced a unilateral ceasefire. But rebels claimed this ceasefire was immediately broken and the talks soon fell apart because of the refusal of key rebel groups to attend.

The Sudanese government has failed to disarm and disband the Janjaweed militias and continues to rely on them in the pursuance of its counterinsurgency in Darfur, though these militias have increasingly pursued their own agendas. The rebel groups have splintered into an increasing number of factions, further complicating efforts to arrange meaningful peace negotiations with the government. Ongoing insecurity and banditry in Darfur has prevented the delivery of aid to large parts of the region, with

humanitarian convoys and personnel frequently coming under attack.

Against this fluid background, one constant has been the large-scale human rights violations suffered by Darfur's civilian population. January and February of this year saw a sharp escalation of violence in Western Darfur, with a series of attacks by government forces and allied militias displacing tens of thousands of people, leaving homes looted and burnt, many killed and women raped. Darfuri civil society has been attacked by the Sudanese authorities, with the aim of undermining social and political structures viewed as a threat. Tribal leaders and other representatives of internally displaced persons (IDPs) remain vulnerable to abuses like arbitrary arrest and torture, and entire sections of IDP communities have been forcibly relocated. Meanwhile the GoS has obstructed the full deployment of the new United Nations-African Union hybrid force mandated to take over peacekeeping duties in Darfur (UNAMID).<sup>1</sup>

History has taught Sudanese human rights victims that today's abuses are grounded in yesterday's impunity and that to break this vicious cycle perpetrators must be brought to justice. However, the GoS has taken no serious steps to address impunity for crimes committed in Darfur. In the face of massive and grave human rights abuses, only an extremely unsatisfactory number of cases have been investigated and these have involved only low ranking officials. In spite of Sudan's clear inability to prosecute those responsible for crimes in Darfur, the government continues to refuse to cooperate with the ICC and hand over the two individuals wanted by the court in connection with the conflict. One of the ICC suspects, Ahmad Harun, has even been allowed to stay on as State Minister for Humanitarian Affairs and is thus responsible for the welfare of the victims of his alleged crimes.

SOAT takes this opportunity to call on the African Commission on Human and Peoples' Rights at its 43<sup>rd</sup> Ordinary Session to effectively engage with, guide and support the GoS in upholding its human rights obligations through clear and measurable recommendations.

It is also hoped that the Commission's findings and recommendations will contribute to shaping and informing the agenda of the African Union (AU) in respect of Darfur. The human rights knowledge and expertise of the Commission should be pivotal in defining a clear and unequivocal AU commitment towards ending one of Africa's worst crises and

<sup>1</sup> For details of Sudan's obstruction of UNAMID, see the joint NGO report *UNAMID: Deployment on the Brink*, available at [www.soatsudan.org/Other%20Reports/UNAMID%20Deployment%20on%20the%20Brink.pdf](http://www.soatsudan.org/Other%20Reports/UNAMID%20Deployment%20on%20the%20Brink.pdf)

ensuring peace and justice for the region's civilian population.

## The Situation in Relation to Articles 4 and 5

### Article 4

*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*

### Article 5

*Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*

### Killings in Darfur

During the period covered by this report Sudanese government forces and members of proxy militias have continued to target civilian settlements and IDP populations in Darfur, resulting in large numbers of civilian deaths. A United Nations (UN) report in December 2007 said that hundreds of civilians had been killed by government forces and allied militias in the region in the six months leading up to publication alone. Evidence suggests that the Sudanese government has continued to ship weapons into Darfur in violation of a UN arms embargo.<sup>2</sup> At the same time, the Sudanese authorities have failed to fulfil past commitments to disarm pro-government militias.

Underlying the ongoing large-scale killing of civilians in Darfur is an entrenched culture of impunity, with Sudan Armed Forces (SAF) and militia members committing crimes in the knowledge that under current conditions they are unlikely ever to face justice. For more on the problem of impunity, see the section of this report dealing with Articles 7 and 26 of the ACHPR.

There is also evidence that rebel groups have been responsible for crimes and human rights violations in Darfur during the period covered by this report, including an attack on African Union peacekeepers in Haskanita in September 2007 and ill-treatment of prisoners.<sup>3</sup>

<sup>2</sup> Amnesty International, New photographs show further breach of UN arms embargo on Darfur, AI Index: AFR 54/045/2007 (Public), 24 August 2007. Available at <http://www.amnesty.org/en/library/asset/AFR54/045/2007/en/dom-AFR540452007en.html>

<sup>3</sup> Amnesty International, Urgent Alert, AI Index: AFR 54/004/2008, 16 January 2008. Available at [www.amnesty.org/en/library/asset/AFR54/004/2008/en/AF](http://www.amnesty.org/en/library/asset/AFR54/004/2008/en/AF)

The following are some examples of killings of civilians in Darfur since 2006:

- In January and February 2008 at least 115 people were killed and over 30,000 were displaced in a series of attacks carried out by government forces and allied militias in Western Darfur. The attacks focused on the settlements of Saraf Jidad, Sirba, Silea and Abu Suruj. The Office of the UN High Commissioner for Human Rights (OHCHR) reported that violations of international humanitarian and human rights law were perpetrated by armed militias and SAF during the attacks. OHCHR said “the scale of destruction of civilian property, including objects indispensable for the survival of the civilian population, suggests that the damage was a deliberate and integral part of a military strategy”.<sup>4</sup>
- Following an attack by rebel forces on AU peacekeepers in Haskanita on 29 September 2007, government forces took control of the area. On 4 October the town was razed to the ground and at least ten civilians were killed. This and a subsequent attack on the town of Muhajariya – reportedly carried out by government troops and allied militia – together displaced thousands of civilians.<sup>5</sup> 48 civilians were reportedly killed during the Muhajariya attack, including eight people rounded up whilst praying in a mosque.<sup>6</sup>
- In November 2006 at least 50 civilians – including 21 children under the age of ten – were reportedly killed when “Janjaweed” militias attacked eight villages and an IDP camp in the Jebel Moon area of Western Darfur.<sup>7</sup>
- In September 2006 13 IDPs from Foro Baranga, south of el-Geneina in Darfur, were reportedly arrested and subjected to physical abuse including being severely beaten with bicycle chains and leather whips, and having their heads submerged under water. One member of the group, Ibrahim Birzi, reportedly died as a result of this abuse. The authorities are thought to have suspected the detainees of supporting one of the Darfur rebel movements.<sup>8</sup>
- Between 4 and 8 July 2006 some 72 people – including around 11 primary school children – were reportedly killed and 103 injured in attacks carried out by SLA-Minnawi against civilians in the Korma region of North Darfur. SLA-Minnawi forces were reportedly supported in these attacks by SAF and “Janjaweed” militias. The UN estimated that some 8,000 civilians were displaced in a matter of days as a result of these attacks and other fighting in North Darfur.<sup>9</sup>
- On 25 April 2006 an individual named Ahmed al-Reheed (Fur) died in the custody of military intelligence in Sanya Dalaiba, South Darfur, as a result of physical abuse he suffered during 19 days that he spent in detention on suspicion of working with rebel groups. No legal action has been taken against the perpetrators.
- On 13 April 2006 over 500 armed militiamen on horses and camels attacked and looted Karamagay village in Southern Darfur, killing 15 people, wounding 11 and stealing hundreds of cattle, sheep and other livestock.
- On 15 March 2006 over 900 militiamen – alleged to be government-allied “Janjaweed” – attacked and looted Tibon IDP camp in Jebel Marra, West Darfur. The militias also attacked three other villages in Jebel Marra on the same day. During the attack, approximately 26 IDPs were killed and six wounded.

[R540042008en.html](#); and Amnesty International, Urgent Alert, AI Index: AFR 54/008/2008, 28 February 2008. Available at [www.amnesty.org/en/library/asset/AFR54/008/2008/en/AFR540082008en.html](http://www.amnesty.org/en/library/asset/AFR54/008/2008/en/AFR540082008en.html)

<sup>4</sup> *Ninth periodic report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Sudan: Attacks on Civilians in Saraf Jidad, Sirba, Silea and Abu Suruj in January and February 2008*, 20 March 2008.

<sup>5</sup> Human Rights Watch, “New Clashes Jeopardize Civilians”, 10 October 2007. Available at [hrw.org/english/docs/2007/10/10/darfur17063.htm](http://hrw.org/english/docs/2007/10/10/darfur17063.htm)

<sup>6</sup> *Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar, A/HRC/7/22*, 3 March 2008.

<sup>7</sup> “Amnesty International Report 2007: Republic of Sudan”. Available at [www.amnesty.org/en/region/africa/east-africa/sudan#report](http://www.amnesty.org/en/region/africa/east-africa/sudan#report)

- On 16 February 2006 over 2,000 armed militiamen on horses and camels – allegedly members of the government-allied “Janjaweed” – attacked and looted six Massalit civilian villages in the Buram area of Southern Darfur. The names of the villages were Arediba Araj, Umrokbi, Gubai, Umtraigo, Gandako, Tigla, Hashaba, Rajaj. The militiamen killed 33 people, injured six and looted more than 1,500 camels and cows.

<sup>8</sup> “Amnesty International Report 2007: Republic of Sudan”. Available at [www.amnesty.org/en/region/africa/east-africa/sudan#report](http://www.amnesty.org/en/region/africa/east-africa/sudan#report)

<sup>9</sup> *Ibid.*

In addition to deaths resulting directly from armed attacks on civilian settlements, civilians have also continued to die as a result of the appalling humanitarian situation in the region, which has been severely exacerbated by government policy.

As a result of factors including the intentional targeting of civilian populations and the destruction of civilian property by GoS forces and allied militias – as well as ongoing fighting and insecurity more generally – civilians continue to be displaced in enormous numbers. Over 260,000 civilians fled their homes in Darfur between January and September 2007 alone. As of January 2008 it was estimated that there were more than 2.45 million IDPs in Darfur, with a total of over 4.27 million people affected by the conflict. Some quarter of a million Darfuris have also taken refuge in Chad and CAR, adding to the huge number of displaced citizens of those countries.<sup>10</sup> Displaced populations in Darfur remain extremely vulnerable, facing problems including violent clashes in IDP camps between supporters of different rebel factions, as well as arbitrary arrests and instances of mass forcible relocation carried out by government officials.<sup>11</sup> ICC prosecutor Luis Moreno Ocampo has argued that Khartoum has intentionally sought to maintain the current lack of security for IDPs, undermine social structures within the camps and disperse their inhabitants to make them easier to control. He has also cited use of the Humanitarian Aid Commission (HAC) to gather intelligence within IDP camps, obstruct the distribution of humanitarian aid and promote orchestrated disturbances with help from pro-government factions. In addition, banditry and insecurity have also had a severe impact on the humanitarian situation in Darfur, with the World Food Programme (WFP) warning that because of this problem it will be dramatically cutting the rations supplied by its massive food aid programme in Darfur from May 2008.<sup>12</sup>

Against this background, UN humanitarian affairs chief John Holmes recently said that a total of 300,000 people may have died as a result of the conflict in Darfur, including both those who have been killed in fighting and those who have died from disease and malnutrition.

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<sup>10</sup> OCHA, *Darfur Humanitarian Profile No. 30*, 1 January 2008. Available at [www.unsudanig.org/docs/DHP%2030%20-%201%20January%202008%20-%20narrative.pdf](http://www.unsudanig.org/docs/DHP%2030%20-%201%20January%202008%20-%20narrative.pdf)

<sup>11</sup> For more information about forcible relocation of IDPs, see Human Rights Watch, "Cease Darfur Camp Evictions: Forcible Relocations by Khartoum Violate International Law", 31 October 2007. Available at <http://hrw.org/english/docs/2007/10/31/darfur17213.htm>

<sup>12</sup> WFP Press Release, "Banditry Against Food Trucks Forces WFP to Cut Rations in Darfur, 17 April 2008. Available at [www.wfp.org/english/?ModuleID=137&Key=2819](http://www.wfp.org/english/?ModuleID=137&Key=2819)

## Killings Outside Darfur

On a number of occasions during the period covered by this report, excessive and/or indiscriminate use of force by state officials has resulted in the deaths of unarmed civilians in parts of Sudan outside Darfur. The frequency of instances of this kind is largely a result of the impunity of state officials, with the authorities routinely failing to conduct thorough public enquiries and punish those responsible.

Several instances of killings of this kind that occurred in the context of violent repression of peaceful demonstrations are detailed in the section of this report covering Article 11 of the ACHPR.

During the period in question, a number of deaths also occurred as a result of physical abuse of detainees in the custody of the police, security and military. The following is one such example:

- In March 2008 two men – Babikr Suliman (38 years old, blind and disabled) and Mohamed Khogaly – died in police custody in the Bahry area of Khartoum. According to local media reports, they were being held on charges of drug trafficking. A large number of police were reportedly detained by the Interior Ministry in connection with the incident, and several were reported to have been charged with murder.

## Torture and Police, Security and Military Brutality

Article 33 of the INC provides that "No person shall be subjected to torture or to cruel, inhuman or degrading treatment". However, it fails to define torture. Sudan has signed but not ratified the CAT.

During the period covered by the report, state officials in Sudan have been responsible for torturing citizens and subjecting them to other forms of abuse. The frequency of instances of this kind stems in large part from the impunity of state officials and the failure of the Sudanese authorities to conduct thorough public enquiries and punish those responsible.

In the period from January 2006 to December 2007, SOAT's medical aid programme in Khartoum alone took on 70 new cases of individuals who had suffered torture or other forms of abuse at the hands of state officials and proxies like student groups allied with the ruling National Congress Party (NCP).<sup>13</sup> The kinds of abuses suffered by such individuals included: beatings with weapons like wire, sticks, pipes and the butts of guns; punching and kicking; mock executions; suspension by the wrists; rape and other

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<sup>13</sup> This refers only to new cases taken on during this period. The medical aid programme also continued to provide long-term treatment to hundreds of other individuals.

forms of sexual violence; and intimidation by means of blindfolding, threats and verbal abuse.

Torture and other forms of abuse by state officials remains a particular problem in Darfur, where it has also been carried out by members of rebel groups.

The following are some examples of cases of torture and other forms of abuse during the period in question:

- On the afternoon of 14 April 2008 a 32-year-old man of Darfuri origin was arrested by NISS agents from the gates of Khartoum University. His arrest came in the context of demonstrations by Darfuri students, though the individual denied involvement. The security agents who arrested him beat him severely inside their vehicle and then subjected him to further physical abuse in the offices of the political section of the NISS in Bahry, an area of Khartoum. When security agents tried to hand the Darfuri detainee over into police custody at around midnight, police officers insisted that he instead be taken to hospital to receive treatment for injuries he had sustained as a result of the physical abuse. Instead of taking the individual to receive medical treatment, security agents drove him to a location near Bahry Electricity Station, where they beat him further with sticks and pipes and then left him. Following his release, the individual received a medical examination and obtained papers referring him for specialist treatment for his injuries. On 15 April he was again detained by NISS agents for several hours and beaten all over his body with weapons including sticks, piping and wire. During this second period of detention, security agents confiscated the medical papers referring him for treatment.
- On 22 March 2008 police officers in Port Sudan beat 24-year-old rickshaw driver Abubkr Mosa Abdalgader unconscious using the butts of their guns in front of eyewitnesses, causing injuries to his neck and back. Police said he had been hitting a boy in the street at the time. Mr Abdalgader was apparently prevented from obtaining a copy of a medical evidence form known as Form 8.
- On 3 February 2008 Danial Mikamely Kahsay, a 28-year-old man of Ethiopian origin, was reportedly severely beaten and threatened in Kosti, White Nile State, by a member of the military intelligence service and a civilian. The two men reportedly took Mr Kahsay to an empty office in a military zone and beat him with a military-issue belt all over his body, resulting in severe bruising. When he asked to be taken to a police station if he had done something wrong, they replied that there are only two forces in the world – God and military intelligence. Before releasing him at 4am the following morning, they reportedly threatened to rape him if he told anyone what had happened.
- On 11 December 2007 a member of the Sudanese army opened fire on a rickshaw and beat its driver with the butt of his gun after the rickshaw overtook the car he was driving in Nyala, South Darfur. Though a case was filed before the Attorney General, the perpetrator has not been prosecuted because of immunity afforded to members of the military (for more details about immunity of state officials in Sudan, see the section of this report covering Articles 7 and 26 of the ACHPR).
- On 24 September 2007 members of the SLA rebel faction summoned a 24-year-old man of Birgid ethnicity from the Otash IDP camp near Nyala, South Darfur, and subjected him to physical abuse including beatings. A case was filed with police in Otash but the perpetrators have not been arrested.
- On 7 September 2007 security agents arrested five men between the ages of 27 and 50 – four of Fur ethnicity and one of Marareet ethnicity – from the Otash IDP camp near Nyala, South Darfur, on suspicion of committing crimes against the state. They were held without charge in the custody of the security services and were subjected to physical abuse including being flogged and kicked, and being beaten with hands and sticks. The detainees were eventually released but the perpetrators of the abuse have not been arrested.
- On 7 September 2007 three armed men affiliated with the SLA Free Will rebel faction detained a 24-year-old man of Birgid ethnicity from Otash IDP camp near Nyala, South Darfur, without any clear reason. They took him to a remote place, beat him with sticks and threatened to kill him if he worked against the SLA. The perpetrators have not been arrested.
- Of some 44 people who were arrested during a raid by police, military and security forces on Kalma IDP camp in South Darfur on 21 August 2007, most were tortured in an effort to extract confessions that they were working with rebel groups and had been involved in an attack at the el-Salam IDP camp earlier in the month during which several policemen were

killed. The torture suffered by the detainees reportedly included severe beatings. All of the accused were eventually acquitted and released.

