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Darfur: Incommunicado detention, torture and special courts

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Memorandum to the government of Sudan and the Sudanese Commission of Inquiry

8 June 2004

Summary

AI Index: 54/058/2004

This memorandum presented to the government of Sudan and the Sudanese Commission of Inquiry underlines the failure of the legal system in Darfur.

In 2001, faced with a rising security problem in the Darfur states, which included inter-ethnic attacks mostly by nomad militias against sedentary groups and a rise in banditry, the government of Sudan chose a path of arbitrary repression. The state authorities limited individual rights by setting up special courts which held summary trials without the full right of defence.

At the same time, using Articles 31 and 33 of the National Security Forces Act, which allow the security forces to detain people incommunicado without charge and give them immunity from prosecution, even the summary justice system could be sidelined.

The failure to address ethnic tensions by using the police to protect the population and fair trials in the courts to judge criminals eroded the rule of law and created an atmosphere of injustice. Traditional mechanisms of reconciliation between ethnic groups which might have defused the situation were also bypassed.

Since April 2003, there have been no further arrests or detentions of those from nomad groups accused of attacking villages and killing villagers from sedentary groups. The government of Sudan has allowed the government-supported *Janjawid* nomad militias to kill, rape and loot with impunity. At the same time there have been scores of arrests of members of sedentary groups, not only of those suspected of supporting the Sudan Liberation Army (SLA) or Justice and Equality Movement (JEM) but also of many apparently targeted because they were community leaders, journalists, lawyers and human rights activists who were thought to be critical of the government.



The vast majority of detainees in Darfur and the detainees arrested outside Darfur in connection with the conflict are denied minimal rights. The security services detain and hold in detention without accountability. Detainees are rarely charged with any criminal offence and frequently not informed of any charges against them. They are routinely not given access to lawyer and family; not brought before a judge; not allowed to challenge the legality of their detention and held incommunicado.

Holding detainees without access to the outside world provides conditions in which torture may and does take place, and in Darfur there are widespread reports of torture. Detainees arrested in connection with the conflict are frequently held in military camps in closed areas or in security and intelligence force detention centres where torture is often routine and conditions of detention are extremely bad.

The memorandum also raises cases of reported "disappearances", mostly of combatants of the SLA said to have "disappeared" after capture; the government denies holding them and their fate is unknown.

Recommendations to the government include the release of all prisoners of conscience and the release of other political prisoners if they are not brought promptly to fair trial on recognizably criminal charges before normal criminal courts. Amnesty International is also calling for prompt access of detainees to the outside world; registration of all detainees and their detention only in recognized places of detention; investigation of every allegation of torture and perpetrators to be brought to justice. The memorandum calls on the government to widen the mandate of the Sudanese Commission of Inquiry set up in May so that the Commission can look at human rights violations relating to detention, torture and the use of special courts.

This report summarizes an 18-page document (8,727 words), Sudan: Darfur: Incommunicado detention, torture and special courts (AI Index: AFR 54/058/2004) issued by Amnesty International in June 2004. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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Sudan

Darfur: Incommunicado detention, torture and special courts

Memorandum to the government of Sudan and the Sudanese Commission of Inquiry

Introduction

International human rights standards¹ lay down guarantees for all people arrested, detained or imprisoned. They include the right to be informed of the reasons for arrest; the right of access to lawyers, families, and medical assistance; the right to be brought promptly before a judge or other judicial official; the right to challenge the lawfulness of detention and the right to be treated humanely.

The vast majority of detainees in Darfur and the detainees arrested outside Darfur in connection with the conflict lack these minimum rights. The security services detain and hold in detention without accountability. Detainees are rarely charged with any criminal offence and frequently not informed of any charges against them. They are routinely not given access to lawyer and family; not brought before a judge, not allowed to challenge the legality of their detention and held incommunicado. Holding detainees without access to the outside world provides conditions in which torture may and does take place, and in Darfur there are frequent reports of torture particularly at the hands of the national security and intelligence agency, and of military intelligence.

Amnesty International has prepared this memorandum on incommunicado detention, torture, and unfair trials in order to present it to the government of Sudan and the Commission of Inquiry headed by former Chief Justice Daf'allah al-Hajj Yusuf set up to look into "alleged human rights violations by armed groups in Darfur", in the hope that the government take action to redress the human rights violations described below and the expectation that the Commission of Inquiry will extend its inquiries to cover human rights violations by government authorities.

The report of the High Commissioner for Human Rights, presented to the UN Security Council on 7 May 2004, stated that an "*international Commission of inquiry is*

¹ These include the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, both ratified by Sudan in 1986, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by consensus by the UN General Assembly in 1988.

required given the gravity of the allegations of human rights violations in Darfur, and the failure of the national legal system to address the problem."² This failure of the legal system in Darfur to ensure justice during the past years has been an important factor in the escalation of human rights violations. In particular, since 2003, the justice system has failed in its duty to bring the perpetrators of attacks against civilians to justice. Amnesty recognizes the right of a government faced with threats from an armed group to take action against the threat but actions must be in accordance with international humanitarian and human rights law. Those who have been detained include human rights defenders, lawyers, journalists and others detained simply for exercising their right to freedom of expression. Incommunicado detention and torture are routinely used and trials within Darfur are summary and unfair.

The memorandum discusses only Amnesty International's concerns relating to the administration of justice, detention, torture and "disappearances" of those arrested in relation to the conflict in Darfur. Amnesty International has other serious concerns relating to Darfur which are not addressed in this memorandum: they include, but are not limited to, indiscriminate and deliberate bombing of civilians by government planes and helicopters; human rights violations by government-supported militias acting in coordination with the Sudanese army including unlawful killing of civilians, burning and looting villages; extrajudicial executions; rape; abductions; and forced displacement.³ The organization has also serious concerns relating to human rights violations elsewhere in Sudan: they include, but are not limited to, incommunicado detention and torture or other ill-treatment; cruel, inhuman or degrading punishments including the death penalty; killing of civilians by government militias; and limitations on the right to freedom of expression.

