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# **Sudan**

## **No one to complain to: No respite for the victims, impunity for the perpetrators**

### **Introduction**

More than a million people have been displaced in Darfur; they have been attacked, women raped, people abducted, their relatives killed, villages burnt and looted. The population in rural areas and small urban centres have been forced from their land and now congregate around the main cities in overcrowded, disease-ridden camps. There is despair among the victims of these gross human rights violations carried out by government armed forces and the militia they support.

Those whom the Sudanese legal system has failed to protect have no faith in government justice.

The rule of law in Darfur is upside down. The security forces detain and torture with impunity and are protected by the law. Victims of human rights violations have little, if any, recourse to justice and some are even punished for trying to seek justice. The government puts all its efforts into repressing Fur, Masalit and Zaghawa communities; few of those said to have been responsible for human rights violations have been arrested, and this, following pressure from the international community. Unfair trials are the norm. One Sudanese lawyer told Amnesty International delegates:

*“In Sudan we do not know the difference between probable and normal anymore. We are not surprised any more at any moves by the authorities. Injustice has become the norm in Sudan.”*

People have lost everything. They cry for justice. Their lives are threatened not only because in some areas they are still attacked, but also because they feel increasing pressure from the government not to speak out and not to complain. While in June 2004 there was an urgency to speak to foreigners about the massive abuses committed in Darfur among the displaced community, it seems that since September the displaced have become afraid of talking. They are being watched by the security forces and the police within the camps for internally displaced persons (IDPs) and fear being arrested after being seen speaking to foreigners. Many people now request that they are guaranteed protection before they agree to speak, a guarantee which is hard to make. There is a danger that because there is no noticeable change in their situation, IDPs may be losing faith in the ability of the international community to improve their fate. The need for accountability for the massive and daily human rights violations committed in Darfur is more pressing than ever.

The Sudanese government, instead of admitting that it has violated human rights by supporting the nomad militias responsible for much of the devastation of Darfur, and instead of listening to the plight of its citizens, continues to oppress the victims of gross human rights abuses. At the same time, suspected perpetrators of extrajudicial executions, killings, rapes and large-scale attacks on civilians remain at large. One of the arms of government repression is the security laws, which undermine the powers of the judiciary, already weak and often biased, and the prosecutor's office. Another is the atmosphere of fear and distrust created by the presence of security forces that dissuades victims from seeking justice. Victims of human rights violations face obstacles at virtually every stage of their complaint, while perpetrators of violations remain protected by the law and by the practices of law enforcement officials.

Throughout October and November 2004 there have been further arbitrary arrests, detention without trial and torture by the Sudanese authorities in relation to the conflict in Darfur and to an alleged attempt at a coup d'Etat by the Popular Congress, an opposition party led by Dr Hassan Al-Turabi, that is said to be linked to the armed political group Justice and Equality Movement (JEM) in Darfur.

During this time, insecurity increased in Darfur with attacks on civilians by all parties to the conflict, fighting between government and rebel forces and the targeting of humanitarian convoys. The scale of the crisis is escalating. At the beginning of November, Jan Pronk, in his monthly briefing to the United Nations (UN) Security Council denounced a "general drift towards lawlessness" in Darfur.<sup>1</sup>

Such human rights violations undermine government claims that it is complying with the demands of the UN Security Council, and bringing to justice the suspected perpetrators of gross abuses in Darfur.

The situation in Darfur has not improved; the displaced remain displaced. They are under threat in the areas to which they have fled and cannot return to their homes. Independent monitors face increasing difficulties in monitoring situation. Neither the presence of UN human rights monitors or African Union ceasefire observers, nor the presence, during September and October, of international human rights organizations such as Amnesty International and Human Rights Watch, have been a deterrent to further human rights violations. The Sudanese government continues to undermine the rule of law and the very concept of justice.

The cases presented in this report are only a snapshot of the situation in Darfur.

Amnesty International, during visits to Sudan, including the most recent visit in September-October 2004, has tried to establish a dialogue on its human rights concerns with the Sudanese authorities, both in the capital Khartoum and in the three Darfur states. The organization has not only documented human rights violations, but has also held discussions with members and advisors of the Sudanese government and given recommendations on how

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<sup>1</sup> Report of the Secretary-General on the Sudan pursuant to paragraph 15 of Security Council resolution 1564 (2004) and paragraphs 6, 13 and 16 of Security Council resolution 1556 (2004), 2 November 2004.

to address the devastation of Darfur. Amnesty International has highlighted on many occasions the failure of the legal system to uphold human rights standards and to bring suspected perpetrators to justice in Sudan and the role of the security forces in arbitrary detentions and torture.<sup>2</sup> The Sudanese authorities have consistently used the same repressive methods to deal with conflict in southern Sudan, the Nuba Mountains and now Darfur. Amnesty International's recommendations for change may seem obvious, but they are fundamental for a durable peace and the building of the rule of law in Sudan.

Sudan has virtually always been under a state of emergency since 30 June 1989, when the current government took power following a coup d'Etat. In December 1999, a year after a new Constitution was promulgated and at the time of a split within the ruling party when the Parliament Speaker Sheikh Hassan al-Turabi was ousted, the Sudanese government declared yet another state of emergency in the country, which has been renewed every year thereafter. The state of emergency has allowed the Sudanese government to restrict the human rights of its citizens, by introducing wide powers of arrests and detentions, with immunity, for the security forces. In 2001, following the declaration of a state of emergency in Darfur, the Sudanese authorities established Special Courts in the three states of Darfur.

Unless the Sudanese government urgently puts in place basic human rights standards to enable the judiciary to address the devastation of Darfur by bringing to justice the suspected perpetrators of human rights abuses, the Sudanese judiciary and the security forces will not be in a position to restore the rule of law in the region. In this case, international justice might be the only way to bring the perpetrators of human rights violations to justice.

Now that the international community's attention is focused on Sudan's conflicts, it must take stock of the structural failings of the Sudanese legal and security system and pressure the authorities, on each violation of human rights, to be accountable to basic human rights standards.

## **1. Problematic access to justice**

International human rights law lays down standards for the protection of victims of human rights abuses before the law. All are equal before the law and are entitled without any discrimination to equal protection of the law<sup>3</sup>; allegations or complaints of grave human rights abuses should be promptly investigated by a body independent of the alleged perpetrators<sup>4</sup>.

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<sup>2</sup> See *Sudan: Empty promises? Human rights violations in government-controlled areas* (AI Index: AFR 54/046/2003), July 2003; *Sudan, Darfur: Incommunicado detention, torture and special courts* (AI Index: AFR 54/058/2004), June 2004; and *Sudan: Intimidation and denial* (AI Index: AFR 54/101/2004), August 2004.

<sup>3</sup> Article 7, Universal Declaration of Human Rights

<sup>4</sup> Article 2 (3) of the ICCPR states:

“ Each State Party to the present Covenant undertakes:

The legal system in place in Northern Sudan allows little room, if at all, for victims to file complaints about human rights violations that they have suffered. People face a multitude of obstacles in their search for justice. Many do not think or want to file complaints as they distrust the police or the judiciary who are not seen as independent of other government institutions; because they do not know the procedures; or because they believe their complaints will go nowhere. As several displaced persons in Darfur told Amnesty International delegates:

*“The government is part of this conflict. How can we go to them and file complaints against them?”*

### **1.1 Distrust in the police; little action taken by the police**

Victims of human rights violations in Darfur are mostly reluctant to approach the police and complain. There are several reasons for this. Some people see the police as being part of their problems in Darfur since the police, before and during the conflict, are seen as having been unable or unwilling to protect them against attacks by nomad groups, and since February 2003, by government-supported militias. Today an enlarged police force of some 12,000 police has been deployed to Darfur in order to “protect civilians”, as part of the Darfur Plan of Action signed by the UN and government of Sudan in August. The new police have come from outside Darfur, from all parts of the country. However, the displaced still view the police as representing the government, or as a repressive force deployed in camps to control their movements and discussions, or even as “*Janjawid*”. The fact that some *Janjawid*<sup>5</sup> have reportedly been seen wearing the blue uniforms of the police, or calling themselves “border police” or “border intelligence unit” or even carrying out police duties, such as arrests and detentions, further compounds the huge distrust between the population and the police.

Amnesty International delegates interviewed a schoolgirl in North Darfur who had been raped by four members of the government *Janjawid* militia during the attack on Tawila in February 2004. The girl was distressed and visibly scared of talking about her ordeal. When asked whether she had reported the rape to the police, she said:

*“I want revenge from what the Janjawid did to me, but I do not trust the police. They are like Janjawid to me. I cannot complain to the police, they will punish me even*

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- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.”

<sup>5</sup> Name commonly given to militias supported by the government and responsible for much of the devastation of Darfur.

*more, some Janjawid are in the police and some policemen themselves are Janjawid."*

Because of distrust in the police and fear of stigmatisation, many women who have been sexually assaulted during attacks or around displaced camps are reluctant to file complaints with the police about rape. Victims of rape have been asked for a police form registering their complaint when they went to hospital to receive medical treatment. A decree issued by the Minister of Justice on 21 August 2004 removed this requirement thus enabling victims of rape to obtain immediate medical attention. However, in October 2004, when Amnesty International delegates visited Darfur, many among the police, judiciary and Sudanese hospital staff did not seem to know about this decree, which means that it has not brought much positive impact for the victims of rape. The medical and legal follow-up of rape cases remains problematic in Darfur.

Many people interviewed by Amnesty International stated that they had approached the police regarding grave cases of human rights violations, including armed attacks, rape or other sexual attacks and looting or theft. The police accepted some complaints, but refused many others, reportedly saying that they could not take complaints about attacks, or that they could not investigate because complaints were against "unknown perpetrators", or because they did not have the means to visit the sites where such crimes were said to have been committed. Some policemen were even reported to have said to those complaining about abuses carried out by government-supported militias: "*The government doesn't allow us to take such complaints.*"

On 15 February 2004, O., a spare parts trader from Nyala, was arrested on his way back to Nyala from the locality of Abu Ajura by 45 men dressed in military uniforms and carrying guns. He was shot in the jaw and the hand and has since endured painful surgery, including a skin transplant, which has not cured his injuries. He stated to Amnesty International:

*"This is the most painful part for me: while I was unconscious my brother went to report the attack to the police at Nyala Wasat police station and they chased him away. When I think of this I cannot sleep. I am a respectable man but I can get no protection. We can be looted, attacked and even killed so easily in Darfur."*

Police in al-Jeneina police station could find no record of a reported attack in a market when two armed men in khaki were said to have killed Saleh Saleh Ahmad Mutawi and badly wounded his 13-year-old brother, Ahmad, from Saraf Omra and living in Ardamata IDP camp. The chief of police and his assistant, who were both new and sent in from outside Darfur, said that it was normally the practice to wait for a hospital report before acting on a case. In this case, if the hospital did not send a medical certificate, no action would have been taken despite the gravity of the crime.

The al-Jeneina police found the file of a later case, the alleged rape by four *Janjawid* of three young unmarried women on 10 August outside Ardamata camp. The police told Amnesty International delegates in September that they had not followed up the case because

the medical report on the three girls had not supported the rape complaint. However, the medical report in the file said simply that there were no marks of scratches or bruises visible on the women, and that they should be sent for an internal (gynaecological) medical examination. This was clearly never done, and the file on the case was simply closed.

In Zam Zam camp for displaced persons, some 15 kilometres West of al-Fasher town in North Darfur, distrust of the police has led to clashes. On 6 October 2004, Amnesty International delegates visited Zam Zam. The situation was very tense, following an assault after sunset on 29 September 2004 on some 20 displaced women by armed men, wearing uniforms similar to the police, on the road from al-Fasher town to Zam Zam camp. These women were coming back from the market in al-Fasher. Some women fled the attackers and went back to the camp, and the IDPs, fearing that other women missing had been abducted, warned the police in the camp and requested their intervention. The police took IDP representatives to the police station in al-Fasher, but the police there refused to intervene until the following morning. On 1 October, when police forces arrived in Zam Zam camp, they clashed with IDPs armed with stones. Two policemen were injured in the clashes and the police withdrew from the camp. The IDPs stated that they were angry at what they perceived was a lack of diligence by the police to act on their complaints.