- Out of dozens of individuals who were detained in Khartoum in July 2007 and held until the end of the year in connection with an alleged sabotage plot, many reportedly suffered torture in detention, including: crushing of the testicles; hammering of the nails on the hands and feet; beatings with weapons including hosepipes and metal rods; and suspension by their wrists. Individual members of the group who are reported to have been tortured include Mohamed Ali Hamid, Ahmad Salman al-Doud, Al-Tayeb Ahmed Khalid al-Na'em, Abdel Jalil al-Basha, Yaqoub Yahya, Kabbashi Khater Mohammed Ahmad, Tawer Osman Tawer and Abdel Rahman Shamaila Khalifa.<sup>14</sup> For more details of this case see "Targeting of Opposition Political Activists" in the section of this report covering Articles 10 and 13 of the ACHPR.
- Between 6 and 27 January 2007 13 men and women from the Tama tribe were arrested in al-Semer, el-Gezira state, on suspicion of sheltering alleged thieves. They were beaten by police, who also threatened female members of the group with rape. A complaint was submitted to the Interior Ministry, but to SOAT's knowledge no perpetrators have been prosecuted.
- On 22 January 2007, central reserve police arrested a 25-year-old man in Om Shoutoor, in South Darfur and detained him for 17 days in Touwal police station. He was accused of attempting to burn a police vehicle and was charged under Article 182 (Criminal Mischief) of the 1991 Criminal Act. During his time in detention, he suffered a broken arm as a result of physical abuse, including being tied up with a rope and beaten with a stick. Although a case was filed before the Attorney General in Nyala, the perpetrators have not yet been arrested.
- On 12 June 2006 Omar Altaj al-Nageeb (25 years old, recent medical graduate from Omdurman Islamic University) was detained by five men who identified themselves as members of the security forces, whilst he was distributing flyers in support of students suspended from the university for non-payment of tuition fees. Mr al-Nageeb was

taken to a Student Union room and subjected to severe torture which caused him to lose consciousness on a number of occasions. The men blindfolded Mr al-Nageeb, tied both his feet and wrists, hung him by his feet to a ceiling fan and attempted to insert a glass bottle into his anus. Mr al-Nageeb was beaten with a metal bar, water hose and chain lock and the men pointed guns at his head whilst threatening him with death. The men also attempted to strangle Mr al-Nageeb using a rope, subjected his hands and face to electric shocks and forced him to sign documents obliging him to pay a large sum of money. Mr al-Nageeb was questioned about his membership of the Communist Party and the relations of other students to this party. The men demanded that Mr al-Nageeb give up his student activities and join the security forces and work with them. After ten hours in detention, Mr al-Nageeb was driven to a farm in al-Maygome, East Nile District, and released. He reported the incident to the Amel Centre for the Treatment and Rehabilitation of Victims of Torture in Khartoum, where staff confirmed that his injuries were consistent with his account of torture.

- On 11 June 2006 five police officers from the Central Reserve Police arrested Sideeg Musa Saed (20 years old, Zaghawa, student) and Ismail Musa Abdel Gadeem (26 years old, Zaghawa, teacher) from al-Souq al-Shabi market in Nyala on suspicion of supporting one of the Darfur rebel factions. The men were taken to the offices of the Central Reserve Police in Nyala, where they were beaten on their heads and backs with the butts of officers' guns and were flogged all over their bodies. Mr Saeed sustained serious injuries to his eye. On the same day, the detainees were transferred to Nyala Wasat Police station where they were charged under Articles 50 (Undermining the Constitutional System) and 51 (Waging war against the State) of the Criminal Act 1991. Mr Saed and Mr Gadeem were eventually acquitted and released.
- On 30 April 2006 security forces in Nyala, Southern Darfur, arrested three students from their homes in Nyala. The arrests followed disturbances inside Nyala University, during which the building housing the Student Support Fund (SSF) was set on fire. The students were taken to the security offices in Nyala where they were detained for two days and subjected to torture.
- On 12 March 2006 police arrested Hashim Abdella Targiya (18 years old, Zaghawa) and

<sup>14</sup> Amnesty International, Health Professional Action, AI Index: AFR 54/052/2007, 12 September 2007. Available at <http://www.amnesty.org/en/library/asset/AFR54/052/2007/en/dom-AFR540522007en.html>

Alsayid Adam Haroun (32 years old, Zaghawa) in the Otash IDP camp near Nyala, South Darfur. The men were taken to Otash police station where they were subjected to physical abuse by three police officers. The police officers tied the men's hands together with rope, kicked them with their boots and beat them on their faces. Mr Targiya and Mr Haroun were released without charge the following day. Both men sustained serious injuries during their detention.

During the period covered by this report, the Sudanese authorities have also deported foreign nationals to countries where they would be at risk of torture and/or persecution. As a party to the ICCPR, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the AU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sudan is obliged not to forcibly return any individual to a country where he or she could face persecution, torture or other serious human rights violations. However, the United Nations High Commissioner for Refugees (UNHCR) has criticised Sudan for breaking international law by forcibly repatriating 15 individuals to Ethiopia on September 27 2007, amid concerns that they could face persecution there. The UNHCR said at the time that after a similar instance of illegal forcible repatriation the month before, the Sudanese government had given assurances that it would not repeat such violations. Information obtained by SOAT suggests that the 15 individuals deported on September 27, who had been arrested in Sudan nearly three months earlier, were subsequently interned in the Addis Ababa Central Investigation Prison. For more information about arbitrary arrests and detention without charge of foreign nationals in Sudan, see "Arbitrary Arrests" in the section of this report covering Article 6 of the ACHPR.

Other cases of torture and physical abuse by state officials, where the reasons for targeting the victims in question appear to include political elements, are dealt with in the section of this report covering Article 13 of the ACHPR.

## Death Penalty

Sudan's INC failed to outlaw the practice of imposing death sentences, with Article 36 of the INC allowing this in cases of "retribution, hudud or punishment for extremely serious offences in accordance with the law".<sup>15</sup>

Under the Criminal Act 1991 death sentences are to be carried out by hanging, lapidation (stoning), or "in the same manner in which the offender caused

<sup>15</sup> Hudud crimes are listed in the Criminal Act 1991 as drinking alcohol, apostasy (ridda), adultery (zina), defamation of unchastity (qazf), armed robbery (hiraba) and capital theft.

death", and may be accompanied by crucifixion. Under the same act, offences punishable by death include apostasy (Article 126), murder (Article 130) and adultery (Article 146). Also punishable by death under the Criminal Act 1991 are a number of offences against the state (Articles 50 to 53), including vaguely-defined crimes such as "undermining the constitutional system" (Article 50). This legislation governing offences against the state has been widely applied in Darfur. For example, demonstrators arrested in Nyala on 29 May 2006 who were seeking to make their way to local UN offices to present a memorandum highlighting concerns about the DPA were charged with the capital crime of "undermining the constitutional system" (see the section of this report covering Article 11 of the ACHPR for further details of this case).

According to research carried out by Amnesty International, at least 23 death sentences were handed down by courts in Sudan in 2007 and at least seven executions were carried out.<sup>16</sup> According to SOAT's own research, the number of people sentenced to death in 2006 was 69. Nearly half of these sentences were passed in just two of Sudan's 25 states – North and South Darfur.<sup>17</sup>

While SOAT deplores the use of the death penalty under any circumstances, its application is particularly problematic in Sudan because of the high risk of miscarriage of justice, as the following recent examples illustrate:

- In November 2007 a court in Khartoum sentenced ten individuals to death for the murder of newspaper editor Mohamed Taha Mohamed Ahmed. All insisted that they had confessed to the crime under torture. A request by defence lawyers for medical examinations to explore these claims was refused, despite the fact that many of those detained reportedly had marks on their bodies as a result of the physical abuse they had suffered. An appeals court decision in March 2008 reportedly accepted the confessions of the ten individuals as evidence against them.<sup>18</sup> This is despite the fact that in August 2007, nine other individuals detained in connection with the same murder were reportedly acquitted after a judge found that

<sup>16</sup> Amnesty International, "Death Sentences and Executions in 2007". Available at [www.amnesty.org/en/library/asset/ACT50/001/2008/en/b43a1e5a-ffe5-11dc-b092-bdb020617d3d/act500012008eng.html](http://www.amnesty.org/en/library/asset/ACT50/001/2008/en/b43a1e5a-ffe5-11dc-b092-bdb020617d3d/act500012008eng.html)

<sup>17</sup> The breakdown of death sentences in 2006 is as follows: Wad Medani Prison, 11 cases; el-Fasher (capital of North Darfur), 3 cases; Nyala (capital of South Darfur), 27 cases; Port Sudan, 18 cases; Kosti, 3 cases; Khartoum, 7 cases

<sup>18</sup> Amnesty International, Urgent Action, AI Index: AFR 54/011/2008, 19 March 2008.



the evidence against them was grounded in confessions given under duress.<sup>19</sup>

- On 15 December 2007 a magistrates' court in Kosti, White Nile State, sentenced Babeker Hassan Babeker (25 years old, cowherd) to death by hanging under Article 130 (Murder) of the Criminal Act 1991. In December 2004 in Elwasa village, around 25 km west of Kosti, Mr Babeker was reportedly attacked by another man who had accused Mr Babeker of having sexual relations outside of marriage with a girl who was also present at the time. The attacker reportedly attacked Mr Babeker repeatedly with a knife and also struck him with a stick, breaking a finger on his left hand. During the incident, Mr Babeker is reported to have got hold of the knife and stabbed his attacker once in self defence, resulting in his death. Mr Babeker was not represented by a lawyer during his trial and the case against him rested solely on his own confession and the testimony of the girl. Mr Babeker was eventually released after the family of the deceased man decided to settle the case by accepting blood money.

For more information about the high risk of miscarriages of justice in Sudan, see the section of this report covering Articles 7 and 26 of the ACHPR.

Under Article 36 of the INC, the death penalty remains applicable for children under the age of 18 in cases of hudud and retribution. One of those sentenced to death in the Mohamed Taha Mohamed Ahmed murder case outlined above is a minor. For more information about children and the death penalty and other cruel, inhuman or degrading punishments, see "Rights of Children" in the section of this report covering Article 18 of the ACHPR.

## **Other Cruel, Inhuman or Degrading Punishments**

While Article 33 of the INC asserts that "No person shall be subjected to torture or to cruel, inhuman or degrading treatment", it fails to explicitly rule out cruel, inhuman or degrading punishments.

Amputation remains available as a punishment under Sudanese law, though its use is very rare. The Criminal Act 1991 allows for the crime of capital theft to be punished with amputation of the right hand from the wrist joint (Articles 170 and 171), and for the crime of armed robbery in certain cases to be punished with amputation of the right hand and the left foot (Articles 167 and 168).

Flogging is also used as a punishment on a daily basis in Sudan. Under the Criminal Act 1991, the following offences are punishable by flogging: rioting (Article 68, up to 20 lashes); disturbance of public peace (Article 69, up to 20 lashes); gambling (Article 80, up to 25 lashes); drinking alcohol (Article 78, up to 40 lashes); insulting religious creeds (Article 125, up to 40 lashes); adultery for unmarried offenders (Article 146, up to 100 lashes); sodomy (Article 147, up to 100 lashes); rape (Article 149, up to 100 lashes); gross indecency (Article 151, up to 80 lashes); indecent and immoral acts (Article 152, up to 40 lashes); materials and displays contrary to public morality (Article 153, up to 40 lashes); prostitution (Article 154, up to 100 lashes); running a place for prostitution (Article 155, up to 100 lashes); seduction (Article 156, up to 100 lashes); false accusation of unchastity (Article 157, up to 80 lashes); insult and abuse (Article 160, up to 25 lashes); capital theft, where the amputation punishment is remitted (Article 173, up to 100 lashes);

Flogging sentences are usually imposed in conjunction with other punishments, such as a fine or imprisonment. Although flogging is considered to be an Islamic form of punishment, it is also used against non-Muslims. Flogging is carried out immediately after the pronouncement of the sentence, sometimes even when the defendant has stated his or her intention to appeal. Rules governing the execution of flogging sentences are laid down in Article 197 of the Criminal Procedure Act 1991 and include the following:

- Men are generally required to stand during flogging, while women are to be sitting down.
- The sentence is to be carried out with "a moderate whip" or "any other similar tool", and is to be "moderate and non-cracking and non-breaking" and "distributed, otherwise than on the face, head and fatal places".
- A magistrate or other qualified observer is to suspend the sentence and refer the matter to a competent court in cases where it becomes clear that the health of the accused "does no longer bear the remainder of the sentence".

Article 47 of the Criminal Act 1991 includes flogging (up to 20 lashes) amongst a list of punishments specifically tailored for use in the cases of juveniles convicted of committing a crime (for more details see "Rights of Children" in the section of this report covering Article 18 of the ACHPR).

## **The Situation in Relation to Article 6**

### **Article 6**

*Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions*

<sup>19</sup> Amnesty International, Urgent Action, AI Index: AFR 54/064/2007, 12 November 2007.

previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

## Arbitrary Arrests

Arbitrary arrest and detention without charge is common in Sudan. Such practices are facilitated by the National Security Forces Act, which allows for detention without charge for up to nine months (Article 31). In recent cases several activists and other individuals have been detained for periods of time ranging from a minimum of two months to one year and then released without ever facing a criminal charge and without ever appearing before a judicial authority.

SOAT also expresses concern about the practice of detaining individuals for lengthy periods without divulging their whereabouts. Furthermore, the right of detainees to have access to a doctor and family members, as well as the right under Article 7 of the ACHPR to have access to a lawyer and to be tried within a reasonable time period of time, are often not respected.

Arbitrary arrests and detentions are often used as a method of preventing activists, opposition leaders and human rights defenders from exercising their constitutionally and internationally guaranteed right to freedom of expression and assembly.

Arbitrary arrests have occurred in connection with human rights defenders' and activists' criticism of government policies and actions. In 2007 SOAT documented a particularly marked pattern of arbitrary arrests in relation to unrest surrounding the construction of hydroelectric dam projects in the north of Sudan. The construction of the dams at Merowe/Hamadab and Kajbar, which will lead to the displacement of large numbers of people from their homes, is strongly opposed by local residents, who have objected to a lack of transparency in the planning process and have expressed fears that they will not be fairly compensated or provided with adequate alternative living arrangements. After an incident on 13 June 2007 in which government forces opened fire on a peaceful demonstration, killing four and seriously injuring 13, a large number of individuals – including community leaders, journalists, lawyers and a university lecturer – were detained in connection with the unrest. Those arrested in the aftermath of the shooting incident included: Osman Ibrahim (spokesperson of the Committee Against the Building of the Kajbar Dam), Saad Mohamed Ahmed (journalist), Alam Aldeen Abd Alghni (lawyer), Emad Merghni Seed Ahmed (lawyer), Abd Allah Abd Alghume (lawyer), Abdel Aziz Mohamed Ali Khieri, Mugahid Mohamed Abdalla, Dr Mohamed Julal Hashim, Osman Shammatt (driver), Alfatih Abdullah (journalist for al-Sudani daily), Qazafi Abdulmotalab (journalist for al-Ayyam daily), Abuobaida Awad, Abdulgassim Farahna (journalist).