Amnesty International is aware that the armed political groups, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) have also held people in detention. There have been reports of torture by the JEM, in particular of a group of detainees who were said to have been bound with chains and beaten in September 2003; two of them allegedly had a mixture of chilli, acid and petrol forced into their mouths. However, these concerns, which have been made public and raised with the concerned armed groups, are not the focus of this memorandum to the government of Sudan and the Commission of Inquiry.⁴

In presenting this memorandum we are calling on the government of Sudan to ensure that its justice system conforms to the international human rights treaties it has ratified by releasing immediately and unconditionally all those detained simply for the non-violent expression of their beliefs. The Sudanese authorities should ensure that all other detainees are brought promptly to trial on recognizable criminal charges before normal criminal courts according to international standards for fair trial, benefiting from the presumption of innocence and the full rights of the defence. We ask the government to make a strong public statement that torture is never acceptable and to order a full investigation into all reported cases of torture. Those who have carried out torture should be brought to justice and their victims compensated. Cases of "disappearances" should be investigated, perpetrators of

² *Situation of human rights in the Darfur region of the Sudan*, Report E/CN.4/2005/3, para 103.

³ *Sudan: Darfur: "Too many people killed for no reason"* (AI Index AFR 54/08/2004), February 2004

⁴ *Ib.* 2.2.2.

“disappearance” should be punished, and those who have “disappeared” who remain in prison should be freed if they are not promptly tried in fair trials on recognized criminal charges. Incommunicado detention under the security and intelligence agency must be abolished and all detainees should be held in good conditions in normal detention centres, under the responsibility of the justice department. All detention centres in Darfur should be subject to inspection by the justice department and the International Committee of the Red Cross.

In January 2003, in discussions with the Human Rights Advisory Council of the government of Sudan, Amnesty International recommended the setting up of a Commission of Inquiry to examine the factors behind the deteriorating situation in Darfur, investigate abuses and suggest mechanisms to bring to justice the perpetrators of human rights violations. On 8 May 2004, after months of human rights violations which have led to the devastation of much of Darfur and the forced displacement of over a million of the rural population, President General Omar Hassan al-Bashir, by Presidential Decree No 97, set up a Commission of Inquiry headed to investigate “alleged human rights violations by armed groups in the Darfur states”. Amnesty International calls on the President to widen the mandate of the Commission of Inquiry so that it is clear that its remit includes the investigation of human rights violations by government authorities. The Commission of Inquiry must have the power to protect witnesses and should report publicly on its findings, conclusions and recommendations. Amnesty International calls on the Sudanese authorities to give the Commission of Inquiry full access to all detention centres and to all detainees arrested in connection with the conflict.

Background

The humanitarian and human rights crisis in Darfur has been on the world’s agenda only since 18 March 2004 when the UN Coordinator for Humanitarian Affairs told the BBC that “this is the world’s greatest humanitarian crisis, and I don’t know why the world isn’t doing more about it”. On 7 April, on the 10th anniversary of the Rwanda genocide, UN Secretary General Kofi Annan announced that he was sending a high level team to Darfur “to gain a fuller understanding of the extent and nature of this crisis, and to seek improved access to those in need of assistance and protection.” A fact-finding mission of the Office of the UN High Commissioner for Human Rights visited Chad from 5 until 15 April and Sudan from 20 April until 3 May. Their report was made public on 7 May 2004 and spoke of a “reign of terror” in Darfur caused by “largely ethnically based” attacks on civilians, including “killing, rape, pillage”, destruction of property and forced displacement by the government-supported militias known often supported by government Antonov aircraft and helicopters dropping bombs. The report said that many of these attacks “may constitute war crimes and/or crimes against humanity.”⁵

A continuing conflict between nomad and sedentary groups in Darfur rapidly worsened after February 2003 when an armed group calling itself the “Sudan Liberation

⁵ E/CN.4/2005/3, para 92.

Army" (SLA) attacked the army and police forces in protest against the marginalisation of Darfur and complaining against the failure of the government to protect the mainly agricultural groups of Darfur.

However, the warning signs had been clear for many years. In January 2003 the first delegation from Amnesty International to be allowed into Sudan for many years visited al-Fasher in North Darfur state and held talks with the then Governor of the state and many government authorities, including police chiefs, judges, prosecutors, as well as with lawyers and villagers who had been victims of attacks. Rural groups spoke of "genocide" and a failure on the part of the government to protect them when armed nomad groups attacked villages, pillaged property and killed villagers. The government authorities and police stated that police were also killed in what they considered a regional problem of competition for scarce resources. Many of the killings were by bandits or were revenge killings. Amnesty International, in public statements in February, after the first SLA attacks, and in April 2003, called for reconciliation mechanisms to be used and the formation of a commission of inquiry should be set up to examine the complex causes of the deterioration of the human rights situation in Darfur and make recommendations to solve the crisis.

The call was ignored by the government which had, by the end of March 2003, decided to respond by force. After an attack by the SLA on al-Fasher airport on 25 April 2003, reportedly killing some 70 Sudanese military and destroying planes, attacks and arrests sharply increased. The government apparently gave free rein to the *Janjawid*⁶ to attack villages and kill civilians⁷ and arrested scores of community leaders from Masalit, Fur, Zaghawa and other sedentary groups.

In May 2003 Amnesty International sent the Government of Sudan a memorandum which raised concerns about killing of civilians in attacks and indiscriminate bombings in Darfur, forced displacement, and arbitrary incommunicado detention. In July 2003, the memorandum was made public as a report. The report concluded, as regards Darfur, that "the Government of Sudan has tried to resolve conflicts whose deep causes lie in problems of discrimination and justice by condoning or ordering actions which have violated human rights. Only when the human rights of all people in Sudan are taken into account can a durable peace develop".⁸

By September 2003, armed government-aligned militias had attacked thousands of villages in Darfur and hundreds of thousands of people had been internally displaced or sought refuge in Chad. A ceasefire brokered by Chad between the government and the SLA in Abéché in September 2003 broke down within two months. After a visit to Chad in November, Amnesty International made public a report entitled: *Sudan: Darfur: "Too many people killed*

⁶ The government-supported militias, who come mostly from Arab nomad groups, are commonly known as the *Janjawid* ("guns on horses") or *Fursan* (horsemen).

