

Sudan

The Sudanese judiciary remains under the control of the government and lawyers face routine interference in the performance of their professional duties. The new Constitution states that the judiciary shall be independent but it largely acts in accordance with the government's wishes. During the year, lawyers were frequently subjected to harassment and prevented from engaging in the advocacy of human rights and the Rule of Law. Sudan's civil war continued to result in massive violations of human rights and the central government also violated human rights in areas outside the conflict. Although the government permitted the registration of political parties this year, it still suppressed active political dissent.

Sudan gained independence from the British in 1956 and has since suffered under several military regimes and large scale violations of human rights. An on-going internal conflict, based on ethnic and religious differences, continues to debilitate the country.

In 1989 the military, headed by General Omar Hassan El-Bashir, with the unofficial support of the National Islamic Front (NIF), led by Hassan al-Tourabi, took control of the Sudanese government in a military coup d'état. Presidential and parliamentary elections were held in 1996. In these elections, widely described as unfair, Hassan al-Tourabi was elected Speaker of the National Assembly and General El-Bashir was elected as President for a five year term.

A new constitution was promulgated in 1998 and accepted in a referendum by the general population in June 1998. Some doubts were expressed over the confirmation process. The Constitution places Islam in a central position within the state. The Constitution creates a federal system of government consisting of a President, Council of Ministers and a unicameral parliament at the federal level. At the state level there is a similar structure consisting of a Governor, State Assembly and a Council of Ministers.

Section 47(2) of the Constitution vests federal executive power in the Council of Ministers, presided over by the President. Members of the Council are appointed by the President, and each minister is jointly responsible to the President, Council of Ministers and the National Assembly. The President is elected by the general population and serves for a term of five years. An elected president can serve for a maximum of two terms.

Section 67(1) vests legislative authority in an elected National Assembly. Membership of the National Assembly consists of 75% elected by general direct suffrage, and 25% chosen indirectly to represent states or a national electoral college. Where it is not possible to conduct an election in a particular constituency, due to compelling security considerations, the President can appoint a person to occupy that position pending the conducting of elections. Due to the continuing crisis in many parts of the country, this gives the President quite a substantial power to influence the membership of the assembly. The National Assembly sits for a term of four years.

In December 1999, General El-Bashir declared a three month state of emergency, and dissolved the National Assembly and Council of Ministers. This was widely seen to result from a power struggle between General El-Bashir and leader of the National Congress (formerly the NIF), Hassan al-Tourabi.

Human Rights Background

The 1998 Constitution protects some fundamental human rights, including the right to life, freedom from slavery, torture and freedom of religion. Article 30 provides that a person cannot be arrested, detained or confined except by law, with the requirement that the charge and the duration of the detention be stated and that proper respect for dignity of treatment be maintained. Sudan is also a party to the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention for the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of the Child. Sudan has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. International law requires that it not act in a manner that would defeat the object and purpose of the treaty before its entry into force.

Despite the constitutional safeguards, human rights continue to be systematically and massively violated in Sudan. Most violations result from the continuing armed conflict and the central government's oppression of any political or religious dissent. In 1999, it was reported by the UN Special Rapporteur for Sudan (E/CN.4/1999/38/Add.1) that approximately 1.9 million people have been killed as a result of sixteen years of armed conflict.

Sudan has the largest population of internally displaced people (IDP's) in the world, and one of the largest populations of refugees. Figures state that the amount of IDP's is approximately four million. The majority of the people are displaced due to conflict, natural disasters, or to avoid looting, recruitment or abduction by the armed forces. Severe famine devastated Bahr Al-Ghazal state in 1998-1999 increasing the number of those displaced. Many IDP's attempt to establish temporary settlements in Khartoum, but these are demolished by the government who then force the people to relocate into camps outside the city. Conditions in camps remain inadequate with continuous disease outbreaks and insufficient supplies of food.

Slavery continues to be a serious problem. Armed militias in the southern, western and eastern areas of the country abduct women and children to engage in forced labour or to fight in their armies. Much of the slavery is perpetrated on an ethnic and religious basis by the *murahleen*, a militia backed by the government. The Sudanese Government routinely denies allegations of slavery, claiming that the practices are merely abductions carried out by opposing sides.

