

# SUDAN

**The judiciary remained largely under the control of the executive. A significant number of lawyers were subjected to various forms of harassment, including arbitrary arrest and detention. The state of emergency declared in December 1999 remained in force. Gross human rights violations continued to occur on a large scale, both in areas marked by armed conflict and those relatively at peace. Although the Government has accepted a Libyan-Egyptian peace initiative aimed at ending the armed conflict, it has not been implemented.**

## **Background**

Sudan is Africa's largest country in terms of land mass. It covers one million square miles with a population of approximately 27 million, 20 per cent of whom live in urban centres and 80 per cent, including nomads, inhabiting rural areas. Women and children make up more than 60 per cent of the population. Since it gained independence in 1956, Sudan has been ruled by various regimes, fluctuating between military dictatorships, totalitarian systems and civilian parliamentary governments. Three parliamentary regimes have governed the country from 1956-1958, 1965-1969 and 1986-1989. Three military Governments have ruled from 1958-1964, 1969-1985 and from 1989 to the present.

The December 1998 presidential and parliamentary elections resulted in the election of President Umar Hasan Ahmad al-Bashir for a further five-year term, and the assumption by the National Congress (NC) of 340 out of 360 seats in the Parliament. All major opposition political parties boycotted the elections, and there were allegations of electoral irregularities, official misconduct and interference in the election process. National Congress members and supporters have continued to hold key positions in the government, army, security forces, judiciary, academic institutions and media. An internal power-struggle within the NC toward the end of 1999, resulted in President al-Bashir declaring a state of emergency and dissolving Parliament. The Parliamentary speaker, Hassan al-Turabi, an Islamist hardliner who helped then-General al-Bashir to assume power in 1989, created a new political party in May 2000, the Popular National Congress (PNC). In February 2001, Hassan al-Turabi was arrested a day after the PNC signed a memorandum of understanding with the southern rebel Sudan People's Liberation Army (SPLA), who have been waging war with consecutive governments since the 1980s. Mr. al-Turabi was placed under house arrest in May 2001.

The 1998 Constitution provides for 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. However, the 1998 Constitution also reflects an Islamic fundamentalist ideology. The 1998 Constitution grants wide-reaching powers to the President. The state of emergency declared in December 1999 remained in force.

## **Human rights background**

During the period under review, gross and widespread violations of human rights continued in both the war and non-war zones. The 1998 Constitution provides for protection of some human rights,

including the right to life, freedom from slavery and torture, freedom of religion, and the right to not be arrested, detained or confined except by law. However, the Constitution is an inadequate protector of human rights. First, the Constitution does not reflect the obligation of the Government to comply with international human rights instruments that have been ratified by Sudan. Second, the Constitution fails to protect a number of fundamental rights, such as freedom of assembly and the prohibition of torture. Third, several rights have either been vaguely formulated or inadequately defined, such as article 30 (immunity from detention) and article 32 (presumption of innocence). Fourth, many of the provisions of the Constitution in this chapter are weakened by phrases such as “subject to law”, “according to law” or “as regulated by law”. Such phrases may potentially limit the scope of the right guaranteed. Moreover, these phrases make the constitutional provisions on rights and freedoms subject to subordinate legislation, with the risk of abrogating these rights and freedoms. Fifth, the Constitution has taken a minimalist approach with regard to the principle of equality and non-discrimination. Article 21 forbids discrimination “only by reason of race, sex or religious creeds”. It fails to extend the non-discrimination clause to all categories enshrined in international standards, which include race, language, religion, political or other opinion, national or social origin, property, birth or other status. Sixth, in relation to political pluralism, the 1998 Constitution employs the term *tawali*, supposedly an old Islamic concept implying solidarity and unity of purpose. The term is extremely ambiguous and has caused tremendous confusion. Article 26 of the Constitution does not define the term, and whether it actually connotes political participation and pluralism remains doubtful.