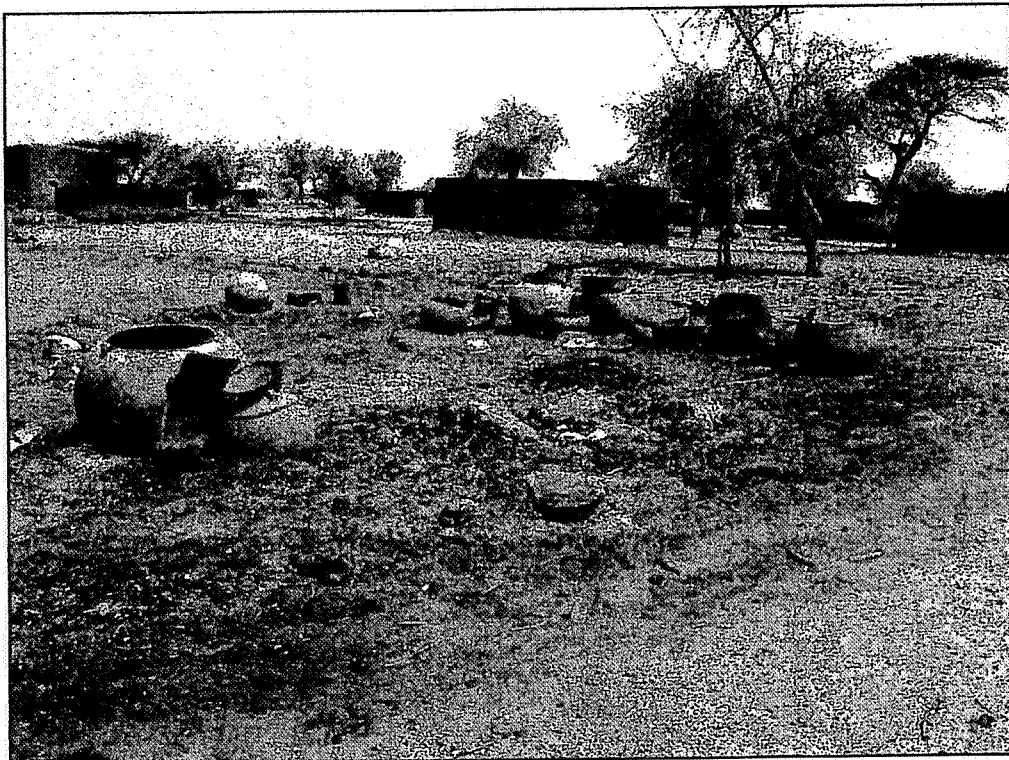
⁷ Among the attacks which followed, on the day after the airport attack the *Janjawid* attacked Murli market and mosque in western Darfur, killing some 60 people.

⁸ *Sudan: Empty promises? Human rights violations in government-controlled areas* (AI Index: AFR 54/036/2003), July 2003.

for no reason". The report concluded that "The grave human rights abuses described in this report cannot be ignored any longer, nor justified or excused by a context of armed conflict" and called on the Government of Sudan to "acknowledge openly the extent of the human rights and humanitarian crisis in Darfur and take immediate steps to end it.

The scale of attacks is clear from the fact that today there is hardly a single village left inhabited and undamaged in much of Darfur. A Human Rights Watch researcher surveyed a 60 sq. km. area in April 2004 and found the area, once well-populated and farmed, to be completely deserted.⁹ The UN Inter-Agency Fact-Finding and Rapid Assessment Mission visiting Kailek town in South Darfur state in April 2004 noted that:

"The 23 Fur villages in the Shattaya Administrative Unit have been completely depopulated, looted and burnt to the ground (the team observed several such sites driving through the area for two days). Meanwhile, dotted alongside these charred locations are unharmed, populated and functioning 'Arab' settlements. In some locations, the distance between a destroyed Fur village and an 'Arab' village is less than 500 meters."



Darfur Village attacked and burned by the Janjawid ©WFP/Marcus Prior

⁹ See *Darfur destroyed Ethnic cleansing by government and militia forces in western Sudan*, Human Rights Watch May 2004 Vol. 16, No. 6(A).

Although Sudan aircraft and helicopters have bombed villages, the greatest devastation has been caused by attacks by the government-supported militias, the *Janjawid*. At first they appeared to be encouraged by the government. By the beginning of 2004 there was little doubt that they were supported, funded and armed by the government. The *Janjawid* attacked villages, burnt homes, raped and abducted and looted property and herds, wearing government uniforms, operating out of military camps, sometimes former camps of the Popular Defence Forces, and drawing government pay.

An emergency and unfair justice system in Darfur

In 2001, faced with a rising security problem, which included inter-ethnic attacks and a rise in banditry, the government of Sudan chose a path of arbitrary repression, diminishing safeguards for the individual before the courts. The failure to address tensions by using the police to protect the population and fair trials in the courts to judge criminals eroded the rule of law and created an atmosphere of injustice. Traditional mechanisms of reconciliation between ethnic groups which might have defused the situation were also bypassed in this repressive policy.

In 2001 Special Courts were set up in North, South and West Darfur states by separate decrees, following a declaration of a State of Emergency in the region. Whilst Special Courts still operate in North and West Darfur, in April 2003 Special Courts in South Darfur were replaced by Specialized Criminal Courts. The decrees are broadly similar.

The guarantees for fair trial, laid down in Article 14 of the ICCPR, include the right to a fair and public hearing by a competent, independent and impartial tribunal; the presumption of innocence; the right to be informed promptly and in detail of the charges; to have adequate time and facilities for the preparation of the defence; and to communicate with counsel of one's own choosing; not to be compelled to testify against oneself; to examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of defence witnesses; and the right to review of the sentence by a higher tribunal. Most of these rights are not allowed to those tried in Darfur's special courts.

While the ICCPR allows the derogation of some rights in a time of public emergency "which threatens the life of the nation", the Human Rights Committee, the panel of experts to examine implementation of the ICCPR, has stated the view that some of the core fair trial rights of Article 14 should be non-derogable. The African Charter contains no emergency clause and therefore allows no derogation from the rights it enshrines.

The Special Courts are headed by one civilian and two military judges; the military judges do not need to have any legal qualifications. The Decree on the Establishment of a Special Court in Al-Fasher (Decree No. 21 for 2001 of the State Governor) states in Article 5:

"c) The evidence of finger-prints is enough [for a conviction] and there is no need for further supporting evidence."

d) The Court accepts the confession of the accused and considers it as evidence if it is convinced by this confession.

e) If the accused withdraws his confession, the Court shall take the confession into account as evidence against the accused. The accused has no right to withdraw his confession."