Throughout November, actions of the police aimed at forcibly removing displaced persons from camps where they have taken refuge have further deepened distrust. At 3am on 2 November an attack on al-Geer camp in Nyala occurred, when 100 police officers beat hundreds of displaced people, reportedly tying them up and bundling them into 15 trucks to be taken to another camp, al-Sherif, several kilometres away. Others staying in al-Geer camp fled to the town of Nyala.

During two further separate attacks on al-Geer camp, shortly after midnight and at 5am on 10 November, four carloads of Sudanese police shot bullets into the air, threw teargas<sup>6</sup> into tents, and beat scores of residents, telling them that they had to leave the camp. They then bulldozed shelters in al-Geer, ignoring the protests of representatives of the United Nations, the African Union and international aid agencies who were present during the attack. Journalists also came under fire and the deputy chief of the camp was beaten up and arrested.

On the night of 13-14 November, the police shot at displaced persons in Kalma camp in Nyala, wounding at least six persons, including an eight-month-old baby and reportedly killing two displaced persons: Ishaq Musa Adam Harun (15 years old) and Adam Abdel Aziz, (32 years old). The official version is that the police fired at rebels who infiltrated the camp.

On 16 November the police beat up displaced people in Otash camp (one of the camps in Nyala), and two IDPs were said to be seriously wounded and in hospital as a result. As the police is clashing more and more violently with the displaced, using excessive force to enforce government policy of forced relocations, it is clear that IDPs will turn less and less to the police to complain.

## **1.2 Complaints to the judiciary – problem of fees**

Other civilians or internally displaced persons have approached the office *niyaba* (the office of the Attorney-General) or private lawyers in order to file complaints about human rights violations they have suffered. However, lawyers report that unless the complainants have enough money to pay fees apparently due in criminal cases, complaints will not be accepted by the *niyaba*. Many lawyers are ready to assist victims of human rights violations for free, but are often unable themselves to pay fees owed to the Attorney-General. Such costs therefore appear to normally fall on the complainants. Sometimes lawyers pay such fees themselves in order to help the victims. In the situation of Darfur, where most of the population has been forcibly displaced, looted of its possessions and now living under extreme poverty, such fees are impossible to pay and deny access to justice by the poorest.

Lawyers explained to Amnesty International that in each criminal case they represented, they had to pay not only the normal costs of printing, travelling to the site of crimes, or to the prison to visit detainees, but also pay for stamps without which complaints would not be accepted by the office of the *niyaba*. Some of the money collected through these stamps is said to go to the Bar Association and the rest to the government, as a form of tax on lawyers. These fees are usually justified as administrative expenses and to finance the working conditions of the Attorney-General's office. The existence and cost of these stamps are reportedly regulated by the Sudanese tax laws, which are updated every year. Lawyers report that before 1989 fees were required only in civil law cases, and only for those who could afford them. It is reportedly only since 1989 (when the current government arrived in power) that legal fees are required in criminal law cases.

In Darfur, a stamp to file a criminal case to the Attorney-General's office costs 500 Sudanese dinars (about USD 2) and lawyers have to pay about 1,250 dinars (about USD 5) with the stamp, paper and printing. Some other stamps cost about 500 to 1,000 dinars. In order to file appeals in criminal cases, lawyers have to pay for another stamp, costing 2,200 Sudanese dinars, plus fees to the assistant of the Attorney-General. If it goes further to the Attorney-General it may cost lawyers up to 7,500 dinars in stamps and fees. Lawyers apparently have to pay such fees and stamps at every stage of the legal procedure in a criminal case: when they apply to the *niyaba* for permission to represent accused persons; when they apply for permission to visit detainees in prisons; when they apply for their clients' release on bail; when they ask for a transfer of the file from the *niyaba* to the court; and when they appeal court decisions to higher courts. Lawyers in Darfur pay even higher fees when they appeal to higher courts in Khartoum.

When asked about these fees, the Attorney-General of North Darfur assured Amnesty International that those who wanted to register complaints about attacks in Darfur would not be asked to pay fees. The Attorney-General also insisted that its staff had travelled to different sites in North Darfur and to camps for internally displaced persons in order to undertake primary investigations about alleged human rights violations and to meet victims would otherwise have no opportunity to travel to his office. Such visits and investigations were

sometimes restricted because of the general insecurity in the region or lack of logistical resources of the office of the *niyaba*.

Amnesty International welcomes such assurances. The Sudanese authorities should carry out such visits and investigations on a wide and systematic basis. The organisation is concerned that the payment of fees may obstruct access to effective remedies and may discriminate against the poorest of the Sudanese people.

### **1.3 Intimidation or encouragement to abandon complaints**

The victims of human rights violations are not only discouraged from complaining because of mistrust of the police or financial obstacles to justice, but also because they risk being intimidated by government officials and security forces. Pressure applied to people who dare to complain appears to be used to cover up abuses and preserve the impunity of those responsible for human rights abuses.

In certain cases where responsibility for grave violations appears to fall on the government security forces, complainants have reportedly been visited by the security forces and offered money in exchange for abandoning legal proceedings against members of the security forces.

The parents of Shamseddin Idris, who were considering undertaking legal proceedings for the death in custody of their son on 10 September 2004, have reportedly abandoned such proceedings, after being proposed financial compensation by the National Security Forces.<sup>7</sup>

If victims or relatives try to obtain justice for abuses committed by the armed forces, they may be in grave danger of persecution. Amnesty International delegates met the brother, X, of one person who was reportedly extrajudicially executed by the armed forces. He was arrested and apparently deliberately tortured to death. X was himself arrested and tortured for trying to obtain justice for the killing of his brother. The security forces also extorted money from him.

*“[...]I reported the murder of my brother to the police but they told me to go and see the armed forces. So I went to the Security who told me to report to the armed forces. Both asked me to pay and I paid in total 35 million [Sudanese pounds]. Then, after someone contacted the army officer in Saraf Omra, I was arrested on 20 August 2003. The armed forces took me to a military camp outside Kabkabiya and beat me, tied my feet and arms and hung me up to a tree from the morning to the evening. They were saying: ‘You and your brother support the armed opposition, where did you find the lorry and the goods?’. I was detained for 12 days and beaten five times a day, before the prayer, after sunrise, at night... I was released because one of my brothers paid seven million pounds to a man working for the military intelligence.[...]”*

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<sup>7</sup> See section 3.2 *Deaths in custody as a result of torture*.

*Until now I have not had any success in the case, even in just reporting the case. [...] Even if you report to the police you get arrested afterwards.”<sup>8</sup>*

To date, he has not been able to register a complaint with any of the Sudanese Security Forces or the judiciary.

## **1.4 Harassment and arrests of lawyers and human rights activists**

Principle 16 of the Basic Principles on the Role of Lawyers states:

*“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”*

The work of Human Rights Defenders is recognised and protected in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).

Victims of human rights violations can often only trust human rights lawyers and activists to advise them on issues of human rights violations. Amnesty International has long documented the arbitrary arrests, prolonged detentions without charge or trial and harassment of certain lawyers and human rights activists by the Sudanese government. The extent of these practices indicates that they are the result of deliberate government policy, which does not only violate the fundamental rights of those engaged in legitimate human rights work, but also contributes to intimidate victims further. It is a warning to the population that humanitarian, human rights and legal activities, particularly on behalf of the victims of the conflict in Darfur, are often considered subversive by the authorities.

In al-Fasher, the capital of North Darfur, lawyers who have often been contacted by victims of human rights violations in Darfur, seem to work under the constant possibility of being asked to report to the National Security Forces. Lawyers in al-Fasher have reportedly become under increased scrutiny and their work disrupted by the National Security since they signed a joint memorandum in February 2003 to the local government. One lawyer told Amnesty International:

*“Every 10 or 15 days I am called by the Security. It is forbidden for me to leave al-Fasher town: I need an authorisation from the Security. They don’t ask questions but*

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<sup>8</sup> See full testimony in Annex 1: Testimony of X, brother of a man who was extrajudicially executed by the armed forces.

*keep me for several hours. I am always watched. I am not afraid as my mandate as a lawyer is to work for human rights. As a lawyer, I have no problem being arrested, because they know that I know the law, but the problem is for other people who are unfairly treated when they are detained. When people are punished, they do not have anyone to protect them or to complain to.”*

In Nyala, lawyer Aba Zer Ahmad al-Bashir was arrested at the end of July 2004 by the Security Forces. When Amnesty International delegates met the Director of the National Security Forces, they were told that Aba Zer Ahmad al-Bashir had been arrested on suspicion of providing information about the Security Forces to the “rebels” as well as to foreign countries. The detainee stated to Amnesty International that he had no relation with the armed opposition, but thought he was detained because of his links to the Zaghawa community. He was released in October 2004 after being detained without charge for more than two months.

Another lawyer, Nurain Mohamed Yusuf, was arrested in Nyala on 31 July at 10 am. Prior to his arrest he had participated in a workshop with other lawyers on the crisis in Darfur. The discussion included questions on whether people belonging to sedentary communities had been killed during the conflict by the *Janjawid* and on the abductions which had taken place. During that meeting he also talked to UN staff. As a lawyer, he was also asked to represent a woman whose village had been attacked and who had lost members of her family. She was planning to bring the case to Court and to demand compensation. The Director of the National Security stated that Nurain Mohamed Yusuf was kept in detention because he was suspected of providing information to the “rebels” and that he had organised a demonstration of a group of students in Kalma camp. In the detention centre of the National Security Agency he stated that he was beaten on one occasion several times on the head and in the face for not answering a question. He was also reportedly released in October 2004.

Lawyers have sometimes said that the Sudanese Bar Association should usually investigate in the event that one of its members is detained. Such recourse does not seem to have been used much, possibly because of the distance and the lack of communications between Darfur and Khartoum, where the Bar Association is based. However, many lawyers do not consider the Sudanese Bar Association as an association independent from the government. Arrests of independent lawyers and alleged vote tampering by the Sudanese authorities ahead of the last election of the Chair of The Sudanese Bar Association in December 2001 have helped to tarnish the image of independence of the association<sup>9</sup>. The Bar Association, in a meeting with Amnesty International delegates in Khartoum, insisted that it was an independent association.

On 10 September 2004, Adib Abdel Rahman Yusuf<sup>10</sup>, the head of SUDO (Sudan Development Organisation, an organisation engaged in humanitarian work in Darfur and training in human rights) in Zalingei, a town in West Darfur particularly affected by the

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<sup>9</sup> see Amnesty International Urgent Action, Fear of torture or ill-treatment/ Detentions without charge (AI index AFR 54/016/2001, 2 November 2001).

<sup>10</sup> see Amnesty International Urgent Action, Human Rights Defender/ Fear for safety: Adil Abdul Rahman Yusuf (AI index: AFR 54/133/2004, 8 October 2004).

conflict, was arrested while on a visit to Khartoum. He has neither been allowed any contact with the outside world, nor been charged with any criminal offence. Amnesty International delegates repeatedly raised his case with government officials, but did not receive satisfactory answers to these queries. Members of staff of SUDO have previously been harassed and arrested, including its director, Mudawi Ibrahim, who was arrested in December 2003 and later charged with offences carrying the death penalty; all charges against him were officially dropped in August 2004.

## **2. Arbitrary arrests and detentions**

Arbitrary arrests and prolonged incommunicado detentions without charge or trial have increased in the run-up to and during the conflict in Darfur. They are conducted with disregard for virtually every basic guarantee laid down in international human rights law for people arrested and detained. These guarantees include the right to be informed of the reasons for arrest; the right of access to lawyers, relatives and medical assistance; the right to have relatives informed of arrest and place of detention; the right to be brought promptly before a judge or other judicial official and the right to challenge the lawfulness of detention. By doing so, Sudanese security forces involved in such arrests and detentions also violate the Sudanese Constitution of 1999 and safeguards contained in the Sudan Criminal Procedure Code.