Several laws restrictive of freedom continue to apply. These laws include:

- The National Security Act of 1999, which repealed the 1994 Security Act, allows derogations from ordinary procedures of arrest and custodial detention. In particular, the 1999 Act prescribes that: (a) a security agent may carry out an investigation, including acts such as search and arrest, with the sole authorisation of an order issued by the Director General of the Security Services; and (b) within the first three days of the detention, the security agent must provide reasons for arrest. This detention may be prolonged for a further 30 days by the Director General, who is under an obligation to inform the competent prosecutor. The prosecutor, however, is under no obligation to review the case until it becomes eligible for another 30-day extension period. Custodial detention may then be extended for an additional 30 days with the approval of the competent prosecutor. The former Special Rapporteur on Sudan has noted that while the Prosecutor’s Office exercises full state authority under the Ministry of Justice, there appears to be a lack of counterbalancing institutional guarantees in favour of the suspect, such as prompt and adequate access to a defence lawyer and the right to independent judicial review of the detention.
- The Workers Trade Unions Act, 1992, which places professional associations and labour unions under the authority of the Registrar of Trade Unions and the Minister of Labour, thereby divesting such organisations of independence.
- The Press and Publications Act, 1999, which imposes a number of restrictions on publications and grants the Press and Publications Council wide powers to suspend and cancel licences of newspapers.
- Public Order Laws adopted by the National Capital and State legislatures restricting freedoms of public gatherings, celebrations, social events and discriminating between women and men in matters relating to public transport, travel, work and dress.

- Laws establishing popular defence forces (mujahdeen) and popular police forces (militias) and granting wide powers that restrict personal liberties.
- The Basis of Judicial Judgements Act, 1983, which rejects any source other than the principles of *Shari'a* in the interpretation of laws, an obvious discrimination between citizens on the basis of religion.
- The Penal Code and Code of Criminal Procedure, both of 1991, which include the Islamic punishments of Hudud and which discriminate between citizens on the basis of religion.

Despite the constitutional safeguards, human rights continue to be systematically and massively violated. Most violations have resulted from the continuing armed conflict and the Islamist government's suppression of political opposition and religious dissent. Torture was practised on a widespread basis and at least 12 persons were sentenced to have limbs amputated during 2000, with at least one amputation being carried out.

Violations of the rights of women were widespread. Women faced severe restrictions on their freedom of movement. Public Order Police frequently harassed women and monitored women's dress according to the government's stereotype of Islamic propriety, Public Order Courts, using summary procedures, often sentenced women to flogging, with no effective right of appeal. Thousands of persons were believed to be held in forced labour or slavery. Sexual slavery of women, torture, including rapes, and forced marriages were widely reported, especially in the areas affected by the armed conflict. Although it denied the prevalence of such practices, the Government set up a Committee for the Eradication of Abduction of Women and Children (CEAWC) to investigate cases of abduction of women and children. The former UN Special Rapporteur on Sudan expressed hopes that CEAWC would address concerns raised in a number of human rights circles regarding the existence of the slavery-like practices that arise in connection with war strategies.

#### *Internal Armed Conflict Related Violations*

The civil war, which resumed in 1983, continued to have a considerable impact on the deteriorating human rights situation in Sudan. An estimated two million persons have been killed, more than four million have become internally displaced, and some half million were believed to have sought asylum abroad. All parties to the conflict have committed gross human rights abuses against civilians living in the contested areas, including indiscriminate bombing, abduction, enslavement, forcible recruitment, torture and killings. The former Special Rapporteur on Sudan has observed that oil exploitation in western Upper Nile has exacerbated the conflict, thereby causing a deterioration in the overall situation of human rights and respect for humanitarian law and narrowing the chances of peace. The drive for control of oil production and territory by both the pro-government forces and armed opposition groups has resulted in widespread displacement, destruction and destitution of the local civilian population. Negotiations to end the conflict appeared fruitless, whatever the form or the venue. The parties remained stalled on the issues of the relation of religion to the state and self-determination. At the time of writing the Sudanese government had accepted a Libyan-Egyptian peace initiative, which aims at ending the civil war that has racked Sudan for 18 years. The initiative, which calls for the establishment of a transitional government, a plural democracy and a unified country has yet to be implemented and has been greeted with a wide degree of scepticism by most observers.

## THE JUDICIARY

The judiciary is regulated by Part V of the 1998 Constitution and the Judiciary Act of 1986. Article 99 of the 1998 Constitution provides that judicial competence in Sudan shall be vested in an independent authority, the Judiciary, which shall assume judicial power in adjudication of disputes and judgements on the same in accordance with the Constitution and law. Article 100, however, makes the judiciary responsible to the President of the Republic for the performance of its work.