At no point does the decree stipulate that confessions extracted under torture should not be used.

The jurisdiction of the Darfur Special Courts and the Specialized Criminal Courts cover a wide range of offences including armed robbery and *haraba* (banditry); unlicensed possession of firearms; crimes under articles 50-57 of the Penal Code (offences against the State); public order offences; and "anything else considered a crime by the Wali (Governor) of the State or the Head of the Judiciary" (Article 4). Under Article 5(g) of Decree No. 21, "lawyers have no right to appear before the courts to represent the accused. The friend of a defendant can appear instead to provide help before the court". Sentences over five years' imprisonment can be appealed within seven days to the Darfur Court of Appeal, whose verdict is final except in cases involving amputation or the death penalty, which may be appealed to the Supreme Court in Khartoum and the Constitutional Court, which has sometimes overturned cases because of lack of evidence.

Trials by Special Courts in North and West Darfur are deeply flawed. The presence of members of the security as judges calls into question the independence of the judiciary. Trials in these courts are summary and death penalties have been handed down after trials which have only lasted an hour. The detainees have only very limited and insufficient rights of defence, lawyers are only allowed to be present as "friends" and to meet the defendant for short periods of time, sometimes only just before the trial and without sufficient time to examine the case file. Torture is often reported and confessions made under torture are accepted as evidence.¹⁰ Frequently the presumption is one of guilt rather than of innocence, which is one of the preconditions of a fair trial.

In the Special Courts lawyers have used the possibility of appearing as the "defendant's friend" to plead on behalf of the accused, but this position does not give them the same rights as an appearance as defence counsel in the ordinary courts. They do not have the same right of access to the case file or to make a final plea (although the Special Court sometimes grants them these). The lawyer as "friend" has no right to cross-examine prosecution witnesses or to call defence witnesses.

In April 2003, Specialized Criminal Courts replaced the Special Courts in South Darfur. The Specialized Criminal Courts are headed by a civilian judge only. Though, in one improvement, they accept legal representation for the accused during the trial session, appeal

¹⁰ Sudan signed in 1986 but has not ratified the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, the principle that a confession extracted under torture may not be invoked as evidence against a defendant is also inscribed in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, passed by the UN General Assembly in 1975.

is not allowed except appeal against sentences such as the death penalty, amputation or life imprisonment, which can be made within seven days to the Chief Justice of South Darfur State. His decision is final, which means that such sentences are no longer to be reviewed by the Supreme Court or the Constitutional Court of Sudan, therefore restricting further the chances of appeal for persons convicted to death or amputation under the Specialized Criminal Courts. The procedures of the Specialized Criminal Courts are still summary and the regulations on the use of confessions as evidence are similar to those of the Special Courts. Lawyers claim that, despite now being able to represent the accused before the Specialized Criminal Courts, they are not allowed to visit them in detention prior to the trial session. Normally they have only limited right to question prosecution witnesses and to call defence witnesses. Special Courts in North and West Darfur States still operate according to the 2001 decrees.

Arbitrary justice: Darfur before February 2003

Between 2001 and 2003 the Government of Sudan often reacted to the growing complaints from the sedentary population of attacks and the rise of banditry in Darfur by indiscriminate arrests. "Arab" and "African" ethnic groups were all the victims of this arbitrary justice. In April 2002 136 members of the Rizeiqat (Arab) ethnic group in South Darfur were arrested on charges of armed banditry (*haraba*) for an attack against members of the Ma'aliya, another Arab ethnic group. After an unfair trial before a Special Court where lawyers were only allowed to defend as "friends" and the judge refused to consider allegations that confessions had been extracted by torture, 88 defendants, including two children, were sentenced to death. Two years later, the case remains under appeal and the defendants remain on death row.

Until the beginning of 2003, action was taken against those from nomad groups who allegedly attacked villages. But sometimes it was heavy-handed, hitting leaders of both communities who were detained in incommunicado detention without charge or trial.

- For instance, after an attack (said by the government to be a revenge attack for the killing of an Arab) by an armed Arab group on Shoba village near Kabkabiya on 28 April 2002 when 17 people were killed and 16 injured, 10 Shoba community leaders were arrested and detained, mostly incommunicado, for four months in Shala Prison in al-Fasher, in Port Sudan Prison and then under house arrest in Wad Medani. At the same time a number of leaders of Arab groups were also arrested and held incommunicado for some months; they include Musa Hilal, the *Nazer* (chief) of the Mahamid, said to be a leader of the *Janjawid*, and Shaikh Abdel Baqi Abdel Rahman Abdel Baqi of the Zeilat.

At other times those who were rounded up were tried in a trial so unfair that it left permanent doubt as to their guilt.

- For instance, 38 members of various ethnic groups were arrested in January 2003 and accused of killing 35 people from Singita village on 31 January 2002. They

were held in incommunicado detention for two months and tried before a Specialised Criminal Court in Nyala in a grossly unfair trial; they were defended by just three lawyers who were allowed to ask only four questions each. Evidence from prosecution witnesses was inconsistent, but nevertheless 26 defendants, including one 15-year-old boy, were sentenced to death on 26 April 2003. Lawyers claimed that the real perpetrators came from another ethnic group and those detained were arbitrarily arrested. A Special Appeal Court commuted the sentence on the boy to 25 lashes; the appeal on the others condemned to death is still pending before the Supreme Court.

Darfur: Detentions since April 2003

Since the decision was made by April 2003 to use repression rather than reconciliation to repress the revolt of the SLA, and later of the Justice and Equality Movement (JEM), there have been no further arrests or detentions of those accused of attacking villages and killing villagers of sedentary groups (though trials of those already in detention continued). The nomad militias, the *Janjawid*, appear to have been given free rein to attack villages, burn houses and kill civilians.

Meanwhile, there were dozens of arrests mostly in towns throughout Darfur. Most of those arrested appear to have been suspected of links with the SLA or the JEM; many of the arrests appear to have been arbitrary. Many appear to have been arrested simply because they were members of the same ethnic group or relatives of members of the SLA and the JEM; others appeared to be arrested because they enjoyed a high status within their community. The arrests of 2003 were characterised by the fact that those detained were only extremely rarely brought before any judicial authority. They were held incommunicado for up to five months in poor conditions, often amounting to cruel, inhuman or degrading treatment, and there were frequent reports of torture.