On the 8 of July 2007 in *Alam Eldeen Abd Alghni and Others v. National Security Force* the Constitutional Court dismissed a petition questioning the legality of the detention of these individuals, filed according to the Constitutional Law Act. In its decision, the Constitutional Court held that according to section 31(2)(b) of the National Security Forces Act, a detainee may present a grievance by petition to the competent Court against the renewal for a further three months detention period, after the initial six (6) months detention period (s.31(1)) has passed. Accordingly it would appear that anyone arrested under Article 31 of the National Security Act might have to wait six months before being able to challenge the legality of their detention. For more information on judicial challenges regarding detentions, see the section of this report covering Articles 7 and 26 of the ACHPR.

All of the detainees listed above were eventually released between 5 and 20 August 2007 after over around two months in detention. During this entire detention period all but two of the detainees were denied any visits by family members and lawyers. Alam Aldeen Abd Alghni and Mohammed Julal Hashim were granted a 15-minute visit by relatives.

Individuals engaged in active opposition to the Kajbar dam project have also been repeatedly arrested and detained for brief periods, as a means of surveillance and intimidation. Among those who have been treated in this way, three were reportedly released on bail on 30 August 2007 pending the outcome of an investigation on charges under Articles 21 (Join Acts in Execution of Criminal Conspiracy), 69 (Disturbance of Public Peace) and 77 (Public Nuisance) of the Criminal Act 1991. If found guilty, they could face custodial sentences.<sup>20</sup>

The following members of the Committee Against the Building of the Kajbar Dam were arrested at the end of August 2007: Nazmi Mohamed Hamid, Nayif Mohamed Hamid, Al Khatib Mohamed Elsir, Maisara Izzeldin Mohamed Munowar, Rami Hassan Farah, Faroug Nuri, Hisham Abbas, Daoud Suliman, Isam Mohamed Fagir, Ezzeldeen Idris, Abdel Hakim Nator, Mamoun Abdel Aziz, Samil Mohamed Samil.

SOAT has also recently documented a marked pattern of arrests and detention without charge of Ethiopian refugees in Sudan, without access to lawyers and in many cases without access to family. In July last year, Amnesty International reported that hundreds of Eritreans and Ethiopians had been arrested in Sudan following an apparent rapprochement between the governments of those three countries. From the beginning of 2008, SOAT

<sup>20</sup> *Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar, A/HRC/7/22, 3 March 2008.*

has documented a number of cases of Ethiopians who remain in detention without charge since that time or who have been arrested more recently. In most cases, the individuals detained had a history of opposition to the Ethiopian regime. In some cases, the individuals whose cases SOAT has monitored have been released from detention but then required to report on a weekly basis to the office of the prosecutor for state security under Article 118 of the Criminal Procedure Act, which provides for powers to issue “precautionary orders” in cases where a person is likely to “disturb public peace or tranquillity”. Individual Ethiopians whose detention in Sudan SOAT has documented in recent months include the following: Abebe Yigletu, Mamai Trunch, Achenef Alemu, Haroun Idriss, Abdala Suliman, Badreldin Ali, Mohamed Amin Nardi, Ibrahim Atbana, Argana Sifim, Shibabaw Asefa, Wendimagenghu Getanehe, Almaz Matko Kubdy, Qenano Mangesti Tamani, Dereje Ayele Mekonen, Achenef Alemu, Mamai Trunch, Abebe Yigletu and Afandy Farah Mohamed Issa.

SOAT has also documented – and continues to document – many individual cases of arbitrary detention in which the motive for detention appears to be linked to the political affiliations of the detained individuals. Cases of this kind are dealt with in the section of this report covering Articles 10 and 13 of the ACHPR, along with many examples of arbitrary detention of students. Cases of arbitrary detention, where these involve human rights defenders, are dealt with in the section of this report covering Article 9 of the ACHPR. More examples of arbitrary detention are also included in the section of this report covering torture and other forms of mistreatment in custody.

## **Arbitrary Arrests Relating to the Darfur Conflict**

Whilst armed attacks against civilian settlements and IDP populations continue unabated across Darfur, attacks against civil society structures and activists in the region are also ongoing. Under emergency rule, arbitrary arrests are used as a means to muzzle peaceful dissent and political debate.

During the reporting period, IDP camps have been the targets of repressive and violent surveillance, and IDP leaders and representatives have been amongst those targeted with arbitrary arrests. As noted by the ICC Prosecutor in his 6<sup>th</sup> report to the UN Security Council, the pattern of unlawful killings and arrests witnessed in Darfur suggest “coordinated efforts to foster instability in the larger camps and reduce support for IDP camp leaders”, and ultimately to undermine political and traditional leadership structures within the camps.<sup>21</sup>

<sup>21</sup> Sixth Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSC 1593 (2005), 5 December 2007.

Rebel groups have also been responsible for arbitrary arrests in Darfur.

The following are some examples of arbitrary arrests in Darfur during the period covered by this report:

- On 29 October 2007 security forces reportedly detained 36 people from the Otash IDP camp in South Darfur, on the same day that police and soldiers forcibly relocated a large number of IDPs from the camp to other sites. The UN said IDPs were threatened during the operation by police and soldiers carrying sticks and rubber hoses.<sup>22</sup>
- On 21 August 2007 some 44 individuals were arrested during a raid by police, military and security forces on Kalma IDP camp in South Darfur. Most were tortured in an effort to extract confessions that they were working with rebel groups and had been involved in an attack at the el-Salam IDP camp earlier in the month during which several policemen were killed. All of the accused were eventually acquitted and released.
- On 17 April 2006 armed men associated with the rebel opposition groups in Darfur arrested Mohamed Issa Kouko (35 years old, Lasayi tribe) in Ala-ayit town, Southern Darfur. Two days later, soldiers from JEM transferred Mr Kouko to their camp in Haskanita village, east of Nyala, where he was detained incommunicado.
- On 15 April 2006 security agents arrested seven men from the Gimir tribe in different locations across Nyala, South Darfur, and took them to a security detention centre there. No reason was given for the arrests. Three of the detainees were released without charge on 22 April 2006. The other four men (Abdel Rahman Abdella Aldouma Adam, Adam Abdella Aldouma Adam, Alfadil Mohamed Matar and Omda Abaker Mohamed Aldouma) remained in detention at the end of May 2006. Family members were denied access to visit them in custody.

Large numbers of students have also been arbitrarily arrested in Darfur during the period covered by this report. For specific examples, see the section of this report covering Articles 10 and 13 of the ACHPR. Examples of arrests of individuals in Darfur in connection with demonstrations are provided in the

<sup>22</sup> Amnesty International, Urgent Alert, AI Index: AFR 54/058/2007, 1 November 2007. Available at [www.amnesty.org/en/library/asset/AFR54/058/2007/en/docm-AFR540582007en.html](http://www.amnesty.org/en/library/asset/AFR54/058/2007/en/docm-AFR540582007en.html)

section of this report covering Article 11 of that ACHPR.

The Sudanese authorities have also carried out arbitrary arrests elsewhere in Sudan in connection with the conflict in Darfur, with those targeted including individuals affiliated with Darfur rebel movements and protesters calling for an end to killings in the region.

For example, in September 2006 security agents in Khartoum reportedly arrested Abulgasim Ahmed Abulgasim (52 years old, member of the political wing of the Sudan Liberation Movement) and Zakaria Ahmed Abulgasim (his brother). Abulgasim Ahmed Abulgasim had been living in Saudi Arabia with his family but was flown to Khartoum on 28 September and handed into the custody of Sudanese security agents. Abulgasim Ahmed Abulgasim was told that he was being held in connection with the murder of the newspaper editor Mohamed Taha earlier in the same month. A third individual, Mukhtar Ali Ahmed (employee of the Sudanese Islamic Bank and an outspoken critic of government policy in Darfur), was also arrested in Khartoum on 10 October and told that he was being held in connection with the same crime. The three men were detained without charge and without any access to family members until their release on 28 March 2007.<sup>23</sup>

For more examples of arrests in Khartoum and elsewhere in Sudan relating to the conflict in Darfur, see the sections of this report relating to Articles 10 and 13 and Article 11 of the ACHPR.

## The Situation in Relation to Articles 7 and 26

### Article 7

*1. Every individual shall have the right to have his cause heard. This comprises:*

- a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
- b) The right to be presumed innocent until proved guilty by a competent court or tribunal;*
- c) The right to defence, including the right to be defended by counsel of his choice;*
- d) The right to be tried within a reasonable time by an impartial court or tribunal.*

*2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was*

*made at the time it was committed. Punishment is personal and can be imposed only on the offender.*

### Article 26

*State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.*

### Judicial Framework

Article 123 (The National Judicial Authority) of the INC states that “The National judicial authority of the Republic of the Sudan shall be vested in the National Judiciary” and that “The National Judiciary shall be independent of the Legislature and the Executive, with the necessary financial and administrative independence”.

In practice, however, government interference in the administration of justice is commonplace in Sudan. This undermines the rule of law and entrenches impunity, thus violating the rights of victims to truth, justice and reparation. Since it took power in 1989, the government has systematically appointed judges based solely on their affiliation to its agenda. Moreover, rampant corruption and lack of training for members of the executive, legislative and judicial branches in international human rights standards and jurisprudence has undermined the independence and impartiality of the judiciary. The current ruling party has failed to recognise the legal and procedural aspects related to the separation of powers and equality before the law.

Hardly any of those accused of the vast number of abhorrent and systematic cases of torture committed in the aftermath of the 1989 coup d'état have been brought to justice and held accountable. There is also a lack of accountability for perpetrators of ongoing human rights abuses across the country. Since 1998 SOAT has documented hundreds of cases of grave violations of human rights in Sudan. Of these, very few have been brought to trial.

The impunity of perpetrators of human rights violations across Sudan has been brought into even sharper focus by the situation in Darfur. Since August 2004, SOAT has documented and filed before local courts hundreds of cases of systematic killings, torture, wanton destruction of villages and property resulting in displacement, rape and kidnappings, arbitrary arrests of hundreds of individuals, and long term incommunicado detention of civilians from particular ethnic groups in Darfur. The current judicial system in Sudan does not have the capacity or the will to try crimes of the magnitude of those that have been committed – and continue to be committed – in Darfur, and so far impunity for such crimes has remained blatantly unaddressed.

<sup>23</sup> Amnesty International, Further Information on Urgent Action, AI Index: AFR 54/013/2007, 11 April 2007. Available at [asiapacific.amnesty.org/library/index/ENGAFR540132007?open&of=ENG-SDN](http://asiapacific.amnesty.org/library/index/ENGAFR540132007?open&of=ENG-SDN)

## Impunity in Darfur

Following the publication in January 2005 of the findings of the UN International Commission of Inquiry on Darfur, which concluded that there was evidence that war crimes and crimes against humanity had been committed in the region, the UN Security Council referred the case of Darfur to the ICC in March 2005.<sup>24</sup> The prosecutor of the ICC immediately embarked on preliminary investigations in the region concerning alleged crimes and human rights abuses including torture, systematic rapes, killings of civilians and pillaging and forced displacement. In June 2005, the Prosecutor concluded that the situation in Darfur was indeed admissible and that major violations of international humanitarian law and human rights law had been committed in the region, violations which amounted to crimes under international law and were within the jurisdiction of the ICC as stipulated in the Rome Statute. Consequently, the Prosecutor formally launched an investigation, which he confirmed would cover not only government officials and the leaders of pro-government militia groups but also rebel opposition groups operating in Darfur.

The Sudanese government was vocal and public in its rejection of the ICC investigation. Its initial response was to dismiss the involvement of the ICC in Darfur as being of "a political nature". It also claimed that the Sudanese judiciary was itself capable of trying the perpetrators of war crimes. On 7 June 2005, one day after the ICC Prosecutor announced that he was initiating investigations on Darfur, the Sudanese authorities established the Special Criminal Court on the Events in Darfur (SCCED).<sup>25</sup>

### a) Ability to Try War Crimes and Crimes Against Humanity

Initially the SCCED was said to be tasked with hearing the cases of 160 people accused of committing crimes in the states of North, West and South Darfur. Despite this enormous task, the judges appointed had little experience of bringing to trial complex atrocities including the wanton destruction of villages, and systematic and widespread killings and rape of civilians. In December 2005 the president of the SCCED, Judge Mahmoud Mohammed Said Akbam, said that the Court had been unable to hold accountable individuals who may have committed grave crimes because of reticence of witnesses and the general insecurity in the region.

<sup>24</sup> UN Security Council Resolution 1593

<sup>25</sup> The SCCED was originally established as a single court in el-Fasher but was later expanded to include seats in el-Geneina and Nyala. The Sudanese authorities had previously established various mechanisms to prosecute crimes in Darfur, but the International Commission of Inquiry confirmed that none of these were independent or effective.

Members of SOAT's network of lawyers who have represented victims of human rights violations before the court system in Darfur have faced harassment and intimidation throughout the proceedings.

To date, although the SCCED has dealt with a few cases of human rights violations, the trials that it has conducted have not addressed the large scale attacks found to have occurred in Darfur by the International Commission of Inquiry. To SOAT's knowledge, only some 31 individuals have been investigated and of these only a dozen have been convicted (five who were sentenced to death, five who were given custodial sentences and two who were eventually granted amnesty).<sup>26</sup> Most of those indicted were soldiers and subaltern officers. There has been no case of convictions based on command responsibility, and no militia leader or member has been tried for war crimes or crimes against humanity.

More recently, the UN Group of Experts on Darfur reported that the Sudanese authorities had conducted limited investigations into three incidents that took place in Darfur (attacks in the Bulbul area of South Darfur; attacks on Deribat and eight other villages along the road from Kutur to Deribat; and killings of civilians in the Buram area of South Darfur) in October and late December 2006. In relation to the Buram case, legal proceedings were apparently underway but the Group of Experts reported that no perpetrators had actually been prosecuted at the time of writing their report.<sup>27</sup>

### b) Willingness to Try War Crimes and Crimes Against Humanity

The GoS has unequivocally refused to accept the competence of the ICC to investigate crimes in Sudan. In spite of its legal obligation under Paragraph 2 of UN Security Council Resolution 1593 (2005), adopted under Chapter VII of the UN Charter, the GoS has refused to cooperate with the mandate from the Security Council to the Court to investigate and prosecute international crimes committed in Darfur.

Khartoum's resistance and refusal to cooperate with the ICC has become even stronger since the court issued arrest warrants in April 2007 against Ahmad Muhammad Harun (Ahmad Harun), former Minister of State for the Interior and currently State Minister of Humanitarian Affairs, and against Ali Muhammad Ali Abd-Al-Rahman (alias Ali Kushayb), an alleged militia leader. The two men are charged with 51 counts of murder, rape, torture and other war crimes and crimes against humanity against the civilian population in Darfur.

<sup>26</sup> International Commission of Jurists, *The Administration of Justice in Sudan: The Case of Darfur*, June 2007.

<sup>27</sup> UN Group of Experts, *Final Report of the Situation of Human Rights in Darfur*, A/HRC/6/19, 28 November 2007.

Sudan's defiance of the ICC turned into insult when one of the suspects, Ahmed Haroun, was recently appointed to a committee in charge of hearing complaints of victims of human rights abuses committed in Sudan. He also acts as the liaison with the UNAMID peacekeepers tasked with protecting civilians against such crimes. The other suspect, Ali Kushayb, was in custody in Sudan on other charges at the time the warrants were issued but was released in October 2007 for alleged lack of evidence.

In line with its policy of explicit defiance of any serious investigation into the crimes committed in Darfur, Khartoum also proceeded with the appointment of Musa Hilal to the position of advisor to the Minister of Federal Affairs in January 2008. Widely considered to be a top commander of Janjaweed militias responsible for appalling crimes in Darfur, Musa Hilal is subject to travel restrictions and financial sanctions under UN Security Council Resolution 1672.