Government security and armed forces commit extra-judicial killings and arbitrarily detain and torture political opponents. Islamic punishments, such as amputation, flogging or crucifixion are used. The freedoms of assembly and expression are routinely restricted. (see section on Lawyers). Political parties are now permitted under the Political Organisation and Political Parties Act 2000, but the government frequently attacks members of the opposition. The government also harasses religious opposition, Christian and Islamic.

The National Security Law allows detention without warrant or charge for three month periods. The detention is renewable if it is affirmed by a judge, however this requirement is ignored. The 1998 Constitution guarantees the right to a prompt and fair trial and the right to select a person to represent you in defence. In practice this right is routinely violated. Those accused of crimes are denied legal access and subjected to torture in order to obtain confessions. The courts refuse to sanction members of police and security forces for the denial of these rights, creating a culture of impunity.

Internal Armed Conflict

A continuing internal conflict has undermined the stability of Sudan since independence. Fighting takes place in various locations between the government and militia groups, and between militia groups themselves, and is mainly concentrated in the south of the country. The main opposition militia in the south is the Sudan Peoples Liberation Army (SPLA) led by Dr John Garang, and in the west the National Democratic Alliance (NDA), an alliance of militia groups including the SPLA. The majority of militia groups are fighting for a secular Sudanese state, with regional autonomy in the south. Several developments occurred in the peace process during the year.

In February 1999, a peace agreement was signed between the Nur and the Dinka, the two largest southern tribes and the main source of inter-militia fighting. In November 1999, the government signed a peace agreement with the Umma Party. The agreement envisaged a four year transitional period to end the civil war, which would then be followed by a referendum in south Sudan on the issue of self-determination.

A peace agreement was signed between the government and six opposition factions in 1997 leading to the establishment of a Southern States Co-Ordination Council (SSCC) led by Mr Riak Machir, a former rebel leader, and the promise of a referendum on the issue of self-determination in four years. Riak Machir resigned from the SSCC in January 2000, in response to the imposition of a state of emergency by President Bashir. It was reported after his resignation that his forces had launched several attacks in southern Sudan and that he had met with SPLA.

A cease-fire between the SPLA and the government began in July 1998, in the south-west of the country due to a famine in that region. That cease-fire was extended during 1999, at various times covering all major conflict areas in southern Sudan. Despite this, localised fighting still occurs in these areas. Negotiations continued between the Sudan Peoples Liberation Movement (SPLM), the political arm of the SPLA, and the government under the auspices of the Inter-Governmental Authority on Development, to establish a more permanent settlement. In July 1999, an IGAD secretariat was established in Kenya to carry out negotiation efforts on a permanent basis.

An agreement was concluded in December 1999 between the Sudanese Government and the SPLM at the third meeting of the Technical Committee on Humanitarian Assistance convened by the UN. The parties agreed to provide free access for all humanitarian agencies to war effected populations, and to guarantee the protection of the human rights of the beneficiaries of the humanitarian assistance. This latter obligation was undertaken by both the government and the SPLM.

The Judiciary

The Sudanese legal system was originally based upon English common law, but since 1983 has been influenced greatly by Islamic law (Sharia). In 1983 a series of laws known as the "September laws" were introduced implementing Islamic punishments (Huddud), such as amputation, flogging and crucifixion. The 1983 Law of Judicial Sources also requires judges to interpret the law in conformity with Islamic law. In 1991 the National Salvation Revolutionary Command Council (NSRCC) adopted a new penal code, which applied Islamic law in the northern states. Section 65 of the Constitution of the Republic of Sudan 1998 states that Islamic law, the consensus of the nation as determined by referendum, the Constitution and custom shall be the sources of legislation. Legislation contrary to these

fundamentals is not permitted. The southern states were exempted from the application of Islamic law, and usually apply tribal law and customary law. However, the armed conflict in southern Sudan inhibits the operation of an effective justice system.

The judiciary is regulated by Part V of the Constitution of 1998 and the Judiciary Act of 1986. The Constitution vests judicial competence in a judiciary, which is responsible for the performance of its work to the President. The judiciary is subject to substantial executive influence. The Constitution guarantees the independence of judges in the performance of their duties and states that they shall not be influenced in their judgements.