The detention of suspects for up to nine months without charge is allowed under Article 31 of the National Security Forces Act. Article 32 gives the detainee the right to inform and communicate with his family only “*if it does not prejudice the progress of the investigation*”; the same article states that a detainee should not be hurt “*physically or morally*” and states that an attorney from the prosecutor’s office (*niyaba*) should inspect places of detention. However, these limited safeguards have been consistently ignored. Article 33 gives the national security agency immunity from prosecution.

The September 2003 ceasefire envisaged a prisoner exchange, and a large number of detainees were released by the army and by the armed groups. However arrests recommenced on a smaller scale soon after the ceasefire was signed on 6 September.

The ceasefire was renewed but by November 2003 it had collapsed. In November and December scores of people were detained. Many of them had been detained on previous occasions. Those detained were consistently held incommunicado, normally not brought before a judge and frequently tortured and ill-treated.

After strong pressure from the international community a further ceasefire was signed on 8 April 2004. Article 5 of the ceasefire agreement stated that: *"The parties have decided to free all the prisoners of war and all other persons detained because of the armed conflict in Darfur;"* A number of detainees were released but many of those held in connection with the conflict remained in detention. In addition, some detainees arrested in connection with the conflict, including lawyers, were transferred to elsewhere in Sudan; some were held in the notorious, mosquito-ridden Debek Prison north of Khartoum (they were transferred to other prisons at the beginning of May 2004 after strong protests). Other detainees arrested in connection with the conflict, including members of the Popular Congress¹¹, were held in Kober Prison, Wad Medani Prison and other detention centres in Sudan. Many of those detained were prisoners of conscience, detained solely for the non-violent expression of their beliefs. Among them was Dr Mudawi Ibrahim Ahmed, the director of a human rights organization with links with Darfur, who remained under house arrest. After carrying out a hunger strike to demand a trial, he is the only one of more than 100 detainees to be undergoing trial on vague charges which carry the possibility of the death penalty.

The National Security Forces Act encourages the security forces to ignore the courts, and this is what has happened in Darfur over the past year with regard to political arrests. One of the few political cases known to have come to court since April 2003 is that of **al-Tayeb Ali Ahmed**, who was tried with two others before the al-Fasher Special Court and sentenced to death on 27 January 2004 for offenses against the state, including "waging war against the state" (Penal Code Article 51). He and his co-defendants were arrested in November 2003 and charged in connection with the SLA attack on al-Fasher airport in April 2003 (although those arrested earlier in connection with the attack had already been released under the terms of the September 2003 ceasefire). During the period of his detention, the security forces allegedly tortured him by beating him with sticks, pipes, hoses and hands, and he was denied any medical treatment. During the trial the defendants had no legal representation and were reportedly convicted on the basis of their confessions taken under torture. Lawyers were only alerted to the case by chance and submitted an appeal, which is still pending, on the last day of the seven-day legal appeal period.

Detention of Prisoners of Conscience

The Sudanese government has not only banned free discussion of Darfur in the newspapers, it has severely limited the diffusion of information and banned the diffusion of comments which criticise government policy on Darfur. Those targeted have been journalists, media workers, lawyers and human rights activists from Darfur.

¹¹ The Popular Congress was founded by Dr Hassan al-Turabi the chief ideologue of the "salvation" government of General Omer al-Bashir from 1989 till 1999, when he split from the Government. They are believed to be linked with the Justice and Equality Movement.

Some of those detained, including many high profile detainees, have been arrested in Darfur and later transferred to prisons elsewhere in the Sudan. Many people originating from Darfur have been arrested in Khartoum, Omdurman and other cities.

Prisoners of Conscience arrested within Darfur

Many of those arrested in Darfur have been prisoners of conscience or possible prisoners of conscience arrested for trying to obtain or spread information about the situation in Darfur, or even just to discuss the crisis and ways to lobby the government. From the beginning of the conflict there has been strict censorship on writing on Darfur. Many of those arrested in Darfur as prisoners of conscience have also suffered torture or other ill-treatment.

- **Yusuf al-Bashir Musa**, the Nyala correspondent of the Khartoum newspaper *al-Sahafa*, (Newspaper) was arrested on 3 May 2003 and taken to the security office in Nyala where he was beaten with wood on the feet, arms, buttocks and chest. A lawyer asked to meet him at once, but was allowed access only on the fourth day. A doctor saw him on the same day recorded the marks left by the beatings. He was charged with publishing incorrect information against the state under Article 26 of the 1998 Emergency Act. He was then transferred to Nyala Prison where his treatment improved. He was released without charge on 24 May. He filed a complaint to demand compensation for the torture he had received, but this has not yet been heard.
- **Ibrahim Yusuf Ishaq**, aged 40, a well-known lawyer and a former member of the South Darfur Legislative Council, was arrested on 15 November 2003, with two journalists, **Gassem Taha** of the newspaper *al-Sahafa* and **Muhannad Hussein**, of *al-Akhbar al-Yawm* (the News Today). Ibrahim Yusuf Ishaq, who comes from Singita, had taken the journalists to photograph and film the burnt houses and property in the two Fur villages after recent attacks by the *Janjawid*. All were released after 11 hours questioning, but Attorney Ibrahim Yusuf Ishaq was ordered to return the next day and detained in custody. Lawyers were refused visits to him and he remained in detention until March. Gassem Taha and Muhannad Hussein were ordered to report to the security agency for about a month on a daily basis.¹²
- **Osman Adam Abdel Mawla**, aged 39, a human rights activist working for the Nyala office of the Sudan Social Development Organisation (SUDO, see below), was detained by the national security and intelligence agency on 5 May 2004, apparently due to his humanitarian and human rights activities for SUDO. He was travelling from Nyala to Zalingei when he was taken off the bus at a checkpoint some five kilometres from Zalingei. He was detained at the national security

¹² For the use of repeated summons to the security as harassment or punishment, see *Sudan: Empty promises? Human rights violations in government-controlled areas*, (AI Index: AFR 54/036/2003, July 2003, page 32).

office in Zalingei and released on 18 May after 13 days incommunicado detention without having been interrogated and without ever knowing the reason for his arrest. On his return to Nyala he was not given a permit to leave the city again for his work.