### **Amnesties and Immunities**

Amnesty and immunity laws stipulating that certain persons are exempt from investigations and prosecutions violate the rights to an effective investigation and to have one's case heard. Amnesties and similar measures have shielded from responsibility and made it even harder to prosecute those responsible for gross human rights violations including war crimes and crimes against humanity, perpetuating and upholding Sudan's long tradition of impunity.

On 11 June 2006 the President of Sudan issued Presidential Decree No. 114 on General Amnesty. The amnesty provides immunity from domestic criminal prosecution to members of armed movements that signed the DPA, parties that participated in Government-endorsed tribal reconciliation processes in Darfur, and to those who supported and committed themselves to the DPA. The Presidential Decree is phrased very broadly and there is no definition for crimes covered by the amnesty. It prevents the prosecution of many militia leaders and personnel responsible for gross human rights violations in Darfur. Under the said amnesty decree two Military Intelligence officers who were convicted by the SCCED for the murder of a 13 year-old boy who died from torture while in custody, were pardoned on 27 June 2006.

The impunity of state officials is further entrenched by a sophisticated system of immunities, guaranteed by the Constitution and various laws, protecting military, police and other government officials from prosecution for human rights violations. Any criminal proceeding against members of the national security forces and the police are subject to the permission of the respective director or head of staff according to

Article 33 of the National Security Forces Act 1999 and Article 61 of the Police Forces Act.

Although in July 2007, the director general of police issued decree No. 57/2007 setting out procedures for lifting immunity for police, the system is still effectively in place. The process of lifting immunities is often cumbersome and time-consuming and requires decisions from authorities in Khartoum. Furthermore, the discretionary nature of decisions to lift immunities leaves ample and non-transparent margins for effectively ensuring impunity rather than accountability for human rights violations.

While a reform of the National Security Forces Act 1999 and its immunity provisions is still to be seen, the government has made attempts to revise legislation governing the police and army to bring this into line with international human rights standards and the Bill of Rights of the INC. However, in December 2007 the Group of Experts on Darfur noted that pending draft legislation covering the police and army would not change the discretionary nature of decisions to lift immunities even in cases of serious violations of human rights. In particular, the Group of Experts noted that Article 34 of the Sudanese Armed Forces Bill, which was pending in parliament, provided that no act shall be deemed an offence which emanates from any officer or soldier in good faith, in the course or by reason of performing the business of his/her post, or discharging any duty imposed upon him or her. The Group of Experts also noted that the bill provides that immunity can only be waived by the President or someone designated by him if offences were committed in the course of discharging duties or carrying out of any lawful order. The Group of Experts concluded that, "This system would, in practice, provide very far-reaching immunity in cases where human rights violations were committed as part of carrying out an order by a competent authority."<sup>28</sup>

### **Effective Access to a Court**

Article 48 of the INC provides that the Constitutional Court and other competent tribunals shall safeguard and protect the rights enshrined in the Bill of Rights built into the INC. Article 122 furthermore provides that the Constitutional Court has competence for protecting human rights and fundamental freedoms and deciding on the constitutionality of laws.

In practice, however, accessing the Constitutional Court can be extremely difficult. Pursuing a case before the Constitutional Court costs the equivalent of around 1,000 US dollars in court fees. Though the Court has the authority to waive the fees in accordance with Article 19 (6) of the Constitutional Court Act, in practice the relatively high fees have the

<sup>28</sup> UN Group of Experts, *Final Report of the Situation of Human Rights in Darfur*, A/HRC/6/19, 28 November 2007.

effect of limiting access to the Court. While the right of access to a court may be subject to certain specific limitations, these should not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.

On 21 October 2007 a group of lawyers and law professionals representing different political parties and civil society organisations reportedly submitted a case to the Constitutional Court against the GoS on the issue of prosecution fees, Constitutional Court fees and land registration fees. It has been argued that the high fees constitute a violation of constitutional and human rights principles.

### Judicial Challenges Regarding Detentions

On the 8 of July 2007 in *Alam Eldeen Abd Algani and Others v. National Security Force* the Constitutional Court dismissed a petition challenging the legality of the detention of a number of individuals in relation to unrest surrounding the construction of hydroelectric dams in northern Sudan (for more information on this case, see the section of this report covering Article 6 of the ACHPR). In its decision, the Constitutional Court held that according to Article 31(2)(b) of the National Security Forces Act, a detainee may present a grievance by petition to the competent Court against the renewal for a further three months detention period, after the initial six (6) months detention period (Article 31(1)) has been exhausted. Accordingly it would appear that anyone arrested under Article 31 of the National Security Act, in cases which lead to the “terror of society threatening the security and safety of citizens”, might have to wait six months before being able to challenge the legality of their detention. The Court limited itself to a strictly procedural interpretation and missed out on the opportunity of exercising its role – as defined in Articles 48<sup>29</sup>, 122(1)(d)(e)(f)<sup>30</sup> and 128 (2)<sup>31</sup> of the INC

<sup>29</sup> Article 48 of the INC (Sanctity of Rights and Freedoms) reads “Subject to article 211 herein, no derogation from the rights and freedoms enshrined in this Bill shall be made. The Bill of Rights shall be upheld, protected and applied by the Constitutional Court and other competent Courts; (...)”

<sup>30</sup> Article 122(1)(d)(e)(f) of the INC (Competence and Jurisdiction of the Court) reads “The Constitutional Court shall be the custodian of this Constitution, the Constitution of Southern Sudan and the States, its decision shall be final and binding, it shall: (d) protect human rights and fundamental freedoms; (e) adjudicate on the constitutionality of laws or provisions in accordance with this Constitution, the Interim Constitution of southern Sudan, or the relevant state constitutions; (f) adjudicate on constitutional disputes between levels and organs of government, in respect of areas of exclusive, concurrent and residual competence.”

<sup>31</sup> Article 128 (2) of the INC reads “Justices and judges shall uphold the Constitution and the rule of law and shall administer justice diligently, impartially and without fear or favour.”

– as guarantor of the Bill of Rights. The Court avoided voicing any opinion as to whether the six-month detention period before judicial control may be exercised is unreasonably lengthy. Moreover, the court avoided taking a position on whether Article 31 of the National Security Forces Act is incompatible with the Bill of Rights and with international human rights principles built into the INC under Article 27, including the right to challenge one’s detention, and the right to either have one’s case promptly heard in court or be released from detention.<sup>32</sup>

### Admissibility of Confessions Extracted Under Torture

The invalidation of confessions and statements extracted under torture is both a basic safeguard and a cardinal rule emanating from the prohibition of torture under international law. However, the use of torture to extract confessions is built into the Sudanese system of justice by Article 10 of the Evidence Act 1993 which states that “(1) With adherence to provisions of confession and the inadmissible evidence, the evidence will not be inadmissible just because it was obtained through incorrect procedure, provided that the court is confident that it is independent and acceptable; (2) The court may, when it considers it suitable for justice, refrain from granting conviction on the basis of the evidence mentioned in part (1) unless it is corroborated by other evidence.”

The practice of courts has been inconsistent and judges often fail to rule out confessions extracted under torture and to issue appropriate orders to the authorities to open investigations in cases where defendants raise allegations of torture. Although judges are entitled to make such orders, lawyers raising the issue have been told by judges that this is not the judges’ concern and that persons alleging torture should make a complaint to the responsible authorities instead.<sup>33</sup>

On 10 November 2007 the Khartoum Criminal Court sentenced ten people, including a minor, to death for the murder of journalist Mohammed Taha. All defendants in the case were allegedly tortured to give confessions, which were used in court as evidence against them. For more information about torture in Sudan and this specific case, see the section of this report covering Articles 4 and 5 of the ACHPR.

<sup>32</sup> Article 27(3) (Nature of the Bill of Rights) reads “All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.”

<sup>33</sup> Redress and SOAT, *National and International Remedies for Torture, A Handbook for Sudanese Lawyers*, March 2005.

# The Situation in Relation to Article 9

## Article 9

- 1 Every individual shall have the right to receive information.*
- 2. Every individual shall have the right to express and disseminate his opinions within the law.*

## Censorship, Including Detention and Harassment of Journalists and Other Writers

The right to freely express and disseminate opinions and to freely receive information through the press is routinely violated in Sudan, with such violations having increased dramatically amid a crackdown on the media since early February of this year. This is despite the fact that Article 39 of the INC guarantees freedom of the media, including unrestricted freedom of expression:

- (1) Every citizen shall have an unrestricted right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to order, safety or public morals as determined by law.*
- (2) The State shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.*
- (3) All media shall abide by professional ethics, shall refrain from inciting religious, ethnic, racial or cultural hatred and shall not agitate for violence or war.*

There have been some positive developments with regard to media freedoms in Sudan during the period covered by this report. In 2007 al-Midan, the newspaper of the Communist Party, and Sawt al-Umma, the newspaper of the opposition Umma Party, were allowed to legally resume publication for the first time since the 1989 coup.

But journalists have continued to face harassment, arrest and detention without charge, ill-treatment and other forms of intimidation. The media have also been subject to official bans on reporting on specific sensitive subjects. Other methods of censorship have included: orders to remove particular articles prior to printing; confiscation of whole print runs of newspapers; and periods of daily vetting of the entire contents of newspapers by security agents before publication. The Sudanese authorities have in particular made special efforts to limit the extent to which the outside world can learn about events on the ground in Darfur. This has included banning reporting on the security situation and crimes in Darfur in the Sudanese media, and arresting foreign journalists working in the region. Besides the direct effects of the kinds of censorship described here, all of this also serves to foster a culture of self-censorship on the part of journalists.

While it is the security services that are mainly responsible for censorship in Sudan, journalists have also had to struggle against the negative influence of the National Press and Publications Council (NPPC). Though established as a monitoring body, the NPPC has been granted powers to impose expensive licensing fees and to impose punishments on newspapers. It is widely perceived to not be politically independent and has been used by the government as a tool to silence independent voices in the media.

Opposition media outlets in Sudan struggle financially as advertising revenues from government ministries, state-owned and partly state-owned companies, and companies owned by supporters of the ruling NCP continue to flow to pro-NCP publications. Against this background, government entities have distributed rewards and incentives, including financial gifts and the use of certain facilities, to journalists in a further effort to control their reporting. Some common forms of censorship – such as suspensions of newspapers and the prevention of publication of particular editions – create further financial problems by blocking revenues from sales and advertising. This is a particular problem in cases where security agents confiscate newspapers *after* they have been printed, with all the costs that printing entails.

The UN Special Rapporteur on the Human Rights Situation in Sudan has criticised existing Sudanese media legislation, warning that it places “rigid and often unattainable material and professional requirements on journalists and newspapers that stifle the media”. Problematic sections of this legislation include a requirement that journalists must register with the NPPC, as well as clauses obliging editors-in-chief to be over 40 years of age and to have 15 years’ professional experience.<sup>34</sup> The Press and Printed Materials Act 2004 also includes restrictions and regulations that impede the opening of new media sources.<sup>35</sup>

In 2007 a new set of draft media laws were made public and offered up for debate amongst representatives of civil society. However, the NGO Article 19 has expressed concerns that the legislation proposed at that stage would continue to allow the government to interfere in the activities of the media, including by shutting down newspapers, and that a draft “access to information” law would be rendered ineffective by its inclusion of broad exceptions.

Besides the Press and Printed Materials Act 2004, other legislation that has been used to control the

<sup>34</sup> *Report of the Special Rapporteur on the human rights situation in the Sudan, Sima Samar, E/CN.4/2006/111, 11 January 2006.*

<sup>35</sup> *Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar, A/HRC/7/22, 3 March 2008.*



Sudanese media during the time period in question includes the Criminal Act 1991. Under the Criminal Act, defamation is a criminal offence (Article 159), as is “publication of false news” with the intention to “cause apprehension, or panic to the public, or threat to the public peace, or diminution of the prestige of the State” (Article 66). Either crime can be punished with six months in prison or a fine, or both. International authorities like the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression have in the past condemned the use of custodial punishments in defamation cases and warned of the “chilling effect” that large sanctions for defamation can have on the right to freedom of opinion and expression. The Special Rapporteur has asserted in particular that “penal sanctions, in particular imprisonment should never be applied and damage awards should be strictly proportionate to the actual harm caused.”<sup>36</sup>

In 2007 a number of court cases took place which appeared to reflect attempts by the authorities to use such legislation to repress independent reporting. In May 2007, for example, Mahjoub Erwa and Osman Mirghani of al-Sudani were charged with defamation and “publication of false news” following a complaint by the Minister of Justice. Mr Mirghani had previously published an article calling for the minister to resign in connection with money-laundering allegations.<sup>37</sup> In mid-November, Mr Erwa and another al-Sudani journalist, Nouredine Medani, were convicted of defaming the security services in connection with their reporting on the arrests of a number of journalists following unrest stemming from the construction of the Kajbar hydroelectric dam in northern Sudan. The two men spent a fortnight in jail after refusing to pay large fines and were released only after the fine was reduced at appeal and they agreed to pay. A number of other similar court cases were also launched against journalists in 2007: following the publication of a story in al-Hayat wa'l-Nass about HIV cases in one of Sudan's top schools; in response to the publication in al-Midan of the testimonies of individuals who said they had been tortured in detention; and following the publication in al-Intibaha of criticisms of Ahmed Harun.

Article 115 of the Criminal Act (Influencing the Course of Justice) has also been used to justify interfering with freedom of the press by preventing reporting on important court cases.

In addition, Article 130 of the Criminal Procedure Act of 1991 (Prevention of Public Nuisance) has in the

past been used to suspend newspapers. On 8 November 2007, however, the Constitutional Court ruled that this article was not meant to be used against the press and that putting it to this use violated the right to freedom of the press guaranteed by the INC. The decision came in response to a case raised by al-Sudani newspaper, which faced suspension under Article 130 earlier in the year.<sup>38</sup>

Freedom of the media is particularly crucial in the run-up to elections due to take place in Sudan in 2009. For this process to be open and democratic, the media must be free to communicate the points of view of the various participating political groupings and should be allowed to play a watchdog role, highlighting any abuses of the process. The deputy secretary-general of the SPLM has recently expressed concerns that control of the country's media by the NCP is “poisoning” hopes for a free political process.

The following are some examples of censorship and other forms of interference in the media during the period in question:

- Since 6 February 2008 security agents have been visiting newspaper offices in Sudan to check on the contents of each edition prior to publication. On 13 April 2008 newspaper editors were informed by telephone that they would henceforth be required to submit a copy of every edition to the premises of the NISS for approval prior to publication. In the days that followed, several newspapers – including Ajas al-Hurriya, al-Ayyam, Rai al-Shaab, al-Sudani and al-Ahdath – were prevented from publishing. On 16 April the NISS withdrew the new requirement and announced a return to the prior arrangement of security agents visiting newspaper offices in person to carry out checks. Though periods of intensive pre-print censorship were previously seen in August 2005 and September 2006, this latest crackdown represents the toughest campaign of its kind since the signing of the CPA and the introduction of the INC in 2005. Examples of issues that censors have been particularly sensitive about reporting on have included: developments in Darfur and neighbouring Chad, where fighting escalated in February between rebels and the government in Ndjamen; and comments made by the Dutch foreign minister during a recent trip to Sudan, when he called for Khartoum to cooperate with the ICC. By way of illustration, the following are examples of just some of the instances where this latest period of pre-print

<sup>36</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report E/CN.4/2000/63.

<sup>37</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, A/62/354, 24 September 2007.

<sup>38</sup> *Report of the Special Rapporteur on the situation of human rights in the Sudan*, Sima Samar, A/HRC/7/22, 3 March 2008.

editorship has led to articles being removed or publication being otherwise obstructed:

- On 10 February, when columnist Haider al-Mikashfy wrote a piece for al-Sahafa newspaper referring to a speech by NISS chief Salah Gosh, in which he accused journalists of being in the pay of foreign embassies, security officers ordered that the article be removed in its entirety prior to publication.
- On 14 February, when Rai al-Shaab sought to publish allegations that the Sudanese government had backed Chadian rebels, the entire day's edition was blocked from publication and distribution.
- On 26 February, two NISS members visited the printing press used by al-Midan and removed paragraphs from two articles, including one referring to the prevalence of practices such as torture and mistreatment of detainees in Sudan.
- On 3 March NISS agents visited the printing press used by al-Midan and objected to two articles due to be included in the next day's paper. One concerned the acquittal of the chief editor al-Tijani al-Tayyib Babiker in a court case stemming from a complaint lodged by the NISS last year over the newspaper's reporting on alleged training camps near Khartoum with links to terrorist activities. The other article included references to support amongst displaced persons in Darfur for the controversial decision by SLA-Abdel Wahed to open an office in Israel. With the objections lodged at such a late stage, al-Midan staff were forced to delay printing and distribution by one day.
- The issue of al-Midan due to be published on 11 March was delayed after an NISS officer ordered the removal of a full-page article about the situation of women in Darfur and a column written by Suleiman Hamid, a Communist Party representative in the Sudanese parliament.