Article 30 of the Sudanese Constitution declares that individuals are protected from arbitrary arrest:

*"A human being is free. He shall neither be arrested, detained, nor confined, save by such law that shall require stating the charge, the duration of detention, facilitation of release and respect for dignity in treatment."*

The 1991 Criminal Procedure Code (CPC) also contains safeguards against arbitrary detention. According to the CPC, except in specific circumstances (such as when caught committing a crime), a detainee must be arrested by warrant signed by a prosecutor or judge giving reasons for the arrest and the detainee must read the warrant (CPC, Articles 69 and 72). If anyone is arrested without warrant (e.g. when caught in the act) the prosecutor or judge must be informed of the arrest within 24 hours, and the detention can only be renewed by a judge, initially for three days, then weekly for two weeks (CPC, Articles 77 and 79). At that point the detainee must be charged or released; even if charged a superior judge must continue to renew detention every two weeks (CPC, Article 79). The attorney general's office (prosecutor's office, *niyaba*) "must make a daily round of all detention rooms, review the arrest record, make sure that all procedures are properly carried out and that those arrested are treated according to the law" (CPC, Article 81).

## **2.1 Security forces involved in arrests and detentions:**

There is a multiplicity of security forces involved in arbitrary arrests and detentions in Sudan: the National Security Forces or National Security Agency (NSA); the military intelligence (*al amn-al-askari* or the *istikhbarat*); the “positive” security (*al-amn al-ijabi*), another branch of the military intelligence; and the police force, including its criminal investigation division. Even the *Janjawid* militia are said to have sometimes arrested people.

Sudanese security forces have attached to them parallel forces which seem to be filled with ideological supporters of the government. For instance, the “positive” Security seems to act as the ideological arm of the military intelligence; the police has parallel popular police (*al-shurta al sha’biya*) and Public Order police, which dealt with offences linked to dress code, public order and drinking alcohol. The Sudanese armed forces have been supplemented by a parallel paramilitary force, the Popular Defence Forces (PDF), whose members are given ideological training before being sent to the frontline.<sup>11</sup>

The National Security Agency operates under the framework of the National Security Forces Act, passed by Parliament in 1999. The National Security Forces Act gives the National Security Agency powers to detain anyone incommunicado without charge or access to a prosecutor or a judge for certain periods of time. Article 31 of the National Security Forces Act of 1999, amended in July 2001, increased the length of incommunicado detention without charge or trial from 63 days maximum to a maximum of nine months. Article 31 (a) allows the security forces to arrest and keep a detainee without access to the outside world initially for three days renewable for 30 days. If the detainee is suspected of having committed “*crimes against the state*”, the detention can be renewed for a further month by the director of the security forces and by a further two months if the National Security Council agrees. Article 31(b) allows the director of the National Security Agency “*in circumstances which lead to panic in society and threaten the peace and security of citizens, namely armed robbery or religious and racial discord*”, to detain a person for three months, renewable once by the director and a further time with the consent of the council. This article is very vague and has been interpreted to cover many non-violent and legitimate activities.

Article 32 of the Act lays down some guarantees for detainees. It states that the detainee should be informed of the reasons for his detention and should have the right to inform his family “*if it does not prejudice the progress of the interrogation*”<sup>12</sup>; and that an attorney from the *niyaba* should inspect places of detention. These safeguards are insufficient, inconsistent with international human rights standards and anyway routinely contravened by the security forces.

Amnesty International delegates had the opportunity to meet with the head of the National Security Forces in Nyala and in al-Fasher, who said that according to the state of

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<sup>11</sup> *Janjawid* members have mostly been incorporated into these parallel forces, the PDF and the popular police, but some are said to have been incorporated into the regular armed forces and the police.

<sup>12</sup> This vaguely-worded limitation on the right to inform family could clearly be applied to most cases and does little to protect individuals from incommunicado detention.

emergency in place, the security forces could detain people as they saw fit; the Director justified each case of detention on the grounds that individuals were suspected of passing information to armed groups. In Nyala, Amnesty International delegates obtained unprecedented access to the National Security detention centre, where they met and discussed privately with individuals detained. All the persons detained by the National Security were held without charge, some for months. They had not been ill-treated, except for one of them. Such access was not later granted to other human rights monitors in Darfur.

In al-Fasher, the Director of the National Security was adamant that the Security Forces were given a legal mandate by the National Assembly and did not acknowledge the lack of safeguards for the detainees included in the National Security Forces Act. As regards incommunicado detentions, he said that relatives of detainees could contact the information office of the Security Forces in Khartoum. Even if the families knew that such an office existed and even if they had the courage to brave the climate of fear and intimidation surrounding security activities to complain to such a body, those living in Darfur would face obvious logistical and financial obstacles which would prevent them from obtaining more information on detained relatives.

The National Security Forces have a Complaints Commission which human rights organisations and lawyers can contact in case of detentions. Although the Commission has sometimes given assurances that detainees were well-treated, most of the time relatives and lawyers are not told the grounds for detention nor granted access to the detainees. The governmental Advisory Council for Human Rights, which writes to the National Security Forces in order to obtain information on cases of detainees they receive from human rights organisations, has stated to Amnesty International that many of their requests for information remain unanswered. An official in the judiciary admitted that such detentions are “*according to the National Security Act and we have no authority on this.*” Amnesty International has repeatedly called for Article 31 of the National Security Act to be abolished.

The **military intelligence and the “positive” security** are forces even more unaccountable than the National Security Forces; no-one knows how many people they detain or the names of many of those detained. Both the military intelligence and the “positive” security are internal branches of the Sudanese armed forces. The “positive” security is said to be an ideological body, linked to the government party, the National Congress. Both forces are suspected of committing horrendous acts of torture on detainees. According to an official in the judiciary:

*“The law doesn’t allow the positive security to arrest anyone: they have to transfer people to the niyaba and the police. But unfortunately sometimes they don’t follow the procedures.”*

As regards to detentions under the **police force**, they are normally monitored by the judiciary and follow laws and legal procedures of the Sudan Penal Code, the Criminal Procedure Code and the Police Forces Act. Nevertheless, safeguards for persons arrested by police are not always respected. One of the main problems for such detainees is poor prison conditions, which are sometimes life-threatening. Detainees often complain of poor food, only

given once a day, lack of hygiene, and that they or their relatives usually have to pay for medicines, in case they require medical treatment. One former detainee in the prison of Nyala described his treatment as:

*“They fight us with water. They only give us water once a week, and if you want more water you need to pay the prison guard (it costs 2,000 Sudanese pounds for a jerry can of water from outside).”*

## **2.2 Arrests based on origin or personal affiliation – as a means of intimidation**

In Khartoum since 2002, people originating from Darfur have been routinely subjected to arrests. Such practices have continued throughout 2004<sup>13</sup>. Many arrests carried out by the security forces named above do not seem to be for any reason other than belonging to particular ethnic groups, usually those represented in the Darfur armed opposition groups (Zaghawa, Fur, Masalit, and other smaller groups), or to families who enjoy a certain social status in those groups.

In October 2004, several relatives of Abdel Wahid Mohamed al-Nur, President of the Sudan Liberation Army (SLA), one of the armed groups in Darfur, were arrested by the Security forces. **Saleh Mahmud**, a human rights defender and a relative of the same SLA leader, spent more than seven months in detention between February and 1 September 2004.

On 11 October, **Abdel Hafiz Mohamed al-Zubair**, his brother **Mansur Mohamed al-Zubair** and **Ibn Omer Abdel Latif**, all students, were arrested by the security forces, together with **Faki Abdel Rasul Abdallah**, a 60-year-old relative and their host in Khartoum. At 3am, some 22 security officers, dressed in civilian clothes and carrying weapons, reportedly climbed over the fence into the house of Faki Abdel Rasul Abdallah in the area of Omdurman. They woke up the people sleeping in the house, asking for their identity papers and took them by car to the office of the National Security in Khartoum North. They then reportedly threatened to kill the detainees and to throw their bodies in the sea, saying: “This way we will not be accountable”. The next day the detainees were interrogated and asked their name, tribe, and political affiliation, including whether they had any relation with the Popular Congress Party. The four detainees were beaten by two security officers, one apparently a known specialist of torture and the other specialised in “punches”. On the evening of the same day, they released Abdel Hafiz Mohamed al-Zubair, Ibn Omer Abdel Latif and Faki Abdel Rasul Abdallah. Mansur Mohamed al-Zubair was kept in detention, possibly because he was a member of the Jebel Marra students’ union at El Nilein University. He was reportedly severely beaten.

The same evening, after midnight, security officials stormed the house of Amin Mahmud, Saleh Mahmud’s brother, in Khartoum and forced people present in the house to

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<sup>13</sup> For arrests until June 2004, see Amnesty International: *Sudan, Darfur: incommunicado detentions, torture and Special Courts*, op.cit.

face the wall while they were searching their bags and checking their identity cards. When the owner of the house protested at their behaviour, the security officials reportedly said that they had orders from a captain in the security to search the house. The security officers arrested three young men **Abu Hanifa Zain al-Abdin**, a trainee lawyer; **Ja'far Abaker Mohamed Osman**, unemployed; and **Mahmud Mohamed Adam**, after finding in their bags an application to the State Minister of Social and Humanitarian Affairs demanding a contribution to the rebuilding of the house of a relative, which was burnt by the Janjawid in Jebel Marra; a poster of a symposium about human rights and a membership card of the Al-Adala (Justice) Party, a registered party; and a list of names of IDPs from Darfur living in Mayo camp in Khartoum. The three were brought to the National Security office in Khartoum North, where they spent the night and were threatened into confessing to belonging either to armed groups in Darfur or to the Popular Congress, or to give information about people not yet arrested. The following morning, Abu Hanifa Zain al-Abdin was asked his name, his tribe, his area of origin in Darfur, his relationship with Abdel Wahid Mohamed al-Nur and Amin Mahmud and his political affiliation. He was released after signing a "code of conduct" and asked to report to the security office a few days later. Ja'far Abaker Mohamed Osman was also released; however Mahmud Mohamed Adam was kept in detention, after he was severely beaten; other detainees said: "*His head and right leg were very swollen and his eyes were coming out of his face*". One of the detainees stated to Amnesty International:

*"I am angry because the security is targeting the Fur, especially those from Thur, those families living in Umbadda and Mayo [districts of Omdurman where many Darfurians live] and the relatives of Saleh Mahmud. I don't have political affiliations and yet they have humiliated us, insulted us and tortured us. They cannot differentiate between politics and normal citizens. They also insulted me by asking: "Why do you waste your time to come and live in Khartoum?"*"

Other students from Darfur had previously been arrested in Khartoum. On 23 September 2004, **Faisal Da'ud Abdel Rahman** (26 years-old), a student in Economics at the University of Khartoum and the General Secretary of the Darfur Students Association, and **Abdel Rahman Mohamed Abdel Rahman**, the chairperson of the Darfur Students Association, were arrested by the security forces and taken to their office in Khartoum North. Both were reportedly severely beaten. Abdel Rahman Mohamed Abdel Rahman was released the following day, while Faisal Da'ud Abdel Rahman is still said to be in detention. There are fears for his safety and his medical condition. On 7 October, **Jalal al-Din Ibrahim Ismail**, a 23-year-old student at the University of Sudan Technology was arrested in Al-Ushara area in Khartoum, by the National Security Forces, while visiting relatives of some other students who had been arrested. He was arrested alongside **Ibrahim Yaqub**, the owner of the house and **Abdelaziz Abdallah Da'ud**, his son.

Often displaced camps around the capital are raided by the security forces and persons from Darfur arrested. There seems to be no other reason for their arrests than their area of origin. Several IDPs from Darfur living in Mayo camp were arrested at the beginning of October. They include: **Saber Abaker Bahr al-Din**, lawyer, from Jebel Marra; **Ja'far**

**Ahmad Tarbush**, engineer, from Jebel Marra; **Abdel Khaleq Abaker Bahr al-Din**, student; **Nagmeddin Mohamed Abdel Mawla**, student; **Al-Sadiq Yahya**, student; **Jilani Abdallah Mohamed Sharaf**, from Shataya around Nyala; **Abdel Mawla** (other names unknown), graduate of electronics and teacher; **Abaker Mohyeddin**, a 15-years-old child; **Faisal Tiko, Hassan “Torabora”**<sup>14</sup>; and **Ismail (other names unknown)**, a student at El Nilein University.