- On 9 May 2004 two omdas (local village leaders) were arrested from the street in Kabkabiya: **Nureddin Mohammad Abdel Rahim**, omda of Shoba, and **Bahr al-Din Abdullah Rifah** omda of Jabal Si. They had been at a meeting in the town called by the International Committee of the Red Cross and attended by the province administration where they had reportedly spoken about the fear of the persons internally displaced from the rural areas and the difficulty they felt in returning to their villages because of the danger of harassment and further attacks by the *Janjawid*. They were reportedly arrested from the street after the meeting. They were released after about two days.

Prisoners of Conscience arrested in Khartoum

There has been such a heavy clamp down on the issue of Darfur in the media that few people in the rest of the Sudan have a good understanding of what is happening in Darfur unless they have friends from the Darfur communities which have been targeted. Most see the conflict as primarily a tribal conflict, and this is the impression that the government tries to present to the media. Human rights organizations, lawyers and activists within Sudan have courageously acted to defend those arrested and to speak openly on human rights violations, but some have been targeted as a result. Editors of newspapers which try to present more information on the conflict may find the print run of the paper seized, and themselves charged under articles of the Penal Code such as Article 103 (threatening the security of the country) or Article 66 (publication of false news).

For the Sudanese Government the most dangerous source of information are satellite TV channels which may not be seized before publication and will be watched in many homes. *Al-Jazeera*, the Qatar-based independent channel, has been one source of information on Darfur and this is the satellite agency most targeted by the government. By the end of 2003 the government started to target *al-Jazeera* and its bureau chief, **Islam Salih Belo**, a reporter close to Hassan al-Turabi's Popular Congress which is accused of being the instigator of the JEM armed group in Darfur. After mounting pressure warning the channel that it would react if they did not tone down their reporting on Darfur the security agency entered *al-Jazeera* office on 17 December 2003 and confiscated a transmitter and three cameras, stating that customs formalities had not been completed. The following day they closed the office and arrested Islam Salih Belo, who was detained for six days. According to AFP, the national security agency stated that: "The Al-Jazeera channel, through its Khartoum office and its correspondent, Islam Salih Belo, took to preparing and transmitting a number of programmes and materials stuffed with false information and poor, biased analyses and with pictures and scenes selected to serve its ends". It cited as evidence reports about tuberculosis, landmine victims in Sudan and events in the western Darfur region. It said the bureau "will be reopened

only after the channel's headquarters takes steps for correcting the mistakes, redressing the shortcomings and appointing to the office responsible persons who can discharge the message of the channel in a neutral and professional manner."



Dr Mudawi Ibrahim Adam ©Private

Dr Mudawi Ibrahim Adam, the Director of the Sudan Social Development Organization (SUDO), a voluntary organisation created to promote sustainable development and human rights, was arrested at his home in Khartoum, the capital of Sudan, on 28 December 2003. SUDO has a network of human rights activists and has been engaged in providing non-food items to internally displaced people in Darfur, western Sudan. Dr Mudawi, who comes from Darfur, had made many visits to the region and had recently come back from the area when he was detained.

Dr Mudawi was first held in Khartoum's national security centre and then in Kober Prison under Article 31 of the National Security Forces Act which allows people to be held for up to nine months without trial. On 7 February he started a hunger strike demanding to be charged and brought to trial or released. He ended the hunger strike after two days when he was brought before the Attorney General. He was then charged with some nine offences under the Penal Code, many of them carry the



Saleh Mahmoud Osman ©Private

death penalty and do not allow release on bail: offences against the state under Articles 50, 51 and 56 of the Penal Code. He was also charged with provoking hatred against or among sects under Articles 63 and 64. He was held with criminal detainees in the detention cells of the Attorney General's office until he was moved, in April, to remain under house arrest. The 14 documents brought as evidence against him included two Amnesty International Urgent Actions, (one of which was not about Darfur). The trial is continuing.

Many of those detained from Darfur in Sudanese prisons are lawyers: they include **Saleh Mahmoud Osman**, a human rights lawyer based in Nyala, who worked on many political cases and provided legal aid to those facing the death penalty. He was arrested at 11pm on 1 February from his wife's home in Wad Medani and is still detained. His family has not been allowed to visit him

for the past two months. Many other lawyers from Darfur based in Khartoum, such as and **Barud Sandal**, one of the lawyers of Dr Mudawi; **Muhammad Omer Muhammad**; **Ismail Omar**; and **Mohammad Abdallah Duma** have been detained in Kober and other prisons for weeks or months. Lawyers from Darfur in Khartoum have often been a focus for people from Darfur to visit their offices to exchange information on Darfur; this may be a reason why so many have been detained. Following the fate of Dr Mudawi Ibrahim, whose demand to be charged or tried led to a variety of charges carrying the death penalty, other detainees arrested by the security agency have not demanded a fair trial, preferring to hope that the political situation will eventually ensure their release.

Detention of members of the Popular Congress

All members of the Popular Congress, including Dr Hassan al-Turabi, who had been detained for two years, were released in October 2003. However, on 29 and 30 March 2004 more than 15 members of the Popular Congress were arrested alongside about 10 army officers. They were accused of various offences including preparing a coup and plotting to blow up a power station. A statement by the government said that Hassan al-Turabi was detained for "inciting violence and ethnic and regional conflicts in various states of the country". The relationship between the Popular Congress and JEM was widely thought to be behind the detentions. By 11 May 2004 some 69 followers of Dr Hassan al-Turabi had been detained. No one has yet been brought to trial.

Torture and other ill-treatment

Amnesty International has noted that over the past years torture of detainees appears to be widespread in Darfur and more frequently recorded than from elsewhere in the Sudan. Although many allegations of torture have been raised in court, there has been no known investigation into any of these allegations.