Besides direct pre-print censorship of this kind, the crackdown on the media in recent months has also involved arrests of journalists, intimidation and bureaucratic obstruction. At the start of 2008 the NPPC sent letters to a number of newspapers – including the Khartoum daily al-Sahafa – ordering them to stop working with certain named journalists. The NCCP said these individuals had not complied with a legal requirement to register for permission to engage in journalistic work. In early February NISS chief Salah Gosh, gave a speech to newspaper editors in which he accused numerous unnamed journalists of being in the pay of foreign embassies and announced that

investigations were underway into their activities. On 18 February 2008, two editors in chief – Adil al-Baz of al-Ahdath and Seed Ahmed al-Khalifa of al-Watan – were arrested in connection with articles they had published about personnel changes in the top ranks of the police service. The following day, five more journalists were summoned over the same issue: Mustafa Abu al-Azaim, editor in chief of Akhir Lahza; Mey Ali Adem, a journalist with Akhir Lahza; Kamal Hassan Bakhit, editor in chief of al-Rai al-Am; Hafiz al-Khayr, a journalist with al-Rai al-Am; and Mohamed Seed Ahmed Al-Motayab, the managing editor of al-Wifaq. All seven individuals were released from custody on 19 February. The Khartoum Monitor, Sudan's main independent English language newspaper, has also been accused of failing to keep up with tax payments and was ordered to come up with a total of \$300,000 – including a \$50,000 fine – by 29 February 2008. Particularly in light of the timing of this move and the failure to offer an option of paying the sum in instalments, this was seen as an effort to intimidate the newspaper.

- In December 2007 five journalists – including a member of SOAT's network in Sudan – faced a death threat for their public stances on key political issues. In a telephone call from neighbouring Chad on December 4, a man identifying himself as Fattah told journalist Abdel Moneim Suleiman that he had been invited to the residence of the Sudanese consul in the Chadian capital N'Djamena and offered 400,000 US dollars to kill him and the four other journalists: al-Haj Warraq and al-Tahir Satti from al-Sahafa newspaper; Rabbah al-Sadiq, who contributes to the same newspaper; and Faisal al-Bagir, a member of SOAT's network and Sudan correspondent for Reporters Sans Frontieres. The caller said they were being targeted because of their criticism of the Sudanese regime and their support for the deployment of an international peacekeeping force in Darfur. He claimed to have withdrawn from the deal because he had not received in full a first instalment of the money that had been promised to him.
- On 23 October 2007 the security forces arrested journalists working for the al-Jazeera television news channel while they were interviewing IDP leaders in the Otash IDP camp near Nyala, South Darfur. They were detained for four days without charge, and the footage that they had been filming was confiscated and not returned to them.

- On 28 August 2007 some 15,000 copies of al-Midan were confiscated to prevent the newspaper from publishing criticisms of the security services.
- On 21 August 2007 the authorities confiscated 17,000 copies of the daily opposition newspaper Rai al-Shaab for violating a ban on reporting about an alleged plot to attack Western embassies in Khartoum. The newspaper's legal advisor told SOAT that the estimated cost of this move to the newspaper was 4,000 US dollars. The following day, security officers visited the printing press at 2am and ordered staff to remove a number of articles before printing and distribution could go ahead. In the event, staff decided to cancel that edition as well. A number of other newspapers also had articles censored around this time in connection with the same ban. They included al-Sahafa, al-Ayam, al-Sudani, al-Rai al-Am and Hikayat. The ban was backed up by a warning that anyone violating it would be subject to punishment under Article 115 (Influencing the Course of Justice) of the Criminal Act 1991.<sup>39</sup>
- On 24 June 2007 the general prosecutor of Northern State banned all public reporting on the work of a committee set up to investigate alleged human rights violations in the Kajbar area, as well as all reporting on the events that led to the establishment of this committee.<sup>40</sup>
- On 23 May 2007 the Press Council banned all reporting on the activities and statements of Darfuri rebel groups.<sup>41</sup>
- On 16 May 2007 the Prosecutor for the Press and Printed Materials issued an order to suspend al-Sudani newspaper for an indefinite period, following a defamation complaint filed by the Minister of Justice. The decision relied on Article 130 (Prevention of Public Nuisance) of the Criminal Procedure Act 1991. The order was overturned a few days later by a court ruling which declared that Article 130 could not be used in this way.<sup>42</sup>
- Over a period of several days in May 2007 Adam Mahdi, who was working as a correspondent in Darfur for the Khartoum-based Arabic daily newspaper al-Sahafa, was repeatedly summoned to NISS offices in Nyala, interrogated and detained for many hours at a time. The repeated summonses appeared to be aimed at obstructing his efforts to report on a visit to Darfur by senior government officials, whose mission was to investigate and resolve disputes between the Rezeigat and Torgom tribes.
- On 25 March 2007 the Sudanese authorities ordered the expulsion of a BBC correspondent from Sudan. He was described as being involved in a propaganda campaign against Sudan by the Western media.
- On the 24 March 2007 a journalist working with Sudan Radio Service was arrested by the security services whilst reporting on clashes in Khartoum between police and members of SLA-Minnawi. He was detained for five days and tortured.
- In March 2007 the Minister of Justice ordered newspapers not to publish news relating to prosecutions of crimes committed in Darfur.<sup>43</sup>
- In February 2007 Adil Sid Ahmed, the deputy editor in chief of al-Watan, was summoned by security forces and interrogated for several hours about an interview that had been published in the newspaper with two people who had threatened to kill foreign nationals in Sudan. Adil Sid Ahmed and another journalist who had also been arrested against the same background, Ahmed al-Sherrif, were subsequently transferred to Kober prison before being released.
- On 30 January 2007 the Press Prosecution issued a decision to suspend al-Sudani newspaper, citing non-compliance with a ban on the publication of news relating to the case of the murdered journalist Mohamed Taha Mohamed Ahmed. The decision was justified with reference to Article 130 (Prevention of Public Nuisance) of the Criminal Procedure Act 1991. The decision was widely criticised by Sudanese journalists, who argued that the legislation in question was being taken out of its intended context. On 3 February the General Prosecutor reversed the decision of the Press Prosecution and ruled that al-Sudani should be allowed to resume publication from 4 February.

<sup>39</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, A/62/354, 24 September 2007; and SOAT research.

<sup>40</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, A/62/354, 24 September 2007.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, A/62/354, 24 September 2007; and SOAT research.

<sup>43</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, A/62/354, 24 September 2007.

- On 23 January 2007 the NPPC reportedly issued a decision to suspend the newspaper al-Hayat wa'l-Nas because it had failed to deposit copies with the council for 20 days and was thus in violation of media legislation. Journalists at the newspaper said they had only stopped depositing copies for nine days, and that this was for technical reasons. Amir al-Bashab, a journalist at al-Hayat wa'l-Nas was reportedly subsequently arrested by security agents.<sup>44</sup>
- On 6 September 2006 the Sudanese authorities imposed daily pre-print censorship for press outlets in the wake of the murder of the prominent newspaper editor Mohamed Taha Mohamed Ahmed. This period of pre-print censorship was terminated after 12 days by Vice President Ali Othman Taha, following intensive campaigning by Sudanese journalists. The period following the murder of Mohamed Taha Mohamed Ahmed also saw the arrests of Abu Obeida Abdulla, a journalist with al-Rai al-Am, and al-Tahir Sati, a journalist with al-Sahafa.
- On 16 August 2006 two journalists working for al-Ayyam newspaper, Nasir al-Din al-Tayeb and Fakhr al-Din Yassin, and two journalists from al-Sahafa newspaper, Salma Fath al-Bab and Ballah Ali Omar, were physically assaulted, ill-treated and detained by police for their reporting on an incident of forced removal of people from Dar al-Salam, in al-Jazeera State. Nasr al-Din al-Tayeb sustained severe ear injuries and was admitted to hospital for medical treatment.
- On 14 August 2006 Muhib Mahir of al-Sudani newspaper, Mujahid Abdullah of Rai al-Shaab, Abu al-Gasim Farrahna of Alwan, and Mutaz Mahjoub of al-Ayyam, were detained and ill-treated by security officers in Amri whilst trying to report on a demonstration against the construction of the Merowe hydroelectric dam.
- On 14 August 2006 al-Fasher Criminal Court in Northern Darfur sentenced the well-known Slovenian journalist Tomo Kriznar to two years in prison and fined him around 2,500 US dollars for "undertaking espionage activities and publishing false news in violation of the Sudanese immigration law". The court also ordered that he be expelled from the country upon his release from prison. He had been arrested on 27 July after

entering the country across the border with Chad without a visa and taking thousands of photographs reflecting the devastating impact of the conflict in Darfur. He was subsequently released following a presidential pardon.

- In August 2006 the foreign journalist Paul Slavick, along with a driver and an interpreter, was detained by a rebel group after entering Sudan from Chad. The rebel group confiscated their car and a satellite telephone. Having been handed over to the Sudanese Armed Forces in al-Fasher, Slavick and his colleagues faced trial on 1 September for "espionage and revealing confidential information against the state". The General Prosecutor dismissed the case and Slavick was later released following mediation from the Governor of New Mexico.
- On 29 January 2006 Nihal Bol, the chief editor of the English-language daily The Citizen, was summoned by NISS officers to the office of the NPPC. At the NPPC office, Mr Bol was ordered not to print the newspaper's Arabic-language edition on Fridays. Mr Bol asked to be given a copy of this order in writing, including an explanation of the laws under which it was being made. This document was not forthcoming and Mr Bol continued to print the Arabic-language version of the Citizen on Fridays.

## **Detention and Harassment of Human Rights Defenders**

During the period covered by this report, the GoS and its security organs have continued to subject human rights defenders to harassment, intimidation and obstruction, particularly in Darfur. This has included: arbitrarily arresting human rights defenders; summoning them to NISS offices for interrogation, often without warrants; questioning them over the telephone about their past activities and future plans; restricting their freedom of movement; and refusing visas for staff from international non-governmental organisations (NGOs). In cases where human rights workshops and other events have been organised with the prior knowledge of security officers and the HAC, they have been prevented from going ahead. In cases where such events have taken place without the prior knowledge of HAC and the NISS, the organisers have been questioned by NISS agents about participants and funders. Furthermore, state officials have continued to foster a hostile environment for human rights defenders by levelling unfounded accusations against human rights organisations of spying, spreading false information and destabilising the Sudanese state. There have also been efforts to discredit the personal and professional conduct of individual human rights defenders through the media.

<sup>44</sup> Sudan Human Rights Organisation, *The Sudanese Human Rights Quarterly*, Issue No. 24, June 2007.

Targeting of human rights defenders has been facilitated by legislation which grants sweeping powers of arrest and detention without charge to state organs like the NISS (for more information, see the section of the report covering Article 6 of the ACHPR). Efforts to hamper the work of human rights defenders were also bolstered by the introduction of the Organisation of Humanitarian and Voluntary Work Act, which was adopted by the Sudanese parliament on 20 February 2006 and superseded the Humanitarian Aid Commission Act 1988. This legislation has further entrenched government control over the activities of humanitarian and human rights organisations – both local and foreign – through the HAC, especially in the Darfur region. The act grants wide-ranging powers to a government-appointed Commissioner General and Registrar General for Humanitarian and Voluntary work., including the power to periodically review the activities of NGOs and to refuse to re-register them. The act also grants the authorities powers to review NGO documents, to suspend their activities, to dismiss their members, to seize their assets in the event of cancellation of registration, and to expel international NGO workers from the country. Furthermore, the sheer volume of administrative requirements and restrictions placed on NGOs by this act amounts to a form of “administrative harassment”.

One of the major challenges currently facing Sudanese human rights defenders is the difficulty of working in Darfur, where their efforts are needed perhaps more than anywhere else in the country. Human rights violations including unlawful killings, gender-based violence, arbitrary arrests and torture continue on a massive scale in this war-torn region. But with the authorities especially determined to repress opposition voices amid the insecurity and struggles for influence there, human rights defenders – along with other groups, including foreign aid workers, leaders of displaced communities and politically active students – are routinely targeted and their activities obstructed. The work of human rights defenders in Darfur has been made particularly difficult by the state of emergency that remains in place there, which has led to further restrictions on freedom of movement and freedom of association.

In general, female human rights defenders across Sudan face the same problems as their male counterparts – but these problems are exacerbated by the social and legal status of women in Sudan in general (for more details, see the section of this report covering Article 18 of the ACHPR). In July 2005 three female human rights defenders who were detained, interrogated and threatened after attending a workshop on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) were told that this document promotes the corruption of women. In March 2006 an event scheduled to take place in Port Sudan to promote CEDAW was

cancelled at short notice by security officers (for more details of this latter incident, see the relevant entry in the bullet-pointed list below).

Obstruction of the work of human rights defenders is a particular concern in the run-up to elections scheduled to take place in Sudan in 2009. For the 2009 elections to be open and democratic, it is crucial that human rights defenders should be allowed to play a watchdog role and report on abuses that could jeopardise the process – including violations of freedom of speech, freedom of association and freedom of assembly. But there are very serious concerns that targeting of human rights defenders will intensify in the run-up to the voting, with the specific aim of preventing them from fulfilling these functions. This prediction appears to be borne out by the parallel crackdown on the media which has been ongoing in Sudan since early February this year.

The following are examples of incidents of harassment, intimidation and obstruction of human rights defenders during the period covered by this report:

- During a visit to Sudan in February and March 2008 the UN Special Rapporteur on the Situation of Human Rights in the Sudan, Sima Samar, was prevented at the last minute from visiting Kajbar, Amri, Merowe and Makabrab in Northern State. She had planned to meet there with local officials and communities affected by the construction of two hydroelectric dams in the Nile Valley. These projects have resulted in unrest amongst the local population, which has in turn led to a series of arbitrary arrests and killings of civilians (for more details see the sections of this report covering Articles 6 and 11 of the ACHPR). The Special Rapporteur noted that the reasons given did not justify the decision to deny her access to these areas.<sup>45</sup>
- In November 2007 the security forces launched a sustained campaign of harassment against staff from the Khartoum Centre for Human Rights and Environmental Development (KCHRED) and other human rights defenders and journalists in the capital. In the course of the month, NISS officers summoned, detained and interrogated: KCHRED chairperson Amir Suleiman; Faisal al-Bagir and Lemia el-Jaili Abu Bakr, who work for the centre's freedom of expression programme; and financial officer Mashair Abdullah Omer. In some cases, these

<sup>45</sup> UN News Centre, “UN Expert Decries Human Rights Violations by Both Sides in Darfur”, 10 March 2008. Available at [www.un.org/apps/news/story.asp?NewsID=25923&Cr=darfur&Cr1=](http://www.un.org/apps/news/story.asp?NewsID=25923&Cr=darfur&Cr1=)

individuals were summoned repeatedly, threatened, maltreated and ordered to produce documents relating to the organisation's finances. Others detained and interrogated as part of the same "investigation" included journalists and freedom of expression activists Madiha Abdullah and Sabah Mohamed Adam.

- On 24 October 2007 security forces in Nyala prevented seven individuals representing a range of civil society organisations in South Darfur from flying to Sirte, Libya, where peace talks were about to begin. No reason was given.
- Between June and September 2007 the Sudanese authorities harassed, arrested and detained a large number of individuals in connection with protests aimed at securing adequate compensation for communities being forcibly relocated to make way for the Nile Valley hydroelectric dams projects (for more details see the section of this report covering Article 6 of the ACHPR).
- In March 2007 staff from 53 local NGOs – including the Amel Centre for the Treatment and Rehabilitation of Victims of Torture in Nyala – were questioned by HAC. The Amel Centre was temporarily closed for two months for "administrative checks" and was unable to resume its work until May 2007.
- In November 2006 Faisal el-Bagir, a freelance journalist and prominent human rights activist, was stopped by security officers at Khartoum airport whilst returning from a visit to Belgium to receive an award on behalf of SOAT. He was interrogated about his trip before being released.
- On 27 July 2006 three members of staff at the Amel Centre for the Treatment and Rehabilitation of Victims of Torture in Nyala received a letter from the NISS informing them that the local Attorney General had filed a case against them for offences against the state. In the following days, two staff members from the Amel Centre were summoned to the office of the Attorney General, where they were interrogated and accused of spreading false information and of being a threat to public security. The questioning focused on events in Otash camp in May 2006, when a number of IDPs were arrested during a demonstration against the DPA. At the time, lawyers at the Amel Centre had requested information about the whereabouts of five of those arrested and had called for their release in the absence of valid legal charges. The

lawyers appeared to be under investigation solely for their human rights work.