The risk of being kept in prolonged incommunicado detention is very real. Some Darfurians arrested since February 2004 are still detained, without charge and mostly incommunicado. No reason was given for their arrest. Amnesty International believes that they were arrested on account of their ethnicity. They include:

- **Ma'mun Issa Abdel Gader**, a 50-years-old Fur leader from Niyertiti, near Jebel Marra (controlled by Abdel Wahid Mohamed al-Nur, the head of the SLA). He was arrested in February 2004 and detained in the security wing of Kober prison. He was transferred to Dabak prison North of Khartoum, then to the prison of Wad Medani, a city south of Khartoum. His family was only allowed to visit him twice. Lawyers petitioned for his release but the judiciary has not yet answered their request. He was never charged and has never received visits by lawyers.

- **Abubaker Sharaf al-Din**, a Fur from Zalingei, arrested in January 2004 in Khartoum. He is reportedly kept in Kober prison.

- **Babiker Abdallah Atim**, a lawyer from Kabkabiya, arrested in Khartoum in February 2004.

- **Abdallah Abaker**, originally from Deleij, near Garsila in West Darfur. He is merchant who was living in the camp of Mayo for displaced persons in Khartoum. He was originally detained in Kober, then transferred to Dabak, and is now reportedly held in Al Domer prison, North of Khartoum.

- **Ibrahim Ali Sharaf al-Din**, from Zalingei. He was an employee in Al Baraka Bank in Khartoum before being arrested. He was originally detained in Kober prison, then in Dabak prison; he has now reportedly been transferred to Wad Medani prison.

- **Bahar al-TaHER**, (nickname “Jirjira”), a student in his late twenties. He is the *omda* (community leader) of Jirjira in North Darfur, instead of his deceased father. He is reportedly held in Kober prison.

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<sup>14</sup> “Torabora” is the nickname often given by the Sudanese authorities to the armed opposition in Darfur.

### **2.3 Arrests of IDPs - counter-insurgency, denial of the right to freedom of expression and forced relocation**

In Darfur, IDPs or civilians living in areas contested between the government and the rebel groups live under the constant threat of arrest. IDPs have been arrested after speaking out about their plight, usually to foreigners or taking the lead in advocating for the needs of the displaced communities, for instance by protesting at government attempts at forced return, often only for exercising their fundamental right to freedom of expression. The government security forces have also arrested people living in places attacked by rebel groups, on the pretext that they may know something about or may have given support to rebel groups. Arrests on such grounds have been a common practice of the government security forces during the conflict in Southern Sudan or the Nuba Mountains, with civilians being labelled as “fifth column” (the “rebels”). Another pattern of arrests is developing, particularly in South Darfur state, linked to government attempts at forcibly removing or relocating the displaced, in violation of international standards and agreements between the Sudanese government, the UN and the International Organisation for Migration (IOM). Many IDPs are being arrested after police raids on camps in an obvious attempt to intimidate whole displaced communities to bow to government pressures for forced relocation.

After the 1 October clashes in Zam Zam camp between IDPs and the police, two IDPs were arrested by the security forces. **Ahmad Saleh Arja** was arrested on 5 October, detained by police in al-Fasher and released the following day upon the intervention of UN human rights monitors. Another IDP, **Tareq Arabi Nasir**, was also arrested on 5 October. He was reportedly tortured during his detention by members of the military intelligence; he was released on 8 October. Such arrests are not only denying the IDPs their right to liberty and freedom of expression, they are also a way to intimidate IDPs into not talking. The case of **Ahmad al-Nur Mohamed**, an outspoken man whom the displaced persons in Zam Zam had chosen as a spokesperson, appears to be on the mind of every IDP in Zam Zam when they are approached by foreign delegations. Ahmad al-Nur Mohamed is a Zaghawa in his forties who fled to Zam Zam camp after the attack of Tawila by *Janjawid* at the end of February 2004. After he was seen speaking out about human rights violations to a high-level foreign delegation in June 2004, the police attempted to arrest him. IDPs surrounded him and prevented the police from carrying out the arrest. A few days later, Ahmad al-Nur Mohamed was missing from the camp. His two wives and several children remain in the camp and have not heard of him since.

A student from Kass, a town in South Darfur where some 60,000 persons displaced by the conflict have taken refuge, stated to Amnesty International:

*“In July, I was working for an international organisation with other colleagues, and me and others went to the IDP camps to collect information. In the camp, we came across many cases of rape. Then, on 18 August, the Security arrested me for four days. I was on my way to the University and someone in civilian clothes ordered me to come with him. When I arrived at the office of the Security, they asked me what my*

*relationship with this organisation was and told me that our government says that we should not help such organisations. They kept me for four days but they could not find anything on me. They proposed me money to spy on the organisation but I refused. Then they released me.”*

Between 31 July and mid-August, some 190 IDPs have been arrested in Kalma camp. Some arrests were related to IDP opposition to government plans to return them to the villages they had fled, others occurred after a man thought by IDPs to be a member of the *Janjawid* was lynched by a crowd on 12 August in Kalma, the police, aided by members of the National Security, proceeded to search for weapons in the camp. Those arrested reported being beaten with sticks during their first night of detention. Most were released without charge but 49 of them were charged with “causing public disturbance”. One of those released told Amnesty International delegates that, while being beaten, the police and the security forces told them “not to communicate with the *khawajas*<sup>15</sup> and to stop encouraging the displaced not to return to their villages”. One of the displaced who was arrested, **Abdallah Bashir**<sup>16</sup>, was said to be in hospital when the others appeared in court; however he was not found in any hospital in the area. Amnesty International believes that he has “disappeared”. The organisation’s delegates asked the head of the National Security Forces in Nyala about his whereabouts, but they were told that all IDPs arrested in Kalma in August were handed over to the police. The organisation also reported their fears to the Chief of Police in Nyala, who said that there was no detainee under such name held in Nyala general prison.

Government security forces have reacted strongly against IDPs and civilians after rebel attacks in certain areas. On 2 October, the Commissioner of al-Fasher travelled with a government humanitarian convoy to Tawila. The convoy was attacked by an armed group who killed one member of the Popular Defence Forces and injured at least two policemen. The local authorities resorted to search houses for weapons in Tawila and on 4 October, the Criminal Investigation Division of the police arrested 12 men: **Salah Beshir Ahmad; Harun Ibrahim Adam; Al-Sadiq Abdallah Abdel Karim; Abdallah Jibril Arbak; Amir Bakhit Nour; Abdallah Ahmad Adam; Saleh Suleiman Adam; Al-Sadeq Abdallah Abdel Mawla; Yunis Ahmad Abdallah; Jamal Fakhreddin Hussain; Abdallah Harun Hussain; and Adam Adam Mohamed Ibrahim**. They were at first detained incommunicado. Ten of them were reportedly transferred to the Shalla prison in al-Fasher, in a section of the prison which no outside authority has access to. Among these, six of them are said to be pupils in the secondary school of Tawila. Salah Beshir Ahmad and Abdallah Jibril Arbak were reportedly severely beaten with metal bars all over their bodies. Two out of the twelve men have been kept under detention by the “positive” security, suggesting how closely the

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<sup>15</sup> Sudanese for “foreigners”.

<sup>16</sup> See Amnesty International Urgent Action, “Fear for safety/ “Disappearance”/ Medical concern: Abdallah Bashir (m), aged 23, (20 August 2004, AI index: AFR 54/104/2004). AI considers that a person has “disappeared” whenever there are reasonable grounds to believe that a person has been taken into custody by the authorities or their agents and the authorities deny that the victim is in custody, thus concealing his or her whereabouts and fate.

police and the military intelligence cooperate. They have not been charged with any recognisable criminal offence.

On 6 October, the army and the military intelligence arrested 11 persons between the villages of Janjonat and Labanti, near Duma (some 12 km north of Nyala), an area where armed opposition groups are said to be active. One person was released without charge, but the military intelligence detained the ten others for four days before transferring them to the police station. The ten are now said to be held in the prison in Nyala. Among those arrested were four minors: **Hamid Abdel Majid Atim**, 17, from the Birgid ethnic group; **Adam Ramadan Adam**, 13; **Abdel Aziz Salah Ati**, 14; and **Mohamed Mahmud Abdallah Hasan**, 15. The other detainees are: **Abaker Harun**, 35; **Musa Ahmad Mohamed Khamis**, a man in his thirties; **Adam Harun Mohamed**, 25, from the Tunjur ethnic group; **Mohamed Ibrahim Adam**, 30; **Adam Ahmad Mohamed**; and **Yaqub Abdallah Yaqub**, 18. The detainees were reportedly beaten with sticks and kicked all over their bodies, in order to confess about their alleged involvement with armed opposition groups. Four of them, Yaqub Abdallah Yaqub, Musa Ahmad Mohamed Khamis, Hamid Abdel Majid Atim and Mohamed Mahmud Abdallah Hasan were accused of being members of the SLA and were charged with articles carrying the death penalty. The charges were finally dismissed because there was no evidence against them.

On 22 September 2004, an armed political group calling itself *al-Shahama*, said to be linked to the Darfur armed groups and to the Popular Congress attacked the town of Ghibaish in North Kordofan state, on the eastern border of North Darfur state. The armed group reportedly looted two banks and the local *zakat*<sup>17</sup> office, attacked the police station and released detainees from the local prison and fought with government police, security and armed forces before leaving the town. No civilians were reported killed or injured. On 26 September, a local merchant was reportedly arrested and tortured by the security forces, and subsequently released. He was accused upon arrest of being seen in the car of the armed group who had attacked the town. The authorities arrested other persons after the rebel attack in Ghibaish, including **Hamid Hamoda Kharala Hamid**, **Tayeb Abdel Majid**, **Haj al-Amin Mudawi** (from the Popular Congress), **Ja'far Nasreddin** (Popular Congress), **Abdel Rahman Mohamed Abaker** (Popular Congress) and **Tariq Issa Hamid Fadlallah**, who was reportedly beaten by the security forces. They are all said to be released but have been asked to report to the security office everyday. The basis for the arrests is not known.

Police arrived at Otash camp in Nyala, at 9pm on 1 November telling the sheikhs (camp leaders) that they wanted to move the camp's residents. They left, but returned at midnight, beating some of the camp's residents, and arresting nine people. Those arrested were taken to Central Nyala police station, again beaten, and were forced to have their heads shaved. They were transferred to prison before being released on bail on 4 November. They have since been treated at the Amal Centre for Rehabilitation of Torture Victims in Nyala.

At a police raid on Al-Geer camp in Nyala on 10 November, at least 46 IDPs were arrested. Many were beaten severely at the camp and again while in detention. One of the

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<sup>17</sup> *Zakat* in Islam is the compulsory giving of a proportion of one's wealth to charitable causes.

sheikhs of the IDPs, **Taher Hasaballah**, has been transferred to hospital as a result of injuries sustained under torture. Twenty-one of them, including an American journalist were released on bail on 11 November, after UN intervention. A further 25, including at least 13 women, were released on bail in the following days. All 46 were charged under Articles 51 and 69 of the Sudan Penal Code, relating to “crimes against the state”. Their trial is pending.

## ***2.4 Arrests linked to the alleged plot of the Popular Congress Party***

On 29 and 30 March 2004 more than 15 members of the Popular Congress were arrested along with 10 army officers, mostly from Darfur. They were accused of various offences, including preparing a coup and plotting to blow up a power station. The relationship between the Popular Congress and the Darfur armed group the JEM was widely thought to be behind the detentions. By May 2004 some 69 followers of Dr Hassan al-Turabi had been detained.