Court Structure

Section 103 of the Constitution creates a court structure consisting of a Supreme Court, Appeal Courts and Courts of First Instance. The Constitution also creates a Constitutional Court. High Courts hear civil and criminal cases and appeals from lower courts. Tribal and Family Courts have also been established. The Code of Criminal Procedure permits the Chief Justice to establish special courts, to determine their jurisdiction and to conduct trials in absentia. Under this power the Chief Justice has created Public Order Courts which hear cases summarily, and can have their sentences immediately executed, even though there is a right of appeal to higher courts.

Special military and security courts have also been established to hear cases involving civilians and military personnel. Presidential Decree No. 2 of 1989, which established Revolutionary Security Courts, is now invalid in accordance with Article 137(1) of the Constitution. The Constitutional Court ruled in July 1999 that military courts have jurisdiction to try cases involving civilians. The decision when to institute cases is left to the discretion of the Minister of Justice.

The SPLA has its own legal code known as the Sudan Peoples Revolutionary Laws, SPLM/SPLA Punitive Provisions 1983. This code creates three levels of courts, Peoples General Courts-Martial, Peoples District Courts-Martial and Peoples Summary Courts-Martial. These courts mostly conduct trials involving military personnel.

Chapter V of the Constitution creates the Public Grievances and Corrections Board (The Hisba and Mazalim). This board, without prejudice to the jurisdiction of the judiciary, has the authority to resolve grievances and to assure efficiency and purity in the practice of the state. The Board can also extend justice after the final decision of a court. All members of the board are appointed by the President, with the approval of the National Assembly, from persons of efficiency and propriety. This board has a wide jurisdiction, is separate from the regular court structure and there is no requirement that those appointed to the board have judicial training. There are no guarantees for its independence and it has the extraordinary power of being able to review the final decisions of other courts.

Constitutional Court

The Constitutional Court is regulated by Chapter II, Part IV of the Constitution and the Constitutional Court Act 1998. The court has jurisdiction to determine any matter relating to the following:

- the interpretation of constitutional and legal provisions submitted to it by the President, National Assembly, or half of the Governors or half of the State Assemblies;
- claims from any aggrieved person to protect the freedoms, rights and sanctities contained in the Constitution;
- jurisdictional conflict between the state and federal organs;
- criminal procedures against the President or the state Governors;
- any claims of infringements of the constitutional federal system, or constitutional freedoms, rights and sanctities, by actions of the President, the Council of Ministers, or any Federal or National Minister;
- review of the constitutionality of judicial procedure, orders and judgements.

The Constitutional Court Act 1998 requires the aggrieved person to exhaust all domestic remedies before applying to the court. Criminal proceedings cannot be instituted against the President or a governor without the permission of the National or State Assembly. If permission is granted, a judge is selected by the court to conduct an investigation into the allegations, who will then submit the results of the inquiry to the court. The investigating judge is still entitled to participate in the trial.

The court consists of the President, Deputy President and five other judges who are appointed by the President, with the approval of the National Assembly. Section 3(3) of the Constitutional Court Act provides that judges of the court hold office for renewable five-year terms. Constitutional Court judges can be removed from office by the President on the grounds of loss of capacity, health infirmity or for a conviction by a competent court in a manner inconsistent with honour and honesty.

Judges

The independence of judges has been seriously undermined since the 1989 coup d'état and continues to be under the new Constitution. After the coup d'état the NSRCC systematically removed its opponents and other non-Moslem members from the judiciary. Many young fundamentalist lawyers were appointed as judges by the new government.

Judges are appointed by the President upon recommendation of the Supreme Council of the Judiciary (SCJ). The SCJ consists of the Chief Justice, as an ex officio member, the Deputy Chief Justice, the Attorney General, the President of the Bar Association and the Dean of the Faculty of Law of Khartoum University. In effect, the government's ability to appoint judges is unfettered as government attacks on the judiciary have resulted in a SCJ that acquiesces to the government demands.

The SCJ is also responsible for the planning and general supervision of the judiciary, the preparation of the general budget, providing opinions on bills regarding the judiciary, and providing recommendations to the President for the appointment, promotion and removal of judges. Section 104(4) of the Constitution states that judges cannot be removed except through disciplinary measures upon a recommendation of the SCJ.

Lawyers

Since independence, lawyers have acted as an independent body against illegality and violations of fundamental human rights. After the 1989 coup d'état, they have been

increasingly subjected to attacks and repression by the government. They are arbitrarily arrested and detained, tortured, denied the freedom of expression and association, and subjected to interference in the performance of their professional duties by members of the security and police forces.