- On 9 July 2006 Dr Nagib Nagm Eldine – a medical doctor and the then director of the Amel Centre for the Treatment and Rehabilitation of Victims of Torture in Khartoum – was arrested from his home and taken to the office of the Attorney for Crimes Against the State. After several hours in detention there, Dr Nagib was interrogated about reports issued by SOAT concerning summary trial proceedings against hundreds of people who were arrested in the unrest that followed the death of the Southern Sudanese political leader John Garang in August 2005. Security officers accused Dr Nagib of providing the information to SOAT. After nine hours in detention, he was released on bail and informed that he was being investigated for offences under Articles 66 (Publication of False News), 77 (Public Nuisance), 96 (Omission to Produce Document or Deliver Statement) and 159 (Defamation) of the Criminal Act 1991, as well as Article 37 of the Press Act.
- On 4 July 2006 police officers in Ikotos, Eastern Equatoria, visited the premises of Manna Sudan, an NGO working on reconciliation and conflict prevention in Southern Sudan, looking for its executive director Charles Locker. On being informed that he was not present, they instead arrested several staff members and confiscated assets including a vehicle. Mr Locker was arrested from his home later on the same day. He was subsequently transferred to Torit and detained without charge. Although no reason was given for the arrests, it was believed that it was because of articles published on the internet in which Mr Locker had criticised the role played by the Eastern Equatoria governor and other local authorities in tribal clashes. Mr Torit was reportedly released in September 2006.<sup>46</sup>
- On 11 April 2006 the Women Awareness Raising Group - Red Sea, also known as "AWOON - Red Sea", was notified by the HAC that its assets, including an account at the Sudanese French Bank in Port Sudan, would be frozen until further notice. A letter issued to AWOON - Red Sea by the HAC stated that its activities were illegal because it had submitted a funding proposal to the European Commission without first seeking approval from the HAC. Although the HAC invoked the

<sup>46</sup> "Amnesty International Report 2007: Republic of Sudan". Available at [www.amnesty.org/en/region/africa/east-africa/sudan#report](http://www.amnesty.org/en/region/africa/east-africa/sudan#report)

Humanitarian Aid Commission Act 1988 to justify freezing the organisation's assets, it drew on the language of the new Organisation of Humanitarian and Voluntary Work Act, which had been adopted by parliament in February 2006 but was yet to be formally enacted.

- On 15 March 2006 Hassan Altaieb, a lawyer and SOAT monitor in Port Sudan, was summoned to the local offices of the NISS and questioned about an event scheduled to take place the following day as part of a nationwide campaign for the ratification of CEDAW. The security officers demanded a full list of speakers and other participants. After two hours of questioning, and without providing any reason, they informed Mr Altaieb that they were cancelling the event. The security officers also advised the hotel where the event was due to be held to cancel the room reservation.
- On 11 March 2006 the HAC ordered the Sudan Development Organisation (SUDO) to suspend all of its activities in West Darfur province, including a health centre, a nutrition centre and a food distribution unit. The directors of SUDO offices in Zalingy and al-Geneina were also ordered to hand over all assets to the authorities, including cars and two motorcycles, and to produce a full report on the organisation's income and expenditure. The letter cited the Organisation of Humanitarian and Voluntary Work Act passed by parliament the previous month. Staff at the HAC were also reported to have sent a letter to the Agricultural Bank on the same day, ordering the closure of an account belonging to SUDO and a freeze on all transactions. The SUDO office in Zalingy had previously been closed in January 2006 but was reopened following negotiations and the intervention of the Minister of Humanitarian Affairs.
- On 10 March 2006 Hussain Osman Mohamed Ismail, a member of SOAT's students network living in Daim Alnour, Port Sudan, was arrested by Military Intelligence in Toker. Mr Ismail had travelled to Toker to investigate human rights violations allegedly committed there in 1997. On 12 March he was transferred into the custody of the security services in Port Sudan. Whilst in detention, he was interrogated about his human rights activities and told that as a human rights defender he was no longer classified as an ordinary citizen. He was also informed that Toker was an emergency zone and that it was necessary to obtain permission before visiting the area. Prior to his release on 18 March,

security officers confiscated all of the documents in his possession, including materials on human rights education and advocacy. Throughout the time he spent in detention, Mr Ismail's whereabouts were unknown and requests by his family to visit him were denied.

- On 22 January 2006, the Sudanese authorities detained 35 people who were taking part in an open civil society forum in central Khartoum. The participants were held for over three hours at the conference venue, during which time they were harassed and threatened. Items including conference documents, laptop computers and personal papers were confiscated. The forum had been organised by the KCHRED to discuss ways of working with the AU, and was attended by European Union (EU) and UN representatives.

## **The Situation in Relation to Articles 10 and 13**

### **Article 10**

1. *Every individual shall have the right to free association provided that he abides by the law.*
2. *Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.*

### **Article 13**

1. *Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*
2. *Every citizen shall have the right of equal access to the public service of the country.*
3. *Every individual shall have the right of access to public property and services in strict equality of all persons before the law.*

### **Targeting of Opposition Political Activists**

During the period covered by this report, a large number of opposition political activists have been arbitrarily arrested and detained by the authorities, often for long periods of time without charge and/or without access to lawyers. Many have reportedly been subjected to torture or other forms of abuse in custody.

Under the state of emergency in Darfur in particular, the authorities have employed tactics including harassment, arbitrary arrests and incommunicado detention in order to repress opposition activists. At least dozens of individuals are currently in detention on suspicion of being affiliated with rebel groups.

Targeting of opposition political activists is a particular concern in the run-up to the national elections scheduled to take place in 2009.

The following are some examples of targeting of opposition activists during the period covered by this report:

- On 23 February 2008 nine SLA-Minnawi supporters were arrested from a house in the Hay al-Buga area of al-Obeid, Northern Kordofan and reportedly tortured. Their arrest followed clashes between Darfuri students and others loyal to the ruling NCP sparked by student union elections at Kordofan University. Amid suspicion that the NCP was keen to exert its influence in the region, which borders Darfur, in the run-up to the national elections scheduled to take place next year, Darfuri students said the voting had been rigged. At least some of the nine SLA-Minnawi members who were arrested had travelled from Khartoum to Kordofan to support their party in the student union elections. They were reported to have suffered abuse in the custody of the security services including beatings and being hung by a rope. One of the detainees was reportedly unable to see for several days afterwards as a result of beatings he suffered in detention. Four of the detainees were eventually released without charge. Weapons possession charges against the remaining five were dropped for lack of evidence. Charges relating to their alleged participation in riots remained outstanding at the time of writing.
  - Between 20 September and 4 December 2007 NISS agents arrested around 30 suspected supporters of SLA-Abdel Wahed, some of them repeatedly. Those detained, most of whom were students at universities in Khartoum, were held incommunicado for varying lengths of time and in many cases were reportedly ill-treated or tortured. The arrests were understood to be linked to the Darfur peace talks convened in Sirte, Libya, at the end of October.<sup>47</sup>
  - On 23 November 2007 Amar Nagmeldin Guluk, the spokesperson and information secretary of the Khartoum State branch of the SPLM, was arrested by NISS officers at Khartoum Airport whilst travelling to Juba. At the time of his arrest, the SPLM had withdrawn from the GoNU in Khartoum in protest at the failure of the NCP to implement key provisions of the CPA. Following his
- Starting on 26 August 2007 security agents in Port Sudan reportedly detained Shaiba Dirar, chairperson of the Beja Congress, for three days without charge.<sup>49</sup>
  - In July 2007 dozens of individuals, including influential opposition politicians and former members of the police and military, were arrested in connection with an alleged coup plot. They were held without charge until November before a case was finally mounted against them for crimes including waging war against the state and dealing with an enemy state. Among the group was Mubarak al-Fadil, the leader of the opposition Umma Reform and Renewal party, who was eventually released by the Justice Minister on 2 December because of a lack of evidence against him. Also among the group was Ali Mahmoud Hassanein, the vice president of the Democratic Unionist Party, who was released within hours of his initial arrest on 14 July but was rearrested on 1 August. Many members of the group reported that they were subjected to torture in detention (for more details of this alleged torture see the section of this report covering Articles 4 and 5 of the ACHPR). Besides al-Fadil, the remaining 30 individuals were “pardoned” by President Omar al-Bashir and released on 31 December.<sup>50</sup>
  - On 1 May 2007 the investigative police of the Sudan Railways Corporation (SRC) in Atbara arrested Aiman Tagelsir Bakri (31 years old, office clerk for the SRC) for distributing a press release issued by the Sudanese Communist Party to mark International Workers’ Day. Mr Bakri was transferred into NISS custody later on the same day, after the Atbara Prosecutor categorised his case as a matter of national security. He was interrogated about the press release and

<sup>47</sup> *Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar, A/HRC/7/22, 3 March 2008.*

<sup>48</sup> Amnesty International, Further Information on Urgent Alert, AI Index: AFR 54/006/2008, 24 January 2008. Available at [www.amnesty.org/en/library/asset/AFR54/006/2008/en/AFR540062008en.html](http://www.amnesty.org/en/library/asset/AFR54/006/2008/en/AFR540062008en.html)

<sup>49</sup> Sudan Human Rights Organisation, *The Sudanese Human Rights Quarterly*, Issue No. 25, November 2007.

<sup>50</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan, A/62/354, 24 September 2007; and SOAT research.*



about his relationship with the Communist Party. He was eventually released on bail on 7 May to await trial.

- In connection with a clash between government security agents and members of SLA-Minnawi in the Omdurman area of Khartoum on 24 March 2007, government forces arrested some 95 members and affiliates of the SLA-Minnawi faction. These detainees reportedly faced ill-treatment by police and security agents in custody, including severe beatings, death threats and threats of sexual violence. Five SLA-Minnawi members who were put on trial for the killings of three police officers during the clashes were acquitted of murder due to lack of evidence, but were given six-month prison terms for minor charges linked to the obstruction of police work. To SOAT's knowledge, no investigative findings have ever been published concerning the killings of nine SLA-Minnawi members during the same clashes.<sup>51</sup>
- Between 10 and 12 February 2007 NISS officers arrested three men associated with the opposition Sudan Congress Party following unrest at universities in Khartoum. They were reportedly held for between 12 and 36 hours and subjected to physical abuse including severe beatings by NISS officers before being released without charge.<sup>52</sup>
- On 10 January 2007 police forcefully broke up demonstrations in central Khartoum against the execution of former Iraqi president Saddam Hussein. The police used tear gas and beat demonstrators. 11 members of the Arab Ba'athist Socialist Party were arrested, charged and later tried under Articles 69 (Disturbance of Public Peace) and 77 (Public Nuisance) of the Criminal Act 1991. A court in Khartoum North dismissed the charges against nine of the demonstrators for lack of evidence. Ali al-Rayah al-Sanhori, the chairman of the Ba'athist party in Sudan, and Osman Idris Abu-ras, its general secretary, were convicted under Article 69 and fined the equivalent of around 100 US dollars each. Several people, including some of those who were arrested, were reportedly injured in the clashes. Police said the demonstrators had failed to secure permission to stage the event.
- On 1 September 2006 the authorities in Kosti withdrew permission for a number of political

parties – including the Communist Party, the Umma Party, the Democratic Unionist Party and some trade unions – to stage a demonstration the following day against rises in the prices of sugar and petrol, citing security concerns. This permission had been granted by the city's security committee several days earlier, on 27 August. Also on 1 September, security agents arrested four members of the Communist Party who were using a loud speaker from a car to publicise the planned demonstration. They were held for a number of hours at an office used by the security forces in Kosti and questioned before being released.

- Between March and April 2006 a number of political activists from Eastern Sudan were arrested by security officers without charge, and for a period of time their whereabouts remained unknown. Although no reason was given for this wave of arrests, it is suspected that it was aimed at intimidating the Beja Congress from participating in the then ongoing peace negotiations in Asmara, Eritrea, with the government under the auspices of the UN. The following individuals were arrested: Osman Hassan al-Masri, General Secretary of the Beja Congress in Gadarif State (arrested on 6 March 2006); Alamin Alhaj, Chairperson of the Beja Congress in Gadarif State (arrested on 6 March 2006); Ali Hussain, Member of the Beja Congress Secretariat in Kassala State (arrested on 7 March 2006); Ali Omer, Member of the Beja Congress Secretariat in Kassala State (arrested on 8 March 2006); Mahmoud Ibrahim Osman, Assistant General Secretary of the Beja Congress in Kassala State (arrested on 10 March 2006); Ali Omer Mohamed Ali, Member of the Eastern Front (arrested on 7 March 2006, began a hunger strike on 26 March 2006); Haroun Mohamed Ali, Member of the Eastern Front (arrested on 7 March 2006); Mohamed Din Suleiman, Chairperson of the Secretariat of the Beja Congress in Kassala State (arrested on 3 April 2006); Gafar Mohamed Adam, General Secretary of the Beja Congress in Kassala State General (arrested on 3 April 2006, previously arrested on 10 March 2006); Mohamed Osman Alkhalifa, Member of the Beja Secretariat in Kassala State (arrested on 3 April 2006); Hashim Hangag, lawyer and spokesperson for the Beja Congress in Kassala State (arrested on 4 April 2006, previously arrested on 10 March 2006); and Alamin Alfaidabi, Member of the Secretariat (arrested on 4 April 2006).

<sup>51</sup> *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, A/62/354, 24 September 2007.

<sup>52</sup> *Ibid.*

## Targeting of Politically Active Students

During the period covered by this report, student supporters of opposition political groups have been targeted with arrests and violent assaults. Those responsible for targeting anti-NCP students have included the police, security services, university administrations and pro-NCP student groups.

Numerous instances of the targeting of politically active students, where this has involved repression of demonstrations, are listed in the section of this report covering Article 11 of the ACHPR. The following are some further examples of the targeting of politically active students during the period covered by this report:

- In January 2008 police and security agents in Medani, Gezira State, reportedly arrested 40 students from Gezira University during discussions organised by the Student Democratic Front and subjected them to physical abuse including beatings. Police reportedly carried out a subsequent raid on a students' club at al-Nishayshiba, during which property belonging to the club was destroyed and more students were arrested and subjected to abuse.<sup>53</sup>
  - On 2 and 4 December 2007 at least seven Darfuri students suspected of supporting one of the Darfuri rebel factions were arrested in Dewaim, White Nile State. They were detained until 17 December 2007 and were subjected to physical abuse by security agents, including being kicked and beaten with hands and sticks.
  - In late October 2007 a university student of Fur origin, who is a member of the United Peoples Front, was arrested and detained in Khartoum North for over 60 days. He was subjected to abuse by security agents in custody, including punching and kicking, mock execution, and beatings with sticks and wires.
  - In early July 2007 more than 16 students were injured after pro-NCP students used force to call off a students' strike at al-Imam al-Mahdi University. Eight anti-NCP students were arrested by security forces in the aftermath of the clashes, at least some of whom were reportedly subjected to physical abuse in custody. Those arrested included:
    - Mudathir Babikir (second year student on the Faculty of Arts): Hospitalised under police supervision for a deep
- Ahmed Ma'awia Ahmed Al Gari (second year student on the Faculty of Arts): Hospitalised after being stabbed in the hand. Arrested by security forces on 4 July and held incommunicado until 7 July. Released on bail on 9 July. Subsequently rearrested, reportedly tortured and forced to sign a written undertaking to leave town immediately.
  - Ammar Othman Suliman (fourth year student on the Faculty of Law): Arrested by police at the university on 3 July. Reportedly tortured prior to his release on 6 July.
- On 14 June 2007 violence erupted at Sudan University after pro-NCP students used force to call off a strike by students on the Faculty of Engineering who were calling for reforms within the university. Iron bars and other tools were used against the students.
- On 8 February 2007 pro-NCP students at the Neelain University in Khartoum reportedly prevented opposition students from going about their work on campus, accusing them of insulting their religious beliefs. In the clashes that ensued, in which firearms were used, it was reported that law student Abd al-Mo'iz Hassan Mohamed Ahmed was killed and several other students injured.<sup>54</sup>
- Between March 2005 and March 2006, the following students were arrested, detained and tortured by security officers and members of student militias associated with the NCP:
  - At Sudan University, Hilat Kuku: Adam Abd al-Gadir, Alam Aldin Abd Alhadi, Alsayed Kamal Alsayed, Badr Elden Jamaa, Haram Ebrahim Ali, Mohamed Alrayah Hassan, Mohamed Hassan, Mohamed Sidig Mohamed Osman, Mohamed Yousuf Suleiman, Mugtaba Bakri Khidir
  - At the University of Omdurman, al-Ahlia: Abd Almuniem Mohamed Hassan, Adison Joseph Garang,

<sup>53</sup> Sudan Human Rights Organisation, *Strong Condemnation to Police and Security Brutalities in the Gezira University*, 22 January 2008. Available at [www.shro-cairo.org/pressreleases/08/gezeira.html](http://www.shro-cairo.org/pressreleases/08/gezeira.html)

<sup>54</sup> Sudan Human Rights Organisation, *The Sudanese Human Rights Quarterly*, Issue No. 24, June 2007.