On 9 September 2004, the Sudanese government accused the Popular Congress of plotting "sabotage" against the government after announcing the discovery of weapons in a house in Khartoum. On 15 September the Minister of Justice announced the creation of a committee, to be headed by Attorney-General Salah Abu Zaid, to investigate the alleged "sabotage", including rumours of a list of government officials to be assassinated and of a coup d'Etat. More than 60 persons were arrested in Khartoum within a week, including many people from Darfur, whether or not they were connected with the Popular Congress. Those targeted for arrest include high-profile members of the Popular Congress and lower-profile members of the Popular Congress, in particular students. Students and people from marginalised areas such as Darfur are particularly at risk of torture: two students from the Popular Congress died in custody after their arrest in September 2004. On 13 September, **Hassan al-Turabi**, the leader of the Popular Congress, was transferred from house detention, where he had been held without charge for several months, to Kober prison. His son **Siddiq al-Turabi** was also arrested and brought to Kober prison, as well as Popular Congress senior officials such as **Ibrahim al-Sanusi** and **Mohamed al-Amin Khalifa**. Siddiq al-Turabi is said to have been transferred to Port-Sudan in Eastern Sudan. During Amnesty International's visit in Sudan in October, the security forces were still said to be using the alleged plot as a pretext to arrest Darfurians in Khartoum. None of those arrested since September has had access to families or lawyers and none has yet been charged with a recognisable criminal offence.

Among those arrested are four persons said to be wanted by the authorities for the alleged March coup attempt. **Yusuf Mohammad Saleh Libis**, an engineer of Zaghawa origin, aged 40, and a supporter of the Popular Congress, has been detained incommunicado since September 2004. He is said to be detained in Kober prison. Despite being arrested in connection with the March 2004 alleged plot, he has not been charged and has not been brought to trial with the other March detainees. Yusuf Mohamed Saleh Libis has previously repeatedly been detained. He was arrested at the beginning of February 2002 and taken to the offices of the security forces in Khartoum, interrogated for 12 days and reportedly deprived of

sleep, then kept in solitary confinement for several weeks before being transferred to Kober Prison. His 70-year-old mother was allowed to see him two or three times after he had been held incommunicado for three months, but then was forbidden to visit him as she only spoke Zaghawa, not Arabic, which the security service guards monitoring conversation during the visit could not speak. In November 2003, with the expiration of the nine months' period allowed for detention under Article 31 of the National Security Forces Act, Yusuf Mohammad Saleh Libis was released but five days later he was rearrested under the same article of the National Security Forces Act and remained in detention for several months.

Other persons were arrested apparently only because their relatives were members of the Popular Congress and wanted by the security forces and detained as "hostages". For instance, **Mohamed Nasreddin Tambur**, a Fur student in Khartoum was arrested in September 2004, in place of his brother, reportedly wanted by the security forces in connection with the alleged Popular Congress sabotage plot. The security forces reportedly forced him at gun point to phone his brother and fix a meeting with him. The security forces failed to arrest his brother at the fixed meeting. Mohamed Nasreddin Tambur is still detained in the Khartoum North security office. **Jalal al-Din Shaid**, a lawyer of Nigerian origin, was also arrested on 7 October, in place of his brother Badawi who is wanted by the authorities in connection with the PC attempted coup. He is believed to be held in the security office in Khartoum North.

The security forces also arrested relatives of Al-Haj Adam Yusuf whom the authorities allege is the leader of the attempted coup d'Etat by the Popular Congress and who is said to have fled outside the country. Two of his wife's brothers were arrested: **Jar al-Habib Mohamed Ibrahim** was arrested in Rashad, in the Juba mountains in Kordofan at the beginning of October. **Ramadan Mohamed Ibrahim** was arrested from his farm in Soba, south of Khartoum. **Ahmad Mohamed Adam Yusif**, a student and brother of Al-Haj Adam Yusif was also arrested on 15 October in his house in Khartoum. He is said to be held in the security detention centre in Khartoum North.

Following the alleged Popular Congress plot in Khartoum, members of the Popular Congress in Darfur have also been arrested. On 15 September, **Abdallah Adam Juma** (PC leader in Darfur), **Hamza al-Hadi**, **Mohamed Johar Suleiman**, **Mossad Dak Mohamed Ali Haggar**, **Mohamed Abdallah Issa Azraq**, **Osman Ibrahim**, **Adam Hamid Limun** and **Jamali Hassan Jalal al-Din** (a lawyer), were arrested in al-Fasher. They were released shortly after. Most were not ill-treated in detention, apart from Mohamed Abdallah Issa Izerik who sustained blows on his face after being reportedly kicked and whipped by the security forces. **11 members of the Popular Congress**, including one man called **Abu Seri**, said to be a primary school teacher, were also reportedly arrested in Um Hosh, near Tawesha, in the eastern part of North Darfur. These men were allegedly transferred to al-Fasher by helicopter and beaten publicly at the airport of al-Fasher. They are said to be detained by the "positive" security forces and no-one knows about their fate.

## **2.5 Releases**

The Sudanese authorities have released some detainees, but notes that these releases have only resulted from strong and sustained demands by different international actors (local and international human rights organisations, lawyers, human rights departments within foreign embassies and the UN, members of the African Union Ceasefire Commission) putting pressure on the government on individual cases. Amnesty International calls on the government to take action on all such cases, not only the individual ones that are the subject of international pressure. The organisation calls for the immediate and unconditional release of prisoners of conscience.<sup>18</sup> It calls for political prisoners to either be charged with recognisable criminal offences or to be released.

On 7 August 2004, all charges (some carrying the death penalty) against human rights defender Mudawi Ibrahim Adam were dropped by the Sudanese authorities. He was released and is now able to carry out his human rights activities. On 1 September 2004, human rights defender Saleh Mahmud was released after more than seven months in detention. Abazar Ahmad Abu al-Bashir, a lawyer from al-Jeneina, was released on 18 September, two days after an Amnesty International delegation visited him at the National Security Detention Centre in Nyala. He had been detained without charge since 24 July and had been denied access to a lawyer. Some 47 persons arrested by the security forces between 26 June and 3 August, after speaking to members of foreign delegations in the IDP camp of Abu Shouk near al-Fasher and in Kabkabiya, were reportedly released between August and September 2004. The fact that some were detained after speaking to US Secretary of State Colin Powell, French Foreign Minister Michel Barnier, or African Union ceasefire monitors<sup>19</sup> brought diplomatic pressure on the Sudanese government. None of those released were able to challenge the legality of their detention while held, or compensated for unlawful detention.

On 1 October, three community leaders living in the camp of Kalma, Sheikh **Tijani Adam Tahir** (A Fur leader from Wadi Saleh near Zalingei), Sheikh **Salah Abdel Gader** (a Fur leader from Shataya, south of Kas) and **Adam Hussain**, the secretary of the Sheikhs, were arrested by the security forces, reportedly after the Friday prayer at a mosque in Nyala. Another community leader, **Osman Adam**, was reported to be arrested at the same period. The community leaders were detained at the security detention centre in Nyala, without access to the outside world. They were never charged; two of the community leaders were said to be detained after having strongly spoken out against attempts by the local authorities to encourage IDPs to return to their home areas. Sheikh Tijani Adam Tahir had participated in

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<sup>18</sup> A prisoner of conscience is a person imprisoned or otherwise physically restricted because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status – who has not used violence or advocated violence or hatred.

<sup>19</sup> See Amnesty International Urgent Action: *Fear for safety/ Torture or other ill-treatment* (6 August 2004, AI index: AFR 54/095/2004) and Amnesty International press release: *Darfur, Sudan: Government should stop intimidation and arrests of civilians speaking to foreigners* (10 August 2004, AI index: AFR 54/099/2004).

a meeting in Kalma camp on 29 September, with the government Humanitarian Aid Commission and representatives from UN agencies, where he reportedly criticised the government policy of returns. Adam Hussain was reportedly accused by the National Security of smuggling weapons into Kalma camp with the help of the SLA representative in the African Union Ceasefire Commission in Nyala. Despite repeated appeals by representatives of the UN, international NGOs and human rights organisations, the Head of the National Security Forces in Nyala refused to give access to the community leaders, on the grounds that the National Security Act gave him the powers to detain persons incommunicado until investigation about them was completed. The community leaders were released on 13 October; they were severely beaten while in detention.

On the first day of the Eid al-Fitr feast that marked the end of Ramadan, Popular Congress Ibrahim al-Sanusi and two other senior officials were released. More than 20 jailed leaders of the opposition Popular Congress party were reportedly freed during Ramadan. Popular Congress leader Hassan al-Turabi and his son, Siddiq, remain in detention.

However, as soon as someone is released, others are arbitrarily arrested, under the cover of the same repressive security laws. The human rights community continues to face the same legal obstacles, particularly with regard to the wide arresting powers allowed under Article 31 of the National Security Forces Act, when discussing each case of arbitrary arrest or detention with representatives of the government.

### **3. Torture**

The right of every detainee to be treated humanely is enshrined in international human rights law, including the International Covenant on Civil and Political Rights (ICCPR), to which Sudan is a party; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted unanimously by the UN General Assembly on 9 December 1988; and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which Sudan signed in 1986 - though it has not yet ratified the treaty it is obligated under international law not to take any action which would defeat its object and purpose).

Article 30 of the Sudanese Constitution also protects the right of every detainee not to be tortured or otherwise ill-treated. Article 83 of the Sudanese Criminal Procedure Code states that any accused must be treated with dignity, has the right to see a lawyer, to inform and meet his family, and may not be removed from his place of detention without authorization and may receive food, clothes and books. Even the National Security Forces Act mentions, under Article 32, that the detainee should not be hurt "*physically or morally*".

Detentions without access to the outside world or outside the authority of the judiciary provide the conditions under which torture is practised. The fact that almost every member of the National Security Forces, the police forces or the military intelligence and the "positive" security can torture detainees with impunity encourages them to torture those they arrest. Article 33(b) of the National Security Forces Act allows almost complete immunity to

officers of the national security for any actions: “*No civil or criminal proceedings shall be instituted for any act connected with the official work of the member save upon the approval of the director*”.

### **3.1 Cases of torture**

Persons arrested by the Sudanese security forces have been routinely tortured. The most common form of torture or ill-treatment consists of heavy beatings, with hoses, whips, or boots. Some detainees have had their nails pulled out, others have been burnt with cigarettes. Sometimes detainees have been tied and hanged upside down. While the National Security Forces do not appear to torture every person they detain, most people remain at risk of torture upon arrest and during incommunicado detention. Those who escape torture are often well-known politicians, or persons who enjoy a high status in society; however, if the security forces believe that they have grounds to arrest well-known members of the society, they sometimes ill-treat them. Most acts of torture seem to aim at extracting confessions from detainees, sometimes with the view of instituting legal proceedings against detainees.

Amnesty International interviewed several victims of torture during its visit to Sudan and Darfur in September and October 2004. All the persons under the custody of the military intelligence and the “positive” security are reported to have been tortured. Amnesty International believes that the military intelligence and the “positive” security, compared to the National Security Forces, systematically torture those they detain.

On 1 August 2004, the “positive” security arrested 12 persons, all from Mellit, a town North of al-Fasher under government control. Those arrested include four women, **Mariam Mohamed Dinar, Su’ad Ali Khalil, Su’ad al-Nur Abdel Rahman** and **Fatima Rahma**, currently detained in the prison for women in al-Fasher; and eight men. Two of the men, **Al Dakir** and **Ahmad Yusuf**, are soldiers and are therefore detained in the military prison. The six other men, **Hamed Ismail Jedo, Abdallah Mohamed Nur, Sabri Adam Nurain, Haytham al- Tahir, Omer al-Toum** and **Adam Mohamed Suleiman**, an employee in the rural council of Mellit, are detained in Shalla prison in al-Fasher. At the time of the arrests, the local authorities announced that they had uncovered an attempt by people from Mellit to fabricate a video tape attempting to show that rapes had been committed in the region. Some government reports attributed such fabrication to rebel groups, others to “an international NGO” who was said to have paid people to make such a video. Amnesty International interviewed the four women detained in al-Fasher, who all reported to have been tortured at the hands of the “positive” security. Amnesty International did not visit the men detained in the same case; however, Abdallah Mohamed Nur is said to suffer from lesions on his chest, and Sabri Adam Nurain from injuries on his scrotum, reportedly after being tortured.