- Thirty people in Kornoy arrested at the end of April 2003 were all reportedly tortured. They were released after 20 days and, allegedly, the marks of beatings and burnings were still visible on their bodies. Two, **Sherif Ahmed Farjekabir** and **Abubaker Zakariya**, were so badly burnt they were taken to hospital.
- In a conflict between two Arab ethnic groups, the armed forces arrested 45 Ma'aliya from Adila in South Darfur state on 4 May 2003. They kept all in incommunicado detention for two months and, in order to force them to confess to killing seven members of the Rizeigat, tortured eight of them, including **Hassan Mohammad Ismail** and **al-Tayeb Yusuf Ajib**, reportedly by beatings and inserting metal objects into the anus. After the torture had been widely raised inside and outside the court the special court dismissed the case against all but one defendant through lack of evidence. One defendant, a Dinka, **Abdallah Agai Akot**, was sentenced to death. He also had reportedly been tortured by beating in order to confess to the crime. His appeal remains pending.

- **Dr Ali Ahmed Daoud**, a veterinary surgeon, and **Ali Hussein Dossa**, a member of the South Darfur State Assembly, were arrested on 15 March 2004 in Nyala. Dr Ali Ahmed Daoud was attending a meeting in Ali Hussein Dossa's house with about 20 other people, all believed to be members of the Fur ethnic group. They were reportedly discussing ways of lobbying the government to take firm steps to end attacks against villages in the region by the government-backed Janjawid militia. Members of the Sudanese security forces are said to have broken up the meeting and detained Dr. Ali Ahmed Daoud, Ali Hussein Dossa and the estimated 20 others who were present, accusing them of having links with rebel groups. The others have reportedly been released. Both men were reportedly so severely tortured that a doctor was sent for. They were said to have been accused with spying for the SLA, but have not been brought to trial. They were transferred to Kober and then to Debek, and are now held in Kober. Twelve students of Nyala University arrested at the same time were held for three days during which the security officers reportedly beat them with wooden sticks and electric cables. The students said that members of the security agency poured cold water over their bodies, forced them to do hard physical exercises and abused them verbally saying African tribes were slaves.
- A number of arrests reportedly followed by torture, at the hands of national security or military intelligence were reported from Buram after an SLA attack on the town in mid-March. Eight people, **Al-Sadeq Ahmed Harba**, 32, from Nyala, **Haroun Bashir**, 35, a fish trader; **Abdu** [other names unknown], a cooking oil trader; **Mohammad Yusuf**, 43, a sorghum trader; **Mohammad Adam Huri**, 45, headmaster of Legaid Diba Primary School; **Zakariya Madibo**, 60, a sorghum trader; **Mohammad Ahmed Abu Kantosh**, 55; and **Al-Faki Abdallah Kiraykiro**, 45, an Islamic cleric, were held for nine days in a military camp where they were reportedly beaten with sticks and gun butts, tied upside-down to a tree and tied together in the back of a truck for four days without food and water. Interrogators allegedly inserted an iron bar into the rectum of Haroun Bashir. After nine days they were transferred to the military prison in Nyala, where they were not given any food for three days. In Nyala one detainee, Al-Sadeq Ahmed Harba, was released; the other detainees are believed to be held in the military prison in Nyala where lawyers have no access to them..
- **Abdel Karim Jaber Narow**, aged 48, a merchant, and **Abdel Shafi' Badawi Bashir**, aged 35, a merchant from Nyala, both Zaghawa, were arrested at 9am on 29 March 2004 at Abdel Karim Jaber Narow's shop in Buram, South Darfur, by the national security agency. They were held at Buram police station for one month without charge or trial. They were apparently suspected of having helped the SLA attack on Buram, including Buram hospital, in March and during their detention were allegedly beaten with hands and metal rods on their backs and stomachs, whipped with water hoses and kicked all over their bodies. They were reportedly denied medical treatment and are still detained in Buram Prison.

Cruel, inhuman or degrading conditions of detention

Most of those detained in Darfur in connection with the conflict have been held, not in prisons, where conditions are relatively better, but in centres of the security forces or the intelligence (merged in March 2004 to form a combined agency called the National Security and Intelligence Agency) and in military or military intelligence-centres. It is difficult or impossible for lawyers or family to gain access to detainees in military centres which are located in military areas. Two detainees from Tina held in al-Fasher, described the conditions in the military intelligence centre there as extremely bad.

"I was taken from Tina by air to the offices of the military intelligence in Al-Fasher. There I remained for four months. I was never charged with any crime and I never saw anyone, not my family, not a lawyer. I was frequently beaten. They also gave me electric shocks to make me tell things. We had only one cup of water a day and the food was little and very bad. I was kept with 25 others in one cell which did not have any toilets. Three persons died in the detention centre while I was there: Sheri' Abdel Rahman, from Tina, Abdel Rahim Taharja, a lawyer from Kutum, and Hagar Yusuf Hagar. He grew sick and no one brought a doctor to him till he died".

In March 2004 a number of detainees from Khartoum were transferred from Kober Prison, where there is a section controlled by national security for mainly political detainees held without trial under Article 31 of the National Security Forces Act, to Debek Prison some 40 km north of Khartoum. One human rights defender described Debek as a prison "where you put those you want to humiliate"; it is said to be filthy, hot, full of mosquitoes, and with aggressive guards. After protests from human rights activists and families in the Sudan, the detainees were transferred at the beginning of May and scattered in prisons throughout the country.

"Disappearances"

A number of people have been reportedly arrested and have "disappeared". In a situation of confusion, with families fleeing to Chad and to towns within Darfur, their fate is unknown. It is extremely difficult for anyone, including relatives, to find out the names of the detainees confined in the detention centres in Darfur. No lists are published and relatives enter the detention centres with difficulty, if at all. Many of those detained for political reasons are held secretly, without any access to the outside world. Some of those who have reportedly "disappeared" after arrest may still be confined, in some prison; others may have died in detention or been extrajudicially executed. Others may have escaped their captors and reached a refugee camp or joined some armed group.