The independence of the judiciary has been further undermined by the establishment of a new judicial body, purported to be an Islamic institution, the Public Grievances and Corrections Board (*Diwan al-Hisba wa al-Mazalim*). This newly created organ is entrusted with powers to adjudicate and decide upon matters normally within the exclusive domain of the judiciary. Article 130 of the Constitution provides that the Public Grievances and Corrections Board is an independent organ, with the president and members to be appointed by the President with the approval of the National Assembly. The Board is responsible to the President and the Assembly. The second paragraph of the same article provides that without prejudice to the jurisdiction of the Judiciary, the Board shall work at the federal level to address grievances, assure efficiency and purity in the practice of the State and extend justice after the final decisions of the institutions of justice. This provision represents a serious encroachment on the principles of the independence of judiciary and separation of powers. Alleviating grievances and upholding justice are basic functions of the judicial authority. The new body is not only granted such powers, but is also provided the capacity to reserve final judicial decisions. The reference in the paragraph to “without prejudice to the jurisdiction of the Judiciary” remains largely inconsequential, considering the overall terms of the provision.

Yet another encroachment on the independence of the judiciary is the establishment in article 127 of the 1998 Constitution of the Employees Justice Chamber, which enjoys the competence to consider and determine the grievances of employees in public service. The decisions of this chamber are final and beyond judicial review and its mandate may be seen as conflicting with that of the above-described board of the Public Grievances and Corrections.

### *Court Structure*

According to article 103 of the 1998 Constitution, the judicial structure consists of a Supreme Court, the courts of appeal and the courts of first instance. The Supreme Court works according to a "circular" system, whereby there is a criminal circle, civil circle and circles for personal matters and administrative objections. The 1991 Code of Criminal Procedure permits the Chief Justice to set up special courts and determine their jurisdiction. The Public Order Courts have been established under this power. The procedures of these courts violate the basic components of the right to fair trial, as they hear cases summarily and their decisions are immediately executed, even though there is a right to appeal to higher courts.

Special military and security courts have also been established to hear cases involving civilians and military personnel. Although article 137 (1) of the 1998 Constitution repealed all the Constitutional Decrees, including Constitutional Decree No. 2 of 1989, which established Revolutionary Security Courts, the Constitutional Court upheld the legality of military courts to try cases involving civilians. However, the decision as to whether and when to institute cases is left to the discretion of the Minister of Justice. Moreover, the 1999 National Security Act provides for the creation of a special court, composed of security officers and with no participation of members of the ordinary judiciary, to exercise jurisdiction over cases of abuse of power by security agents.

### *The Constitutional Court*

The most significant innovation of the 1998 Constitution is the establishment of a Constitutional Court. The jurisdiction, procedure and appointment of the Court members are regulated by article 105 of the Constitution and the Constitutional Court Act of 1998. The Court's jurisdiction includes, *inter alia*, interpreting constitutional and legal provisions submitted by the President of the Republic, the National Assembly, half the number of Governors or half the States' Assemblies; claims from any aggrieved person to protect the freedoms, sanctities or rights guaranteed by the Constitution; claims of conflict of competence between federal and state organs; criminal procedures against the President or the State Governors; and review of the constitutionality of judicial procedures, orders and judgements.

In order for an aggrieved party to gain legal standing before the Constitutional Court, it must exhaust all domestic remedies. Criminal procedures against the President or a Governor may not be instituted without the permission of the National or State Assembly.

The Constitutional Court comprises a President, Deputy President and five other judges, who are appointed by the President of the Republic with the approval of the National Assembly. According to article 3 (3) of the Constitutional Court Act, judges of the Court hold office for renewable five-year terms. Judges of the Constitutional Court may be removed upon conviction of an offence, by a competent court, in a matter inconsistent with honour and honesty. Additionally, the President of the Republic has the power to remove Court judges on the grounds of loss of capacity and health. This competency, in practice, could undermine the independence of the Court.

### *Judges*

Although the 1998 Constitution provides for the establishment of an independent judicial authority, the power of appointing the Chief Justice and his deputies is vested in the President of the Republic. Moreover, the President of the Republic appoints all the other judges on a recommendation from the Supreme Council of the Judiciary (SCJ). The SCJ is composed of the Chief Justice, Deputy Chief Justice, the Attorney General, the President of the Bar Association, and the Dean of the Faculty of Law of Khartoum University. The constitutional powers of the SCJ include, *inter alia*, planning and general supervision of the judiciary, the preparation of the budget of the judiciary and provision of recommendations to the President of the Republic for the appointment, promotion and removal of judges. However, the role of SCJ remains advisory and under the control of the executive power represented in the President of the Republic.