Mariam Mohamed Dinar and Su’ad al-Nur Abdel Rahman were arrested separately in Mellit by the same three members of the “positive” security. They were each asked to follow them and taken by force to a military camp in the hills south of Mellit. There they were beaten heavily and kicked all over their bodies. The members of the “positive” security even stood on them with their army boots. During their beating, they were both asked if they knew each

other and if they knew anything about a video or about a studio belonging to a man called “Siddiq” in Mellit. They were then transferred to the office of the “positive” security in al-Fasher by car. Upon arrival in the city they were covered with plastic sheets so that no-one could see their transfer. Su’ad Ali Khalil was arrested in the market of al-Fasher by the same three members of the “positive” security, asked if she knew Mariam Mohamed Dinar and taken by force to their office. Fatima Rahma was arrested at home by the same people (she knew one of them, as she had refused to marry him), after being asked if she knew Su’ad al-Nur (who is a relative of hers).

The four women spent about a month being tortured during the day at the office of the “positive” security, and transferred at night to a dark cell in the prison for women in al-Fasher. Mariam Mohamed Dinar was severely tortured. She told Amnesty International:

*“I was taken in a room with ten men; they took my tobe<sup>20</sup> and put a cloth on my eyes. They lifted my clothes and began to punish me with a belt until the evening. They pulled my nails with a cutter until I bled, with a pen they picked me and said: “you will confess to this story”. They also made me spend a day under the sunshine. I was then transferred to another room and they kicked me with their shoes and fists. I am still suffering on my left and right side.”*

Fatima Rahma was also severely tortured, maybe out of personal grudge. She said:

*“The security officer I knew kicked me with his boots and punched me on the face and on my feet. The punishment continued, and the two other men also used their belt on me, saying:*

*“If you want to be released, you have to tell the truth.” The punishment continued for nine days, sometimes I was left in the sunshine for days. I fell sick’*

Some of the women confessed to the story under duress. Su’ad Al Nur was reportedly less severely tortured, apparently because she was coerced into saying that the other women had participated in making a video about rape: *“They took me away and said that they knew I had not made the video but that I had to say I did. And then they punished me very heavily. The next day I said that I did the pictures.”* Mariam Mohamed Dinar said: *“After this torture I was forced to confess to this story. I didn’t sign anything but they wrote a document. They put some paper to cover my eyes and I was taken in picture with a video camera that they had on their shoulder. Su’ad and I were then pictured in different situations: sitting down, standing up, with telephones and we were forced to say on these phones that we did it.”*

After a month, the four women were brought to the office of the *niyaba* in front of a judge [name withheld] and told him that they were tortured into confessing they had participated in making a video. The judge reportedly ordered their transfer back to the office of the “positive” security, because they were trying to change their confession, where they were further tortured. The three members of the “positive” security responsible for their arrest

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<sup>20</sup> Women’s cloth.

told them: “The *niyaba* belongs to us, the positive security”. Ten days later, the women were transferred to hospital, after private lawyers demanded that they be medically examined. They are now under the authority of two members of the *niyaba* who appear to have seriously investigated their torture and have promised that they would be released if it is proven that they were tortured. However, the four women, along with the eight men arrested in the same case, have been charged with Articles 60, 63, 64, 50 and 146 of the Sudan Penal Code. Some of these articles carry the death penalty. Despite the medical examination being free of charge, the detainees or their relatives must buy their own medicine. The four women interviewed by Amnesty International are all responsible for the care of children or sick relatives. They were adamant that they did not know why they had been arrested and knew nothing about the alleged video tape.

Other persons arrested by the “positive” security have been severely tortured. In August 2004, the “positive” security arrested **Suleiman Mahmud Abaker, Mohamed Ali Mu’min** and **Mohamed Saleh Mohamed Yahya** and tortured them by whipping and burning them. On 30 September, the “positive” security also arrested Abdel Rahman Yahya, a policeman working at the court in al-Fasher, accusing him of having smuggled weapons to Zam Zam IDP camp. The policeman was so severely tortured that his right leg was fractured. He was transferred to the hospital in Khartoum by his family in order to receive intensive care.

On 26 September, a **local merchant** was reportedly arrested by the local Chief of Police and several policemen in Ghibaish (recently attacked by armed opposition groups) and forced to the back of a police pick-up car, where he was tortured in the open while the car was driving around the market. The policemen cut the back of his leg with their bayonets. One judicial officer was reportedly shot at by the police when he tried to intervene and asked the police to stop such treatment. The man was then reportedly taken to the police station and, in the presence of security, Popular Defence Forces and National Congress officials, was thrown onto the floor and severely beaten while policemen were holding his arms and legs. Amnesty International delegates saw the marks of torture on his back, back leg and arms and were shown a medical report which confirmed beatings on the neck and shoulders, blood on the skull, blows on the legs and chest and a cut on the leg.

Torture has also been practiced extensively by the *Janjawid*, in their areas of control, after having attacked, killed and forcibly displaced people. M., a community leader from **Margasa**, West Darfur told Amnesty International about his torture in **For Baranga**:

*“From 3pm until 8pm they left me there under the tree. Then I had to sit and they tied my legs to my body, my hands on the back and put a stick under my legs. They hung me upside down to the tree, on the stick under my knees and then they swung me back and forth. I was beaten with sticks and whips at my feet. They were maybe 15 Janjawid. They took all my clothes off and I was naked. They left me hanging upside down with another person under this tree until morning. They read the names of 97 Tora Bora from Andrabru to me and they called me bad names. For three days this continued, they beat us every day and at night they hang me under the tree upside down.*”

*They did not give us food and only a little water. They rubbed pilipili (hot pepper) in our eyes and nose. They put a blanket around our head and tied it very tight. On the fourth day they told me and another local leader to dig a well for them. They would pour cold water over our hot bodies and refused us to give us water to drink, they made us work for them and sometimes they would fire gunshots at us.”*

### **3.2 Deaths in custody as a result of torture**

Sometimes torture by the security forces is so severe that it causes the death of detainees. On 26 August, in Mellit, the military intelligence arrested **Adam Suleiman Abaker, Bishara Issa Adam, Abaker Ahmad, Abdelrahman Mohamed Abdel Hadi, Osman Abdallah, Abdallah Adam Issa, Adam Ahmad Suleiman, and Siddiq Abdallah Abdallah**. Despite all being civilians, they were held in the army garrison in Mellit where they were tortured. Abdelrahman Mohamed Abdel Hadi died in custody on the same day, reportedly as a result of severe injuries sustained as a result of torture. The military intelligence reportedly tried to hand over the body to his relatives who refused to take it. At last the body was reportedly buried by officials near the hospital of Mellit. The others, also injured as a result of torture, were subsequently released.

In September 2004 two students arrested as part of the crackdown on the Popular Congress died in custody<sup>21</sup>. On 10 September, **Shamsaddin Idris**, a Nuba student at al-Nilein University, died in custody one day after being arrested. The police told his relatives that he died of "stomach pains"; however a medical examination of his corpse revealed blows on his brain and bruises on his legs, abdomen and left shoulder. The family of the second student received no death certificate and were not allowed to bury his body. **Abdel Rahman Suleiman Adam** was the eldest son of the family, supporting them by working in the market, but had no close relatives in the capital – his family were in Nyala, Darfur. It was said that he had left weapons connected to the alleged coup plot at his uncle's house in Khartoum. On 10 September security officers came and searched the house, so the family warned him not to come back. He phoned on Sunday 12 September to say he was staying with an aunt. The following morning he left with his cousins and they saw him climb on a bus. The same evening, Monday 13 September, national security contacted his uncle and took him to Khartoum Hospital. They showed him the body of his nephew and told him that he had died trying to jump out of the car. But he was only shown the head and neck of the body and not allowed to telephone other relatives to come to the burial. Abdel Rahman was buried in al-Sahafa cemetery in Khartoum without a death certificate or Authorization of Burial. The family went daily to the main national security office in Khartoum to ask for a death certificate but were always told to come back the next day.

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<sup>21</sup> See Amnesty International Urgent Action, Fear for safety/Torture, 16 September 2004 (AFR 54/121/2004).

According to Reuters news agency, First Vice-President Ali Osman Mohamed Taha told reporters on 13 September that an investigation had begun into the death of Shamsaddin Idris. He added that, "*under these kinds of circumstances, where there are battles... some incidents may occur. But the law rules, and there is no organ or apparatus in this state that is above the law... including the state security services*". Amnesty International delegates in Sudan met with a representative of the legal department of the National Security Forces who assured that an investigation into both deaths in custody was underway and that, if any member of the security forces was found responsible for mistreatment, he would be tried by a Security court or an ordinary criminal court. According to Amnesty International's information, the National Security Forces have not, to date, released any findings of such investigation; nor is it known whether the investigation has been conducted.

### **3.3 Impunity for torture**

Torture is encouraged to continue because of the overwhelming impunity enjoyed by the perpetrators. One Sudanese human rights organisation, which provides medical aid and legal advice to victims of torture, has documented hundreds of cases of torture, including through medical evidence and tried to start legal proceedings against those said to be responsible for torture. Complaints are brought to the *niyaba* in Khartoum but they have gone nowhere because Article 33 of the National Security Forces Act grants immunity to the security forces. Only the Director of the National Security Forces is allowed to lift the immunity of its members; the judiciary is not allowed any oversight of the security forces. Hundreds of complaints of torture are said to be pending against members of the security forces. Human rights activists hope that the impunity of the security forces will end after the signature of the North-South peace agreement and that these complaints will lead to prosecutions.

Amnesty International knows of only two cases where the immunity of the security forces appears to have been challenged. The first case relates to the torture of four Nuba people in Dongola, North Sudan, in June 2003, which resulted in the death in custody of one of them, Ramadan Ismail; and the coma and prolonged hospitalisation of another, Juma Omer El Nur<sup>22</sup>. Three security officers were reportedly tried by a court of the Security forces, and sentenced to a fine, one year in prison and dismissed from the ranks. However there is no information as to whether the trial respected international standards of fairness or whether the victims of torture and their relatives were awarded compensation. There was no independent oversight of the trial.

The other case relates to the death in custody of Abdel Rahman Mohamed Abdel Hadi on 26 August 2004 in Mellit. His mother filed a complaint to the office of the Attorney-General in Mellit and the police reportedly started investigating the reports of torture in September 2004. Three officers of the military intelligence and two soldiers are said to be among those under investigation. It is not known whether they have been charged yet.

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<sup>22</sup> For more information, see Amnesty International Urgent Actions: *Fear for safety / fear of torture or ill-treatment / incommunicado detention/medical concern* (AI index: AFR 54/043/2003, 17 June 2003) and follow-up (AFR 54/050/2003, 25 June 2003 and AFR 54/060/2003, 16 July 2003).

## **4. Government investigations of human rights violations and perpetrators in Darfur**

Under increased international pressure, including the demands of UN Security Council Resolutions 1556 and 1564, the government has announced publicly or reported action against a limited number of people reported as being *Janjawid* and suspected of killings and lootings in Darfur. The very few cases of arrests and trials contrast sharply with the hundreds of cases of arrests of civilians, IDPs, human rights activists and politicians accused of criticising the authorities or supporting rebel groups. It is clear that the majority of human rights abuses carried out in Darfur in the last 20 months remain uninvestigated and the perpetrators – both those that have directly carried out abuses and those who have ordered them – have not been brought to justice. The police and the judiciary, when asked about investigations into the large-scale killings in the region, invariably answer that the perpetrators are unknown. Government-announced investigations, including the National Commission of Inquiry into human rights violations by armed groups in Darfur, by not making the results of their findings public, appear to protect the authorities rather than helping to provide justice to the victims. The work of these commissions has not been followed up by judicial proceedings against perpetrators.

### **4.1 Flawed action taken against so-called perpetrators of abuses in Darfur**

On 23 April 2003, Janjawid militias attacked civilians in Mulli, north of al-Jeneina, as they came out of the mosque after the noon prayer. The militias shot at the crowd, attacked people and looted goods in the market place. A total of 46 people died, either at the time of the attack or later due to wounds. Local people said that although there was a police station 15 kilometres away the police came only after four to five hours. They said that, although they told them that the killers escaped to the south, the police went to the north and arrested 11 men they found looking after their herds. The 11 arrested – apparently at random – were the last people to be arrested for a year in the area for attacking villages and killing civilians. After the SLA attack on al-Fasher airport two days later, the Janjawid militias attacked villages and killed civilians with impunity. The case came to trial before the Specialised Criminal Court in al-Jeneina in September, apparently only after the lawyer of the victims' families insisted. Two of the police who had arrested them then retracted their evidence and the 11 were acquitted.