In 1993 the military government amended the Advocates Act to reduce the status of the Bar Association from an independent self-governing body to a trade union subject to the control of the Minister of Labour and the Registrar of Trade Unions. In 1997 the Bar Association was instructed at short notice to hold elections for a new Bar Council. The election process suffered from many irregularities and illegalities and was cancelled. The Bar Association remains controlled by a government appointed board.

During 1999, lawyers were frequently prevented from assembling to conduct seminars or meetings to discuss issues relating to the protection of human rights, the Rule of Law and the promotion of democracy. Force was often used to disperse such meetings, and many lawyers were arrested and detained because of these activities. Principle 25 of the UN Basic Principles on the Role of Lawyers guarantees lawyers the right to participate in the discussion of matters concerning the law, the administration of justice and the protection and promotion of human rights, without suffering professional restrictions resulting from their lawful actions.

Cases

Mustafa Abdu (lawyer): On 31 July 1999, Mr Abdu was abducted from outside his offices by an unknown armed group. No details of the membership of the armed group have been attainable. Members of his family contacted the security forces, but they denied all knowledge of his whereabouts.

Ishraka Adam, Sumayya Ali Isshak, Mo'awad Awad, Ezz El-Din Othman, Satia Mohamed El Hag, Mamoon Faroug, Mohamed Ibrahim, Nazik Mahgoub, Afaaf Othman, Ameer Soliman, Ghazi Suleiman (lawyers): On 17 November these lawyers were attending a press conference being conducted by the Democratic Forces Front at the offices of lawyer Mr Suleiman. The security forces broke into the offices and dispersed the meeting with tear gas and the use of force. Several lawyers were beaten with clubs and kicked by members of the security forces. The office suffered a large degree of damage.

These eleven lawyers were arrested and detained until the evening when they were released until the completion of investigations. The following day they were charged with holding a meeting without prior consent. The Khartoum Criminal Court ordered their release pending trial.

Ali Ahmed Alsayed (lawyer): Mr Alsayed is required by the security forces to report daily to security headquarters. During time spent at this location he has been subjected to ill treatment. He has reportedly been left to stand out in the sun for long periods of time, or been required to perform humiliating exercises, such as rabbit jumping.

Nasr El Din, Satia Mohamed El Hag, Mohamed Elzeen El Mahi, Mohamed Abdulla El Nago, Wagdi Salih El Taieb Idris, Mamoon Faroug, (lawyers): On 9 April 1999, these lawyers were arrested and charged with attempting to gain entrance to the building containing the Bar

Association office's using force. On 10 April the court dropped the charges against these lawyers and they were released.

Satia Mohamed El Hag (lawyer, member of the National Alliance for the Restoration of Democracy): Mr El Hag, a lawyer in Khartoum, was arrested and detained on 3 October 1999. He was released but ordered to return to security headquarters the following day.

Khaled Abdallah Hamed (lawyer): Mr Hamed, a lawyer in Khartoum, was reportedly arrested and detained on 30 September 1999. He was detained at least until 4 October 1999 and no further details have been attainable.

Issam Mohammed Farah Shourbagi (lawyer): Mr Shourbagi, a lawyer from the city of Kareemeh, was reportedly arrested and detained on 26 September 1999. He was still in detention on 4 October 1999 and no further details have been attainable.

Ghazi Suleiman (lawyer, leader of the Coalition for the National Alliance for the Restoration of Democracy, head of the Sudanese Group for Human Rights): Mr Suleiman was arrested and detained on several occasions throughout the year. On April 9, Mr Suleiman was jailed for 15 days for disturbing the police and trying to hold an illegal assembly. He had attempted to conduct a seminar at the lawyer's union, despite being banned from entering the premises for three months. Members of the government controlled Bar Council summoned the police forces to prevent Mr Suleiman and other lawyers from entering the building. It was reported that clubs were used to disperse the meeting.

On 7 November police entered the legal offices of Mr Suleiman to disperse a conference being conducted by the Democratic Forces Front and other opposition parties with members of the foreign and local press.

On 17 November 1999 Mr Suleiman and 9 other lawyers were arrested and charged with holding a meeting without prior permission. Mr Suleiman was beaten during the police action and required medical treatment afterwards.