Mohamed Alhadi, Mohamed Salih Adam

- At the Sudanese Jordanian College for Science and Technology: Badr Eldin, Dirgam Hassan Elhadi, Essa Hussain, Mohamed Ahmad, Mohamed Mustafa, Munzir Mahjob, Mutaz Gibril, Waleed Mohamed Adam

All were subject to intimidation and were warned to join the NCP or refrain from political activities.

Darfur were reportedly dispersed by police using tear gas. Some protestors reportedly suffered minor injuries. After the protestors were dispersed, some eight students were reported to have been followed and arrested by NISS officials in different parts of Khartoum. They were reportedly taken to a NISS detention facility in north Khartoum where they were held for two days and were blindfolded, interrogated, tortured and otherwise ill-treated.<sup>55</sup>

## The Situation in Relation to Article 11

### Article 11

*Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*

### Repression of Demonstrations

Article 40 of Sudan's INC affirms the right of all Sudanese citizens to freedom of assembly. During the period covered by this report, however, the Sudanese authorities have continued to use excessive force to break up unauthorised public protests, including opening fire with live ammunition on peaceful demonstrations. This has led to a large number of civilian deaths which have never been transparently investigated. Such incidents are encouraged by the effective impunity of state officials responsible for human rights violations (for more details on impunity, see the section of this report covering Articles 7 and 26 of the ACHPR).

Legislation that has been used against demonstrators includes Articles 67 (Rioting), 69 (Disturbance of Public Peace) and 77 (Public Nuisance) of the Criminal Act 1991. Punishments available under these articles include custodial sentences and flogging. Under the Criminal Act 1991, the charge of rioting can be applied in instances involving an assembly of as few as five persons.

The following are some examples of repression of demonstrations during the period covered by this report:

- On 27 December 2007 at least 62 students were arrested by police and security forces following demonstrations at Nyala University. During the arrests, police beat the students with water hoses.
- In September 2007, in the run up to the Darfur peace negotiations in Sirte, Libya, protestors in Khartoum calling for an end to the killings in

- On the 13 June 2007 government forces opened fire on civilians holding a peaceful demonstration against the building of the Kajbar Dam in northern Sudan. 13 people were seriously injured and the following four were shot dead: Shaik Aldin Haj Ahmed (25 years old, farmer); Mohamed Fagir Diab (21 years old, high school student at Farraig); Alsadig Salim (40 years old, farmer); Almoiz Mohamed Abdelrahim (21 years old). An investigation is reported to have been carried out into these killings but its results have never been made public. SOAT is unaware of any perpetrators having been identified or any action taken to hold them to account.

- February 2007 saw a wave of violence in Sudanese universities, including several instances in which the authorities violently repressed student demonstrations. On 17 February clashes reportedly erupted between police and students at the faculty of education at Shendi University after police tried to break up a peaceful strike by students. The following day, one student was reportedly shot dead by police and ten others injured during demonstrations in Kadogli, Southern Kordofan.<sup>56</sup>

- On 30 August 2006 peaceful demonstrations in Khartoum sparked by rising petrol and sugar prices were reportedly put down by police using tear gas and batons. 80 people received sentences of up to two months in prison for public order offences.<sup>57</sup>

- On 29 May 2006 security forces and central reserve police officers opened fire on a demonstration in the Otash IDP camp in Darfur against the DPA. As a result of the shooting, one person – Ali Musa Issa – was killed and three others were wounded.

<sup>55</sup> UN Group of Experts, *Final Report of the Situation of Human Rights in Darfur*, A/HRC/6/19, 28 November 2007.

<sup>56</sup> Sudan Human Rights Organisation, *The Sudanese Human Rights Quarterly*, Issue No. 24, June 2007.

<sup>57</sup> "Amnesty International Report 2007: Republic of Sudan". Available at [www.amnesty.org/en/region/africa/east-africa/sudan#report](http://www.amnesty.org/en/region/africa/east-africa/sudan#report)

- In a separate incident in Nyala on 29 May 2006, security officers used sticks to beat IDPs who were trying to make their way to local UN offices to present a memorandum highlighting their concerns about the DPA. Security and police officers arrested scores of demonstrators. Of those arrested, 21 – including ten women – were taken to Nyala Wasat police station and charged under Articles 50 (Undermining the Constitutional System) and 51 (Waging War Against the State) of the Criminal Act 1991, both of which are punishable by death in Sudan. An unknown number of demonstrators were detained without charge in the custody of the security forces.
- On 22 April 2006 government forces reportedly opened fire on a demonstration in the Amri area in northern Sudan against a survey designed to lay the ground for relocating local residents to make way for the construction of the Merowe hydroelectric dam. As a result of the shooting, three civilians were reportedly killed and 12 wounded. The Sudanese authorities were said to have set up a committee to investigate the incident, but to date SOAT is unaware of any findings having been made public.<sup>58</sup>
- In February 2006 scores of students from Juba University in Khartoum were reportedly beaten with batons by armed police and security agents after they gathered to call for the university to be relocated to South Sudan. Around 51 were reportedly detained and beaten, deprived of food and denied access to legal counsel and family visits.<sup>59</sup>

## The Situation in Relation to Article 18

### Article 18

1. *The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.*
2. *The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.*
3. *The State shall ensure the elimination of every discrimination against women and also ensure the*

<sup>58</sup> World Organisation Against Torture, *Sudan: Ongoing Violence Against Communities Resisting Dam Construction in the Northern Nile Valley*, 30 November 2007. Available at [www.omct.org/pdf/ESCR/2007/SDN\\_301107\\_ESCR.pdf](http://www.omct.org/pdf/ESCR/2007/SDN_301107_ESCR.pdf)

<sup>59</sup> "Amnesty International Report 2007: Republic of Sudan". Available at [www.amnesty.org/en/region/africa/east-africa/sudan#report](http://www.amnesty.org/en/region/africa/east-africa/sudan#report)

*protection of the rights of women and the child as stipulated in international declarations and conventions.*

*4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.*

### Rights of Women

Article 32 (1) of the INC grants equal rights to women: "The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits". Article 15 (2) also gives special protection for women: "The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life".

Notwithstanding these provisions and Sudan's international human rights obligations, regulations and laws that severely curtail the human rights of women both in their public and private lives are still in existence, among them the explicitly discriminatory Personal Law Act 1991.

### Public Order Laws

Public order laws in Sudan have the effect of discriminating against women and dictating their public behaviour and dress code. Articles 151 (Gross Indecency) and 152 (Indecent and Immoral Acts) of the Criminal Act 1991, for example, give the authorities a great deal of leeway in interpreting these crimes. Offences under Article 152 are punishable by flogging and fines, while offences under Article 151 can also be punished with a custodial sentence. The following are some examples of legal restrictions on women's behaviour in Sudan:

- Private parties: It is not allowed to organise a private party where men and women dance together.
- Privacy with women: Men and women are not allowed to be together alone in a closed room.
- Dress: The police have the power to monitor women's dress and to order a woman to cover up further if they consider that the way she is dressed is un-Islamic. Under Article 152 of the Criminal Act 1991 "indecent or immoral dress" can be punished with a fine and/or up to 40 lashes.

### Muslim Personal Law Act 1991

Discrimination against women remains a persistent pattern, particularly in the area of marriage and divorce. Laws governing the family and personal status create a web of discriminatory practices which seriously limit women's independence, autonomy and enjoyment of human rights, as the following

provisions of the Muslim Personal Law Act 1991 (which governs Muslim citizens) illustrate:

- **Guardianship:** A woman's guardian must be an adult male. Prior to marriage, a woman's guardian is usually her father, brother or another close male relative. After marriage, a woman's husband is considered to be her guardian.
- **Marriage:** In general, a guardian signs the marriage contract on behalf of a woman.<sup>60</sup> Girls as young as ten years old can be married. A Muslim man can marry a non-Muslim, but a Muslim woman cannot marry a non-Muslim, unless he converts to Islam.
- **Polygamy:** The law permits polygamy as an Islamic principle, but ignores the wife's right to divorce if her husband takes another wife (Articles 51,75, 91 and 167).
- **Divorce:** The husband has the right to unilateral repudiation. A wife can secure a divorce only if her husband grants it to her or if she appeals to a court and the court decides that there is a valid and sufficient reason (Articles 43, 48, 50, 162-167). A woman may initiate divorce proceedings without having to prove damages only in cases where this option was explicitly stipulated in the marriage contract.
- **The Husband's Rights and Duties in a Marriage:** The conception of the rights and duties of a husband embodied in the Personal Law Act assumes and reinforces the dependence of a woman on her husband. Under this act, the husband is required to maintain the family, grant his wife permission to visit her relatives, and treat co-wives equally (Section 51).
- **Inheritance:** A woman has the right to hold and dispose of her own property without interference and is ensured inheritance from her parents. But a daughter inherits half the share of a son when their father dies. And when a woman's husband dies, she inherits a much smaller share than her children.
- **Adultery/Sexual Intercourse Outside of Marriage:** Adultery is considered an offence of honour and reputation, and against public morality. In theory, the law does not differentiate between the male and female offenders, but in practice women are more vulnerable. If a woman is caught in a suspect

place with a man who is not a mahram (a father, brother or other relative who she cannot marry), she can be charged with adultery or gross indecency. In the case of hudud offences, a woman's testimony has limited effect: the testimony of two women has the same credibility as the testimony of one man. Depending on marital status, if there are no witnesses available to the alleged adultery, proof can be obtained through physical examination to provide evidence of intercourse or the virginity status of the woman. The Criminal Act 1991 (Articles 145 and 146) defines adultery as any instance of sexual intercourse outside of marriage and provides for punishments including execution by stoning for married women and 100 lashes for unmarried women. Under the Criminal Act 1991, women convicted of adultery in the South can be imprisoned and/or fined.

### **Violence Against Women**

In February 2007 the criminal court of al-Azazi (Managil province, Gazeera state), headed by Judge Hatim Abdurrahman Mohamed Hasan, sentenced two women to death by stoning under Article 146 (Adultery) of the Criminal Act 1991. The death sentence was eventually quashed and the two women were re-sentenced in light of the fact that they had not had access to "the necessary legal advocacy" during the trial. SOAT is glad to report that following their retrial, the two women were released on 7 April 2007. However, the discriminatory and disproportionate application of the death penalty under Article 146 of the Criminal Act 1991 remains unchallenged in principle. SOAT recalls that, as stated in the "Safeguards guaranteeing protection of the rights of those facing the death penalty" approved by UN Economic and Social Council resolution 1984/50 and reiterated in the UN Human Rights Committee General Comment 6, in countries which have not abolished the death penalty, capital punishment must be read restrictively and "may be imposed only for the most serious crimes". The Human Rights Committee has determined that adultery falls outside the scope of the "most serious crimes" for which the death penalty may be imposed.<sup>61</sup>

During the period covered by this report, there has been a pattern of attacks against civilians in the eastern part of Southern Kordofan state which have included rapes of women. These attacks are mainly carried out by well-organised Arab militias determined to destabilise the area and create a sense of insecurity among the population – mostly black African tribes – to induce them to flee. The majority of the perpetrators of these attacks are members of Popular Defence Forces armed by the central

<sup>60</sup> Where a guardian refuses to give his consent, a woman may apply to a qadi (religious judge) to marry her instead.

<sup>61</sup> UN Special Rapporteur on summary and arbitrary executions, report A/HRC/4/20.

government during the civil war in the South. Following the signing of the CPA, the government failed to disarm these militias.

In one such incident, at 8.30pm on 27 May 2007 a group of armed men riding camels attacked a truck (registration plate number NB 5033) carrying 43 passengers in Southern Kordofan. The attack happened between the villages of Kawakia and al-Jabalat, in the District of Um Lobia, locality of Rashad. The attackers were armed with Kalashnikov rifles and had their faces concealed. Six girls travelling onboard the truck were forced to unload the goods being transported and were subsequently raped by over ten armed men. One of the women was abducted and then released after 24 hours. Three other passengers were attacked and physically injured.

Women forced to unload the truck and sexually abused:

Name (Initials Only)	Age	Area	Tribe
M. I. Y. I.	15	Umpair	Tagowi
Z. O. I.	14	Umpair	Tagowi
H. A. K. K.	17	Umpair	Tagowi
K. M. J.	18	Jabalat	Tagowi
S. M. A. S.	16	Jabalat	Tagowi
Z. I.	14	Jabalat	Torjoic

Other injured passengers:

Name	Type of Injury	Age	Remarks
Yousief Musa Abdul Mounium	Head Injury	45	Driver
Adil Haron Ibrahim Idris	Body Injury	30	Assistant Driver
Wadi Ismail Ali	Back Injury	75	Passenger

To SOAT's knowledge, no perpetrators have been convicted in connection with this attack.

### Women and Employment

Women have limited access to the formal labour market and are most likely to be economically active in the informal sector. Here women – especially female IDPs – are often engaged in income-generating activities which are illegal and are therefore at risk of cruel and inhuman treatment and punishments.

Sudan has the largest population of IDPs in the world – over 4.5 million, of whom around 60% are estimated to be female. For many displaced women from the Nuba Mountains and the South, including those who are heads of households and need to secure a living for their families, the only income-generating activity available is brewing and selling an alcoholic drink called merissa. While merissa is

traditional in the South, dealing in alcohol is illegal under Article 79 of the Criminal Act 1991. Despite not being Muslim, these women are routinely arrested, sent to court and sentenced to punishments including fines and/or imprisonment.

### Rape in Darfur

In Sudan, rape is one of the most common forms of violence against women and girls. The situation is particularly bad in Darfur, which is notorious for the widespread incidence of rape and the impunity enjoyed by perpetrators. Countless international observers have reported a widespread and ongoing pattern of Sexual and Gender-Based Violence (SGBV) against women and girls by government forces and "Janjaweed" militias in the region.<sup>62</sup> SOAT alone has documented hundreds of specific cases of rape and other serious forms of SGBV, and SOAT's medical and legal aid programmes continue to offer assistance to victims of such crimes. As the conflict continues, there is no indication of any significant reduction of instances of rape and SGBV against women and girls. Armed conflict, lack of security and discriminatory laws are amongst the factors which facilitate the pervasiveness of rape in the region, along with social norms that deter women from reporting cases of SGBV.

Throughout the war government forces and its proxy militias have waged a systematic campaign of SGBV against unarmed female civilians from the same tribes as the rebel groups. Even during periods of relative calm, the continuing grave insecurity and consequent lawlessness has increased women and girls' vulnerability. Even everyday tasks and roles place women at great risk. A particular problem has been rapes of women leaving IDP camps to seek firewood, either for use by their own family or to sell in order to supplement income. The newly deployed UNAMID troops have resumed patrols specifically designed to protect women venturing outside IDP camps, a positive practice previously established by African Union Mission in Sudan (AMIS) peacekeepers. But these "firewood patrols" fall very short of solving the problem completely, and UNAMID remains only partially deployed and continues to face obstruction by the GoS.