Amnesty International was also told by a member of the judiciary in North Darfur that some 18 persons were arrested after an attack by government militia on Kabkabiya market on 18 December 2003. The accused were held in the police station in Kabkabiya. The investigation into the attack has not yet been completed. The official was unable to say whether the 18 persons had been charged or whether they were still detained.

In July 2004, the Sudanese government announced that some ten “members of the *Janjawid*” had been arrested, tried by a Specialised Criminal Court in Nyala and sentenced to six years’ imprisonment and cross-amputation (amputation of the right hand and left foot). The government announcement gave no details of the crimes of which the men had been found guilty. The so-called *Janjawid* members were shown on Sudanese television saying that they had not been armed by the government. Those shown on television were criminal suspects accused of *haraba* (armed robbery) who have been detained for more than a year in Nyala. No record of the trial was found at the Specialised Criminal Court in Nyala, according to lawyers in the town. Amnesty International was able to confirm that five persons were tried; one of them, Ali SidAhmad, an employee of the Agricultural Bank in Nyala, had been found guilty of embezzlement and sentenced to a fine of 2,080 million Sudanese dinars in July. Another of the five persons has reportedly been sentenced to cross-amputation (amputation of the right hand and left foot). He has appealed the sentence.

In September and October 2004, the government Advisory Council for Human Rights reported to the UN Joint Implementation Mechanism, overseeing compliance of the Sudanese government with the UN Security Council resolutions, that several “*Janjawid*” had been tried. On 12 October, seven persons belonging to the Iregat ethnic group were sentenced to death by hanging by the Nyala Specialised Criminal Court. They were found guilty of charges of murder and armed robbery, for an attack on the Fur village of Haluf in October 2003. They had reportedly been detained since 2003. There was reportedly no substantial evidence brought to the attention of the court by the prosecution; the person who denounced them did not appear at the trial and therefore the defence was not able to question witnesses for the prosecution. However, defence witnesses appeared in court and claimed that the accused were not present in Haluf at the time of the attack.

The government also reported that on 4 October 2004, Mohamed Barbary Hasab al-Nabi, a member of the Awlad Zaid ethnic group, was tried by the al-Jeneina Specialised Criminal Court under Articles 175 (armed robbery) and 182 of the Sudan Penal Code and sentenced to three years imprisonment and a fine of one million Sudanese dinars. The man was reportedly found guilty of participating in the burning of Dorti Mongash village in West Darfur and the looting of cattle. Notwithstanding requests by Amnesty International, the government did not provide details as to the evidence available against the accused, whether he pleaded guilty or non-guilty, or whether he was accorded adequate means of defence at the trial.

Even in cases when responsibility for abuses would appear to fall on suspected opponents of the government, victims or their relatives do not benefit from basic standards of protection, such as confidentiality. On 20 October 2004, the governmental Advisory Council for Human Rights issued a press release stating that five girls, aged between 11 and 16 years-old, had been abducted and raped by an armed group in the locality of Kulbus. The police is reportedly investigating the incident after a medical report was issued to them. The names of the girls were announced and distributed publicly, without consideration for their age or the potential stigma or risks of retaliation they could suffer. While all thorough investigations into abuses by any party are welcome, such a press release may have served more as a tool for

propaganda (i.e. the armed opposition is committing abuses) rather than due consideration for the rape survivors.

Amnesty International has been able to confirm that, as reported by the Sudanese government<sup>23</sup>, two policemen, Hisham Mahdi and Nasreddin Ibrahim Malik were arrested in al-Fasher after being accused of raping a displaced girl in Abu Shouk camp in September 2004. The policemen were suspended from the police forces pending investigation. However the victim's family has not contacted their lawyers for some time, possibly because they have been intimidated.

#### ***4.2 Investigations on perpetrators of human rights violations inexistent or stalled***

Impunity for gross human rights violations is deeply entrenched. In a visit to al-Jeneina court in West Darfur, where they were able to meet judges and prosecutors, Amnesty International delegates noted that, between May 2003 and March 2004, while hundreds of villages were being destroyed and thousands of civilians were unlawfully killed, only one case was brought against suspected killers during attacks on villages. In this case – involving the killing of eight policemen – those arrested were acquitted. When delegates asked how so many thousands of people could be murdered and so much property destroyed and looted without any judicial action taken, the judges explained that the Sudanese judiciary was trained not to act without evidence and that there was “*no evidence and no complaints*”.

In the majority of cases reported to the police or the judiciary, complainants are told that no action can be taken because “the perpetrators are unknown”. Often those attacking villages cover their faces with turbans and attack in big numbers and therefore cannot be individually identified by the victims. Other justifications given to complainants or to Amnesty International delegates are the general insecurity prevailing in the region, or the lack of resources which would prevent members of the police or of the *niyaba* from travelling to the site of crimes to make thorough investigations. Officials have assured Amnesty International delegates that the complaints they have received remained opened, until perpetrators were found. However, there is little chance that with such lack of official willingness, reports of human rights violations will be followed up. Victims and lawyers hold privately that there will be no investigations into the massive human rights violations committed in Darfur, because such investigations would invariably lead to government officials said to have directed or encouraged attacks on civilians. The Sudanese government is not willing to arrest those who could provide damning evidence about official support for a campaign of devastation. As one member of the militia said, when asked by a journalist about prosecution for war crimes committed in the region:

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<sup>23</sup> case file number: 2468/2004.

*"I am a military man [...]. If I am taken to court, so will all the government. We are in this together."*<sup>24</sup>

Even if the perpetrators are known to the victims, the authorities do not always take action. In March 2004, victims of looting by a group of armed men wearing uniforms and in possession of weapons in Radom, a Fur village (15 km East of Nyala) reported it to the police who appear to have taken no action. The armed group was said to camp in a nearby valley, called Haras. The same group reportedly attacked Radom village on 7 October, firing gunshots in the air, assaulting a woman, killing a mentally disabled person and forcibly displacing the inhabitants. The villagers, who fled to Kalma camp, again reported it to the police station in Kalma. The armed group is said to have been responsible for many attacks in the area between April and October 2004, including on the villages of al-Nur, Fasha, Radom, Abu Azam, Takala, Ta'aisha, Tebeldiya, Firingo, Aishna and Baba. The police reportedly refused to accept the complaint of the Radom villagers about the October attacks, because they could not travel to the camp of the armed group. Part of the armed group is said to have now settled in Radom.

Amnesty International also met a policeman from Hilla Zaghawa, a village in the area of Bulbul Dalal Hangara which was partly burnt down and looted on 27 January 2004 by members of nomad groups living nearby. The policeman told Amnesty International that the villagers knew 40 of the attackers and have been trying to have the perpetrators arrested, without success. They reported the attack to the police in the area, who took no action, despite being provided with fuel and food by the villagers in order to travel. The villagers believe that the local police are complicit in the attacks because they were only 300 meters away from the village when it was attacked. They then complained<sup>25</sup> to the police in Nyala, who issued a warrant of arrest on 23 February 2004 against those said to be responsible and transferred the request to the police near Hilla Zaghawa. Ten of attackers are said to have joined the Popular Defence Forces (PDF), two months after the attack. The policeman from Hilla Zaghawa wrote to the legal department of the PDF, who told him to write to the legal department of the armed forces, who then told him to go back to the PDF. The police in Nyala also reportedly wrote to the PDF, asking them to bring the 10 to justice but without success.

### **4.3 Government commissions of inquiry unaccountable**

The Sudanese government set up several commissions of inquiry into human rights violations in Darfur, who all had the opportunity to make thorough investigations and prove to the victims that their complaints were taken seriously. However, all such government-appointed commissions lacked independence and willingness to make serious investigations. None of their findings have been made public and available to the people of Darfur; no recommendations have been issued, let alone implemented.

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<sup>24</sup> See *Rare glimpse inside Janjaweed militia's base in Sudan*, by Somini Sengupta, Mustariha (a Janjawid camp near Kabkabiya), 21 October 2004, for the New York Times.

<sup>25</sup> Their complaint is reportedly registered under number 26/2004.

The Governor (*Wali*) of North Darfur set up two commissions of inquiry, one into the attacks in Kutum in August 2003<sup>26</sup>, where some 40 inhabitants were extrajudicially executed by members of government-supported militia, and one into the attack of Tawila at the end of February 2004, where many schoolgirls were gang-raped in the local school by government-supported militia. The Commission of Inquiry into Kutum was reportedly composed of five members, including officials Kamal Awadallah, Abdel Rahman Yaqub and Mohamed Osman AlaNur (a policeman) and local leaders from al-Fasher. Amnesty International does not know whether the members of this commission were able to freely access the victims and witnesses of the attacks. The findings of this commission have not been made public; however it is alleged that the commission reported that those responsible were part of an armed group wearing military uniforms and riding camels and horses, even though no perpetrator was identified. The Commission of Inquiry into Tawila was reportedly composed of a member of the judiciary, a representative of the army and a police officer. The findings of these two commissions are said to be in the hands of the *Wali*.

In Habila, West Darfur, a bombing in August 2003 reportedly killed 26 people, including civilians as well as government army soldiers in a nearby garrison. On 10 September 2003, the Minister of Defence declared that the bombing was a mistake, that those killed were martyrs and created a committee of members of the military to investigate the incident. Amnesty International is concerned at the failure to set up an independent investigation. The findings of this investigation, too, have never been made public.

President of Sudan, General Omer al-Beshir, set up an internal commission of inquiry by a decree published on 8 May 2004, following the 7 May report of the Fact-finding Committee of the UN High Commission for Human Rights which stated that there was a “reign of terror in the Sudan” and recommended “that, given the gravity if the allegations of human rights violations in Darfur and the failure of the national legal system to address the problem” an international commission of inquiry should be set up. The Sudanese commission of inquiry’s mandate was to investigate “alleged human rights violations by armed groups in the Darfur states,” the causes of the violations and to establish the facts about the human and material damage. Human rights violations by government authorities or by the army were not mentioned as part of the mandate. The head of the commission of inquiry is former chief justice Daf’allah al-Hajj Yusuf. The Commission visited the three states of Darfur but reportedly only met officials of the local government, the security forces, the police, judges, and the district Attorney-Generals. The only displaced persons they visited were reportedly members of nomad groups said to have been attacked by rebel groups, in Mosai camp in Nyala. The National Commission has still not published its report.

Faced with accusations of large-scale rapes in Darfur by Amnesty International and others, the government appointed on 17 July “rape committees” for the three states of Darfur, each composed of a female judge, a police woman and a female member of the district Attorney-Generals’ office. Amnesty International met with the rape committees, who insisted that they investigated rapes in the region seriously, by sitting down with women displaced by

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<sup>26</sup> See Amnesty International: Darfur, “Too many people killed for no reason”, 3 February 2004 (AI index: AFR 54/008/2004).

the conflict in camps and checking police records of rapes. The committees reported only 50 cases of rape to the government of Sudan and to the UN in September, according to the Human Rights Advisory Council. While their work was most certainly hampered by the strong distrust of the displaced in any government institution, the rape committees were also said to have publicly announced that there were no cases of rape in Darfur, and failed to meet lawyers providing legal aid to victims of rape.

## 5. Unfair trials

Article 14 of the ICCPR, to which Sudan is a party, lays down basic standards for fair trial, including the rights:

- to a fair and public hearing by a competent, independent and impartial tribunal where the public may only be excluded in some cases of morals, public order or national security;
- to be presumed innocent, and treated as such;
- to be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;
- to have adequate time and facilities for the preparation of their defense and to defend themselves in person or through counsel of their choice;
- to be tried without undue delay;
- to be tried in their presence;
- to examine, or have examined through their legal counsel, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
- not to be compelled to testify against themselves or to confess guilt;
- that evidence extracted as a result of torture may not be used in court except as evidence against the perpetrators of torture.

The Sudanese authorities have undermined these rights in the Sudanese legal system, which contain trial procedures which are unfair and inconsistent with international standards. The authorities have also used the vagueness of certain articles of the Sudan Penal Code to criminalise criticism of the government.