The "disappearance" of detainees, including the "disappearance" of captured combatants is particularly worrying. Although some captured combatants may have agreed to work with the government and may now be with government forces, from the example of the

fate of captured Sudan People's Liberation Army combatants captured during the war in the south, there is a danger that those who have not been released may have been extrajudicially executed.¹³ Those who appear to have "disappeared" after arrest include the following cases:

- **Al-Hadi Adam** was allegedly arrested by government forces in Kutum, along with many other people, just before fighting took place between government forces and armed groups in July 2003. Others were released afterwards, mostly after the ceasefire, but he has not been seen since.
- A number of people were arrested near Silaya in the months which preceded the fighting there in 2003. They included a trader, **Ishaq Abdallah**, arrested in June 2003 in Kongok village, north-east of al-Jeneina, allegedly after complaints to the government that he was revealing the secrets of the *Janjawid*. Others include **Adam Abdallah**, who was reportedly chained and beaten after arrest, **Abaker Adam**, a 37-year-old farmer arrested on the road to Silaya, and **Ismail Yahya**, a 40-year-old farmer arrested on the road to Silaya. None of them has reportedly been seen since.
- According to the SLA, a total of 79 combatants and non-combatants were captured by the government forces mostly in June and July 2003 and not released after the 6 September 2003 ceasefire. Their whereabouts remain unknown to this day. They include a total of 28 SLA combatants who were captured in Dissa on 18 June. According to Mini Arkoi Minawi, secretary-general of the SLA, two of them, **Mohammad Adam Musa** and **Abaker Tikki Jamus**, were allowed to telephone to him a few days after their capture, using a mobile phone loaned them by the Sudanese army, and gave him the names of those captured. Mohammad Ahmed Musa said that he had a broken leg. Those "disappeared" include four civilians, **Suleiman Mahmoud Nabi** with his wife, **Hussein Nahar Jarar** and his father **Nahar Jarar** and 33 other SLA combatants said to have been captured at the battle of Abu Gamra in August. The SLA delegation in Abéché raised the question of the non-liberation of those detained and the government delegation denied holding them.

Amnesty International handed a list of those said to have "disappeared" after arrest to the Sudanese Embassy in London in January 2004. However, no clarifications as to their fate have been received.

¹³ "There is almost no clear information about the fate of combatants captured in conflict zones. However, the war is notable for the lack of captured prisoners in detention. This appears to be because the government regularly executes captured combatants if they cannot be used for intelligence purposes. SPLA soldiers who give themselves up voluntarily to government forces appear to be at less risk of execution." *Sudan: The Tears of Orphans*, AI Index: AFR 54/02/95, January 1995, page 67.

Conclusion

The arbitrary detention of scores of people and the unfair trial of others has been little mentioned in the midst of the human rights catastrophe of Darfur, where nearly one million people have left their devastated villages, thousands of men women and children have been killed and scores of women have been raped.

Yet the failure of those who, in a period of growing disorder, should have protected the people – the police, the security system and the law courts – helped to create the human rights and humanitarian crisis of 2003-4. A system of injustice was already built up, with prolonged incommunicado detention and flawed trial procedures in special courts. By 2003 many people in Darfur felt that, in a system controlled by unaccountable security agents, justice for killings and attacks was unobtainable from the state

During the present crisis the security forces have detained hundreds in connection with the conflict, who have only rarely been brought before a judge. Incommunicado detention without trial has been the norm for political detainees. Without a fair trial it is impossible to know who is innocent and who is guilty.

Freedom of expression, a full discussion in Sudanese civil society of the reasons for the crisis and of the solutions which might be acceptable to all groups living in Darfur might have averted thousands of killings and the worst results of this tragedy. But the censorship of the press, the failure to allow free access to information and discussion, has meant that criticism in Sudan of the government policy in Darfur has been muted. The fact that those who have been detained include many prisoners of conscience, detained simply for expressing their beliefs without advocating or using violence - human rights defenders, lawyers, professionals, students and even village leaders who have simply spoken openly of the fear of their people – has helped to spread a climate of fear and to make people unwilling to criticise in public.

It is not enough for the government to release those who were detained. From time to time Sudan's prisons have been almost emptied – for instance, as recently as October 2003 there were only two prisoners left in Kober's political wing and scores of detainees in Darfur had been released. But as long as Article 31 of the National Security Forces Act remains on the statute book and as long as members of the national security are allowed by law to hold people in prolonged incommunicado detention without charge, to ill treat and torture with impunity, the national justice system will remain powerless to defend the rights of individuals and no critic, lawyer or human rights defender will feel free from arbitrary detention.

In order to rebuild a system of justice, Amnesty International makes the following recommendations to the government:

Recommendations

- Release detainees - immediately and unconditionally release all prisoners of conscience and release others detained in connection with the conflict unless they are brought promptly for

trial on recognizable criminal charges in trials which meet international fair trial standards without recourse to the death penalty or other cruel, inhuman or degrading punishments.

- **No incommunicado detention** – all those arrested should have prompt access to family and lawyers and medical assistance.

- **No torture** – all those in detention should be humanely treated. All places of detention should be registered and be inspected by an inspectorate service under the Ministry of Justice. The International Committee of the Red Cross, and an inspectorate under the Ministry of Justice should have access to every detention centre in Darfur; investigate promptly and impartially cases of torture and other human rights abuses and bring perpetrators to justice. Ceasefire and human rights monitors should also have access to all detention centres.

- **Prompt Access to Justice** – Article 31 of the National Security Forces Act which allows detention without charge and trial for up to nine months should be abolished.

- **Fair Trials** - special courts which use summary procedures contrary to international fair trial standards should be abolished; all detainees should benefit from the presumption of innocence, have prompt confidential access to lawyers and the right to defence. No statement made as a result of torture may be used as evidence against a suspect;

- **End Disappearances** – All detainees must be held in recognized detention centres; their names must be registered and their families informed of their detention. Cases of “disappearances” should be investigated, perpetrators of “disappearance” should be punished, those who have “disappeared” should be freed if they are not promptly tried in fair trials on recognized criminal charges; if the “disappeared have been extrajudicially executed their families should be compensated.

- **No impunity** – All those who have committed, ordered or been complicit in grave violations of human rights should be brought to justice in fair trials without the possibility of the death penalty.

- **Freedom of Expression** - The government of Sudan should guarantee the right to free expression, and lift controls on the press. The security services should end the arrest, intimidation and harassment of independent media, journalists and other media workers.

- **Redress to the victims** - Victims of human rights violations, including those who have lost family members, those who have been tortured, including those raped or abused and those who have lost homes or property, have a right to reparation including compensation for what they have suffered. The Commission of Inquiry appointed by the Government of Sudan in May under former Chief Justice Daf'allah al-Hajj Yusuf should recommend a mechanism through which victims should be compensated.