Systematic rapes and other forms of SGBV have also occurred, and continue to occur, in the context of armed attacks on civilian settlements. The recent report issued by the OHCHR in cooperation with UNAMID on a series of attacks by government forces and allied militias in the villages of Sirba, Silea, Abu Suruj in Western Darfur in January and February 2008 recorded "consistent and credible accounts of

<sup>62</sup> *Eighth Periodic Report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan: Women abducted, raped and kept as sex slaves following the December 2006 attacks on Deribat*, August 2007.

rape committed by armed uniformed men”. Based on interviews conducted, it was concluded that at least ten girls and women, between the ages of nine and 18 years old, were raped during one attack alone on the village of Sirba on 8 and 9 February 2008. There were “strong indications” that SAF members participated in these incidents of rape. One eyewitness reported seeing four girls being led to an abandoned hut and raped at gun point by a group of soldiers belonging to the SAF.<sup>63</sup>

Women and girls in Sudan are unlikely to report instances of rape for fear of the consequences for their families and for their reputation. In addition to this social stigma, Sudanese legislation relating to rape – including the legal definition of the crime of rape and the requirements for proof that this crime has occurred – is an additional strong disincentive for victims to report such cases to the police. Article 149 of the Criminal Act 1991 defines rape as an act of sexual intercourse by way of adultery or sodomy without the consent of the person. Rape victims have reported fearing that if they fail to prove that the act of sexual intercourse in question was not consensual, they could be prosecuted for adultery, which under Article 146 of the Criminal Act 1991 can be punished with death by stoning for a married woman or 100 lashes for an unmarried woman. Cases of victims of sexual violence being prosecuted for adultery have been reported to human rights and humanitarian workers in the past. Because the definition of rape in the Criminal Act 1991 incorporates the crime of adultery, some judges have interpreted this as meaning that the strict shari’a evidence rules applicable in adultery cases also apply in rape cases.<sup>64</sup>

Against this background, one positive step taken by the Sudanese authorities has been to do away with a previous requirement for rape victims to obtain a copy of a medical evidence form, known as “Form 8”, from police before being allowed to receive medical assistance. Humanitarian workers had voiced concerns that this requirement, which was in place

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<sup>63</sup> *Ninth periodic report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Sudan: Attacks on Civilians in Saraf Jidad, Sirba, Silea and Abu Suruj in January and February 2008*, 20 March 2008.

<sup>64</sup> Under Article 63 of the Evidence Act 1993, to prove the crime of adultery requires: a confession; four male eyewitnesses; pregnancy, if the woman in question is unmarried; or an oath of the husband that his wife committed adultery, if the accused woman refuses to take an oath to the contrary. For more details about flaws in Sudanese legislation relating to rape, see Refugees International, *Laws Without Justice: An Assessment of Sudanese Laws Affecting Survivors of Rape*, June 2007, available at [www.refugeesinternational.org/content/publication/detail/10070](http://www.refugeesinternational.org/content/publication/detail/10070)

until 2005, prevented rape victims from accessing healthcare.

### **Female Genital Mutilation**

Article 32 (3) of the INC provides that “the State shall combat harmful customs and traditions which undermine the dignity and the status of women”. However, Female Genital Mutilation (FGM) remains a widespread practice which continues to endanger the lives of young girls. According to the United Nations Children’s Fund (UNICEF), 90% of women in Sudan between the ages of 15 and 49 have undergone some form of FGM.<sup>65</sup> Women’s groups in Sudan have undertaken a great deal of campaigning against FGM and government officials have also made statements in this regard. Other positive steps include a degree issued by the Sudanese Medical Council in 2004 banning doctors from performing excision and infibulation operations on women, as well as a ruling by the Council of Islamic Jurisprudence prohibiting FGM. However, existing Sudanese legislation still fails to criminalise FGM. Previously in Sudan, the 1946 Penal Code prohibited infibulation, though it permitted other forms of FGM. This legislation was ratified again in 1957, when Sudan became independent. Following the 1989 coup, the Sudanese government affirmed its commitment to the eradication of FGM. But the Criminal Act 1991 does not mention FGM, leaving its status unclear.

### **Slavery**

Prior to the signing of the CPA in 2005, more than two decades of civil war in the South between government forces and the SPLM fuelled conditions which led to thousands of people, particularly women and children, being enslaved. Slave raids were carried out by a government-backed armed militia known as the Murahaleen, which drew members from the Baggara ethnic group. These raids primarily targeted Dinka villages in the province of Bahr el-Ghazal. Thousands of women and children who were captured in the course of the raids were forced into different kinds of abuse, including forced labour as domestic workers, cattle herders and agricultural workers, as well as forced marriage and sexual slavery.

In 1999 the Minister of Justice established the Committee for the Eradication of Abduction of Women and Children (CEAWAC) to facilitate the safe return of women and children to their families. The CEAWAC was mandated to investigate reports of abduction and to bring to trial anyone suspected of supporting or participating in such activities. However, the mandate to prosecute has never been applied.

Between 1999 and 2004 the CEAWAC documented 1,842 cases of individuals who had been enslaved.

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<sup>65</sup> [www.unicef.org/infobycountry/sudan\\_statistics.html#49](http://www.unicef.org/infobycountry/sudan_statistics.html#49)

Of these, 1,497 were reunified with their families in cooperation with various international organisations. Between March and December 2004 the CEAWAC documented a further 7,240 cases, out of which 1,500 were reunified with their families in SPLM-controlled areas of the South and 200 were reunited with family members in the North. Despite these efforts, however, many thousands of men, women and children are thought to remain in slavery.

According to media reports, following a period of inactivity the work of the CEAWAC resumed around the start of March 2008 following the provision of \$1,000,000 of funding from the GoSS, apparently to cover costs such as food, shelter and clothing for those freed.<sup>66</sup>

In the past, there has been a great deal of controversy concerning the practice of paying abductors to release slaves. Organisations like UNICEF have argued that this effectively rewards slave-taking rather than punishing it and therefore creates an incentive for further abductions. Furthermore, the failure to condemn slavery as a practice, combined with the impunity of those responsible for past abuses, has contributed to the replication of a similar pattern of abductions in other conflict areas such as Darfur.<sup>67</sup> In view of this, SOAT believes that the GoS should take a clear position on slavery. This should include: publicly stating that abductions and all associated practices are illegal; making the appropriate legislative amendments; and fully enforcing all available laws in order to combat abductions and slavery.

## Rights of Children

International law, including the ICCPR and the CRC, prohibits the use of the death penalty against child offenders – that is, any individual who was under the age of 18 at the time that the crime in question took place. Despite the fact that Sudan has ratified both the ICCPR and the CRC, Article 27 (2) of the Criminal Act 1991 still allows for the use of the death penalty against children under the age of 18 in cases of hudud and retribution. In practice, the Sudanese judiciary continues to use this legislation to pass death sentences against children, as the following recent examples show:

- On 10 November 2007 Al-Tayeb Abdel Aziz (16 years old) was sentenced to death along with nine other individuals for the murder of

newspaper editor Mohamed Taha Mohamed Ahmed in September 2006. Al-Tayeb Abdel Aziz was 15 years old at the time of the murder. A lawyer representing the group has said that the conviction was based on confessions extracted under torture. The death sentences were upheld by the Khartoum North Court of Appeals on 13 March 2008.<sup>68</sup> For more details about this case, see the sections of this report covering Articles 4 and 5, and Articles 10 and 13 of the ACHPR.

- On 3 May 2007 Abdelrhman Zakaria Mohamed and Ahmed Abdullah Suleiman (both 16 years old) were sentenced to death by the Criminal Court in Nyala, South Darfur. Abdelrhman Zakaria Mohamed was found guilty of murder, robbery and “causing injury intentionally”. Ahmed Abdullah Suleiman was found guilty of “being an accomplice”.

More generally, Article 47 of the Criminal Act 1991 provides for punishments specifically tailored towards juveniles. These punishments, which are available for courts to use in cases where an individual is convicted of committing a crime when he or she was between the ages of 7 and 18, include up to 20 lashes (for more details about how flogging sentences are carried out see “Other Cruel, Inhuman or Degrading Punishments” in the section of this report covering Articles 4 and 5 of the ACHPR). The other punishments listed under Article 47 are: reprimanding the juvenile in question in the presence of a guardian; handing the juvenile over to a guardian who will undertake to “properly look after” him or her; putting the juvenile under “social supervision” for one to two years; and detaining the juvenile in one of the “reformation and social welfare institutions” for two to five years.

<sup>66</sup> BBC, Slave Rescue Bid Resumes in Sudan, 5 March 2008. Available at [news.bbc.co.uk/2/hi/africa/7277189.stm](http://news.bbc.co.uk/2/hi/africa/7277189.stm)

<sup>67</sup> Eighth periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, “Women abducted, raped and kept as sex slaves following the December 2006 attacks on Deribat”, August 2007. Available at <http://www2.ohchr.org/SPdocs/Countries/8thOHCHR20aug07.doc>

<sup>68</sup> Amnesty International, Further Information on Urgent Alert, AI Index: AFR 54/011/2008, 18 March 2008. Available at [www.amnesty.org/en/library/asset/AFR54/011/2008/en/AFR540112008en.html](http://www.amnesty.org/en/library/asset/AFR54/011/2008/en/AFR540112008en.html)



## Recommendations

In order to promote compliance with Sudan's obligations under the ACHPR and other national and international commitments, SOAT calls on the GoS to implement the following recommendations.

- With regard to the urgent need to protect civilian population and respect human rights in Darfur:
  - Establish an effective cease-fire and end all attacks on civilians in Darfur, including human rights defenders and humanitarian workers
  - Ensure the full and unhindered deployment of the UNAMID hybrid force
  - Ensure protection of civilians in Darfur according to obligations under international human rights law and international humanitarian law
  - Take all effective measures to combat impunity for the most serious crimes and equip the national courts with the necessary funds and resources to try war crimes and crimes against humanity committed in Darfur, while ensuring the independence and impartiality of the judiciary
  - Cooperate fully with the ICC in line with Sudan's obligations under UN Security Council resolution 1593, including arresting and surrendering the two suspects for whom international arrest warrants were issued on 27 April 2007
  - Ratify the Rome Statute of the ICC
  - Amend emergency laws operating in Darfur not to grant security agencies broad powers to arrest and to restrict freedom of movement, assembly and expression
  - Allow for the participation of different sections of civil society, including representatives of IDPs, refugees and women, in Darfur peace talks
  - Intensify efforts and ensure the implementation of the recommendations made by the UN Group of Experts on Darfur
- Conduct impartial and transparent investigations into all allegations of torture, other forms of abuse and killings by state officials, and bring to justice all suspected perpetrators, guaranteeing them fair trials according to internationally recognised standards
- Abolish the death penalty and all other cruel, inhuman or degrading punishments, including flogging and amputations
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Modify existing legislation to bring it in line with the Interim National Constitution as integrated in the CPA, specifically:
  - Ensure that any person deprived of their liberty is informed of the reasons for arrest, given immediate access to a lawyer upon arrest, given access to family members, and brought promptly before a judicial authority
  - Ensure an express right of habeas corpus to all detainees irrespective of the forces responsible for arrest and detention
  - Ensure institutional and legislative reform of the National Intelligence and Security Services in accordance with the CPA and Interim National Constitution. In particular, broad powers of arrest and detention should be reformed (Articles 31 and 33 of the National Security Act) and effective judicial oversight mechanism established
  - Undertake all other steps necessary to end the impunity of state officials, including reforming key legislation and dismantling the system of immunities
  - Clarify the Evidence Act, expressly declaring that confessions extracted under torture are inadmissible, even when there is corroborating evidence to support the confession
  - Ensure the development of a body of case law that incorporates international standards for the administration of justice and human rights and clarifies the scope and content of human rights and fundamental freedoms and the obligations of the authorities
  - Dismantle the system of immunities for state agents regardless of their official status or function by revoking all immunity laws or allowing for an express exception when the alleged acts concern torture and other serious human rights violations
  - Immediately cease all forms of pre- and post-print censorship, including arbitrary arrests, intimidation and harassment of journalists, temporary suspension of newspapers, bureaucratic obstruction and bans on reporting on specific subjects, and take all necessary steps to guarantee the independence of the media and expedite the introduction of new media laws.
- Review the compatibility of existing legislation relevant to the work of human rights defenders – especially the National Security Forces Act and the Organisation of Humanitarian and Voluntary Work Act – with the ACHPR, the UN Declaration on Human Rights Defenders and other applicable international human rights standards
- Apply the UN Basic Principles on the Use of Force and Firearms by Law Enforcement

Officials as a benchmark for policy and official guidelines, including requiring officials to always use non-violent means before resorting to force, to always ensure that the use of force is in proportion to the seriousness of the offence, and to ensure that lethal force is only used when absolutely necessary to protect life

civilians, and end all attacks on civilians, including human rights defenders and humanitarian workers.

- Establish an environment conducive to free and fair elections, including allowing political opposition parties and activists to campaign effectively; fully involving human rights defenders in the process; allowing them to independently monitor the actions of the GoS in preparing for the elections; and allowing them to monitor the elections themselves
- Speed up the adaptation of its laws governing the family and personal status, in particular with regard to the institution of the wali (guardian) and the rules on marriage and divorce
- Undertake to review its legislation, in particular Articles 145 and 149 of the Criminal Act 1991, so that women are not deterred from reporting rapes by fears that their claims will be associated with the crime of adultery
- Review legislation to make slavery, abductions and all associated practices illegal
- Take serious steps to address sexual crimes committed in Darfur including bringing those responsible to justice
- Train police and members of the judicial bodies in women's human rights standards and jurisprudence
- End the use of corporal punishment for children, and make the provisions and disseminate information on alternative non-violent methods of discipline
- Ratify, implement and raise awareness of women-specific international human rights instruments such as the Convention on the Elimination of All forms of Discrimination Against Women and the Optional Protocol to the African Charter on Human and People's Rights on the Rights of Women
- Speed up and ensure the establishment of an effective and independent national human rights commission, in accordance with the Paris Principles

SOAT calls on the warring factions in Darfur to:

- Respect their obligations under international human rights law and international humanitarian law, in particular with regard to the protection of

## Glossary

**ACHPR** – African Charter on Human and Peoples' Rights

**AMIS** – African Union Mission in Sudan

**AU** – African Union

**CAT** – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**CEAWAC** – Committee for the Eradication of Abduction of Women and Children

**CEDAW** – Convention on the Elimination of All Forms of Discrimination against Women

**CPA** – Comprehensive Peace Agreement

**CRC** – Convention on the Rights of the Child

**DPA** – Darfur Peace Agreement

**EU** – European Union

**FGM** – Female Genital Mutilation

**GoNU** – Government of National Unity

**GoS** – Government of Sudan

**GoSS** – Government of Southern Sudan

**HAC** – Humanitarian Aid Commission

**ICC** – International Criminal Court

**ICCPR** – International Covenant on Civil and Political Rights

**IDP** – Internally Displaced Person

**INC** – Interim National Constitution

**JEM** – Justice and Equality Movement

**KCHRED** – Khartoum Centre for Human Rights and Environmental Development

**NCP** – National Congress Party

**NGO** – Non-Governmental Organisation

**NISS** – National Intelligence and Security Service

**NPPC** – National Press and Publications Council

**OHCHR** – Office of the UN High Commissioner for Human Rights

**SAF** – Sudan Armed Forces

**SCCED** – Special Criminal Court on the Events in Darfur

**SGBV** – Sexual and Gender-Based Violence

**SLA-Abdel Wahed** – The faction of the Sudan Liberation Army loyal to Abdel Wahed al-Nur

**SLA-Free Will** – Sudan Liberation Army Free Will faction

**SLA-Minnawi** – The faction of the Sudan Liberation Army loyal to Mini Minnawi

**SOAT** – Sudan Organisation Against Torture

**SPLM** – Sudan People's Liberation Movement

**SUDO** – Sudan Development Organisation

**UN** – United Nations

**UNAMID** – United Nations-African Union Mission in Darfur

**UNHCR** – United Nations High Commissioner for Refugees

**UNICEF** – United Nations Children's Fund

**WFP** – World Food Programme