## **LAWYERS**

The Sudanese Bar Association has historically played a role in the country's public life, in particular in the defence of fundamental rights and freedoms and upholding the rule of law. Unlike other professional associations and trade unions, the Bar Association had been governed by its own special law, the Advocacy Act of 1983, addressing formation and organisation. However, in 1993, the government amended the 1983 Advocacy Act, effectively reducing the status of the Bar Association from an independent self-governing entity to a trade union subject to control of the Minister of Labour and the Registrar of Trade Unions.

Throughout the years 2000 and 2001, lawyers were subjected to attacks and repression by government authorities. A number were arbitrarily arrested or detained, tortured, denied freedom of

expression and association and subjected to interference in the performance of their professional duties by the security and police forces.

## CASES

**Rifaat Makkawi {lawyer}**: Since 16 April 2000, the police have kept Mr. Makkawi and other lawyers working with PLACE (a legal aid organisation for internally displaced persons) under investigation. The Chairperson of PLACE and its various lawyers have frequently been detained at the police station under accusation of spying and sending information to foreign countries. It is believed that this harassment has resulted from the criminal case brought by Mr. Makkawi before the Attorney-General accusing a policeman of raping a displaced eleven year-old girl. Mr. Makkawi has also allegedly been pressured by the police to disclose information that he receives from his client.

**Abdullah Ahmed Abdullah {judge}**: On May 17, 2000, Mr. Abdullah Ahmed Abdullah, a First District Judge, was subjected to assault and inhumane treatment by police officers. The abuses came in response to Mr. Abdullah's intervention to stop police officers who were beating a Sudanese citizen in the Judge's presence.

**Ali al-Said {lawyer}**: Mr. al-Said was arrested on December 6, 2000 together with seven other leading members of the National Democratic Alliance (NDA), during a meeting with a US diplomat, on suspicion of conspiring to overthrow the Sudanese government. The charges against him included spying and "conspiracy against the State". The trial of Mr. Al-Said and the other members of the NDA began at the end of March 2001, but was repeatedly postponed as a result of the failure of the Government to produce key witnesses in court. On 1 October 2001, President al-Bashir decided to suspend the trial, apparently as part of measures to improve relations between Sudan and the United States after the September 11 attacks in the United States.

**Ghazi Suleiman and Ali Mahmoud Hassanain {lawyers}**: Both lawyers were arrested on December 9, 2000, after signing a petition, along with 12 other lawyers, to the Ministry of Justice in protest at the arrests of the leading members of the NDA. The lawyers had also agreed to defend the NDA members. They were held in solitary confinement in a secret place of detention and released, without charge, on 22 February 2001.

**Saati Mohammed al-Haj and Hadi Ahmed Osman {lawyers}**: Both lawyers are members of the National Alliance for the Restoration of Democracy (NARD), a group of lawyers that has undertaken to defend the seven leading members of the NDA. Mr. Al-Haj was arrested at his office on December 17, 2000, while Mr. Osman was arrested three days earlier. No official reason was given for their detention.

**Abu Bakr Abdel Razig {lawyer}**: Mr. Abdel Razig was arrested on 24 December 2000. He was among the 12 lawyers who had signed a petition submitted to the Justice Ministry protesting the detention of the seven leading members of the NDA (see above case).

**Osman Yousif {lawyer}**: Mr. Yousif was arrested on 13 February 2001 at his office in Khartoum. The security forces searched his office and confiscated his computer as well as papers concerning Mr. Yousif and his clients. His arrest occurred after the Democratic Front for Lawyers had issued a memorandum regarding the Bar Association elections. The memorandum criticised the current laws restricting freedom of expression and association. Mr. Osman is a well known human rights defender who provides free counselling for prisoners of conscience and victims of human rights violations. He was one of the lawyers campaigning for the release of Mr. Ghazi Suleiman. Mr.

Osman Yousif and his brother, Siddig Yousif Ibrahim, who also was arrested on 13 February, were released in March.

**Mustafa Abdel Gadir {lawyer}**: Mr. Abdel Gadir was arrested during the afternoon of 5 June 2001 and released the same evening without charge. He was ordered to report to the Political Section of the security offices in Khartoum on Wednesday 6 June for interrogation and was held for four hours. He was ordered to return for subsequent interrogation. Mr Abdel Gadir is the principal defence lawyer for NDA members who are awaiting trial. He is a prominent human rights defender and has defended many prisoners of conscience and victims of human rights violations free of charge. Mr. Abdel Gadir has been subject to continual harassment by the government authorities and his office has been subject to continual surveillance. He had previously been arrested three times and has spent over two years in prisons.