Unfair trials are the norm in Sudan. Political trials and trials under Specialised Criminal Courts in Darfur are inherently unfair, but often even trials under ordinary courts fail to respect international standards of fairness. In some cases, the judiciary appears to have overturned sentences or dismissed charges against the accused for lack of evidence; however, doubts remain as to the guilt of many persons convicted in unfair trials.

## 5.1 Trials before the Specialised Courts

Special Courts instituted under a 2001 State of emergency in Darfur were reformed into “Specialised Criminal Courts” in all three states of Darfur in March 2004, following another decree by the Chief Justice in Khartoum.<sup>27</sup> The Specialised Criminal Courts are defended by the Sudanese authorities as a notable improvement for the rights of defence; in particular they are now headed by only one civilian judge, compared to the Special Courts which were also headed by members of the security forces. According to the Ministry of Justice, the Specialised Criminal Courts are formally under the responsibility of the judiciary; they have been established for reasons of “expediency”.

The Specialised Criminal Courts, like the Special Courts, stem from the state of emergency instituted in Darfur in 2001. 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 who 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. Some human rights, such as the right to life and the right to freedom from torture and other cruel, inhumane and degrading treatment or punishment, may never be suspended in any circumstances.

Lawyers in Darfur see little difference between the Special Courts and the Specialised Criminal Courts. In particular, the Decree institutionalising such courts still fails to ensure that confessions extracted under torture are not used as evidence against the accused, even if they are later retracted; it does not overrule Article 5 (g) of the Decree on the Special Courts specifying that defence lawyers are not allowed to represent the accused and that only “friends” of the defendants can appear before the court to help. While lawyers in North and South Darfur state report that Specialised Courts judges frequently allow them, in practice, to fully represent their clients, this remains at discretion of the judge. Specialised Criminal Courts continue to sentence convicted persons to cruel, inhumane and degrading punishments and the death penalty, with limited rights of appeal. 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.

In the words of a lawyer in Darfur: “*There are always fears of a miscarriage of justice under the Specialised Courts.*”

The jurisdiction of the Darfur Specialised Criminal Courts covers offences such as 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

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<sup>27</sup> Previously Amnesty International only reported such change in South Darfur State, as it was sent only one decree by the Sudanese authorities. See Amnesty International, Sudan: *Empty promises? Human rights violations in government-controlled areas*, 7.4, 16 July 2003 (AFR 54/036/2003).

“anything else considered a crime by the Governor of the State or the Head of the Judiciary” (Article 4).

Hundreds of people are said to have been sentenced by such courts in Darfur, mainly on charges of armed robbery and possession of unlicensed weapons. Many have been sentenced to death for offences not involving a lethal act. Between June and August 2004, at least five persons were sentenced to death in North Darfur. On 12 June 2004, **Abdallah Mohamed al-Taher**, was sentenced to death (or a minimum of one-year imprisonment in case the charge is overturned by appeal). He appealed the sentence. On 21 June 2004, **Ali Mohamed Abdallah**, was sentenced to death by hanging on charges relating to *haraba* and possession of unlicensed weapons and ammunition; his appeal to a higher court is pending. In July 2004, **Isam Ibrahim Ahmad** was sentenced to death by hanging for murder and carrying guns and ammunition. An appeal was submitted to the higher court. Ahmad Ibrahim Ahmad, his co-accused was fined 50 million Sudanese dinars. On 22 August 2004, **Omer Hamid Suleiman** was sentenced to death by hanging for illegal possession of a gun. It is not known whether he appealed the sentence. On 27 August 2004, **Mohamed Adam Khamis**, a 35-year-old Zaghawa man, was reportedly sentenced to death on charges of armed robbery and possession of a weapon without licence; an appeal is pending.

Seven displaced persons, arrested in Kalma camp, stand accused of the murder of Abdel Rahman Ahmad Madibo, a volunteer in a workshop organised by an international NGO, on 12 August 2004. The man was lynched by a crowd of IDPs after some of them said he was identified as a member of the *Janjawid* militia and as responsible for killings and the burning of villages. The seven are **Suleiman Yunis Issa**, **Mohamedain Fadl al-Taher**, **Ahmad Ismail Da’ud**, **Harun Ahmad Jad al-Karim** (a Dajo), **Abdelmajid Jar al-Nabi**, and two minors, **Al-Sadiq Bakhit al-Bagir**, aged 17 and **Faruk Ali Yaqub**, aged 16. All deny the accusations, and at least one, Faruk Ali Yaqub, alleges that he was beaten by a police officer. They are being tried by the Nyala Specialised Criminal Court.

The vast majority of those arrested on such charges are said to be tortured, then kept in detention until the marks of torture disappear. Very few of those accused undergo medical examination, unless by demand of defence lawyers supported by strong international pressure. For instance, **Ibrahim Yaqub Bakur**, a Zaghawa, was arrested in January 2004, on charges relating to banditry, the day after two lorries were looted near al-Fasher. He was reportedly tortured by the security forces, and beaten with gun butts and small sticks. He confessed to the looting during the torture. He appeared in front of the judge only on 27 June 2004, when he reportedly told the judge he had confessed under duress and withdrew his confession. The judge is said to have refused to withdraw the confession.

Eighteen members of the Gimir ethnic group from Tayer village, near Shoba in North Darfur, were arrested after an attack on Shoba in February 2004. All but five were released. **Hassan Issa Abdallah**, **Abaker Mohamed Suleiman**, **Ibrahim Adam Ibrahim**, **Ali Abaker Adam** and **Sanusi Rima Gardo** remain under investigation in Shalla prison in al-Fasher. The evidence for their arrest seems to rest on the proximity between Shoba and Tayer. They deny the accusations. Nine months later, they remain in detention without trial.

Many of those arrested for unlicensed possession of arms are said to belong to farming groups, rather than members of government-supported militia. Some lawyers think that the proliferation of small arms in Darfur is not truly addressed by the Specialised Courts and say that they try people who have weapons for self-defence purposes.

There also appears to be a worrying trend whereby the Sudanese authorities use the Specialised Courts to try members of rebel groups or civilians suspected of supporting rebel groups. Amnesty International is concerned that the Specialised Courts, which accept confessions extracted under torture as evidence, can be used by the Sudanese authorities to pass sentences of death or other cruel, inhumane and degrading treatment, on such detainees. The Sudanese authorities have frequently arrested and tortured civilians into confessing to belong to rebel groups.

**Yaqub Abdallah Yaqub, Musa Ahmad Mohamed Khamis, Hamid Abdel Majid Atim and Mohamed Mahmud Abdallah Hassan**, arrested near Duma on 3 October 2004, and reportedly tortured by the military intelligence, have been accused of being members of the SLA and charged with Articles 50 (crimes against the state), 51 (waging war against the state), 58 (mutiny) and 107 (harbouring criminals) of the Penal Code, which carry the death penalty. The accused were visited by lawyers, who have requested a medical examination of their clients. All charges against them were reportedly dismissed by the Attorney-General in Nyala, as there did not seem to be any evidence against them.

Another 13 persons from Kassar, a village situated 20 km south of Nyala, were arrested on 3 October by the National Security Forces, on suspicion of supporting the SLA. They were transferred to the police station in Nyala on 4 October. While there are currently no official charges against them, **Hamadain Abaker and Abdel Rahman Adam Abdelrahman** (both community leaders), **Issa Abdallah, Mohamed Issa, Ishaq Sadiq Suleiman, Mohamed Idris, Adam Adam Abdel Nabi, Abdel Jebar Bashar, Adam Ahmad Hussain, Adam Adam Mahmud, Diraije Adam Idriss, Ibrahim Abdallah Ahmad and Issa Abdelrahman Shogar**, are to be tried by the Nyala Specialised Criminal Court. There are fears that they may have been tortured in custody. They have reportedly been released on bail pending trial.

## ***5.2 The Popular Congress trial***

Eighteen persons arrested in March 2004 on accusations of plotting a coup d'Etat in Khartoum are being tried in a high-profile political trial in front of a criminal court specialised in "crimes against the state". They are defended by a group of well-known lawyers. All except two of the defendants are from Darfur and they include lawyers from the Popular Congress, such as Barud Sandal Rajab and Suleiman Sandal Haggar. Ten of the defendants are officers of the Sudanese army. The prosecution has charged 36 persons in connection with the alleged coup, including people who have not yet been arrested by the security forces. Four were arrested during the September crackdown on the PC, including Yusuf Mohamed Saleh Libis. However, the prosecutor refused to include them in the trial of the 18 and they have remained in incommunicado detention without charge.

In the first sessions of the trial, the accused have denied the charges against them. The government had previously announced on state television that the accused had confessed to fomenting a coup d'Etat. There are credible reports that at least some of the detainees have been tortured in the period when they were held incommunicado in Kober prison. Other persons detained in Kober with the March detainees and subsequently released have reported that Nureddin Adam Ali and Ibrahim Sultan were beaten in front of them, suspended up in the air, chained; cold water was also poured on them. The accused have not been allowed to be examined by a doctor to check these claims.

The detainees have now been removed from the custody of the security forces and are currently held under the police, after demands by their defence lawyers. They are still detained in Kober prison. Some of them have been able to receive visits by their relatives.

Regarding the September arrests of Popular Congress members, defence lawyers were reportedly given a list of 94 persons, including military men, who would stand trial for suspected involvement in an alleged coup attempt.

*“Strangely enough, the overwhelming majority of them are from Darfur, arrested here in Khartoum [...]. Most of the suspects are ordinary people,”* according to lawyer Abdel Salam al-Jizuli, interviewed by AFP.<sup>28</sup>

### **5.3 Other trials**

Even trials under ordinary criminal courts do not seem to respect international standards for fair trial, convicting persons on weak evidence, sometimes obtained under duress and often handing down cruel, inhuman and degrading punishments and death sentences.

Several groups of IDPs arrested in Kalma camp in July and August 2004 were brought to trial in the criminal court of Nyala, for offences relating to “public disturbance”. A group of 21, arrested on 31 July, after protests by IDPs at government attempts to return them to villages in insecure areas, were charged with Article 69 of the Sudan Penal Code. They were sentenced to flogging, a short prison sentence and a heavy fine. They appealed the decision and the Appeal Court overturned the prison and flogging sentence and reduced the fine, which was covered by the time they spent in detention. A group of 51 IDPs, arrested by security forces on 15 August after the killing of a nomad on 12 August<sup>29</sup>, was also tried by the Nyala Criminal Court. 49 were sentenced to two months imprisonment and a fine of 27,000 Sudanese dinars; 2 were sentenced to one month imprisonment and a fine of the same amount. They appealed and were released after spending some time in prison which covered the fine. Both groups of detainees reported that they were beaten by the security forces upon arrest, with sticks and water pipes. Lawyers asked for medical examinations; it is not known whether medical evidence was taken into account by the criminal court.

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<sup>28</sup> *Sudanese opposition party leaders released: lawyer*, AFP, 17 November 2004.

<sup>29</sup> See section 2, *Arbitrary arrests and torture*.

Four persons, including a minor, were also recently charged with murder (Article 130 of the Sudan Penal Code); they are due to be tried by the Nyala criminal court. **Abubaker Adam Osman**, a 17-year-old Masalit from Hey Karari in Nyala, was arrested on 28 May 2004 by the military intelligence who detained him for four days. He alleges that they beat him, whipped him and kicked him with their army boots while under their custody. He was then transferred to the police forces. No investigation is known to have been opened into his allegations of torture. He has not yet been brought before a court.

## 6. Conclusion

The authorities are still engaging in a “counter-insurgency” repression in Darfur, suppressing the human rights of the people, arresting and torturing them and shutting off dissent. Amnesty International is concerned at the disproportionate number of arrests and reports of torture, both in Darfur and in Khartoum, of those the government labels as “rebels”: IDPs, civilians living close to places where government officials or police officers have been attacked, relatives or those who simply share the same ethnic group as the insurgent groups, as well as Sudanese civil society actors who are active in taking up the concerns of the civilians. Under pressure of the international community, the Sudanese authorities have arrested a handful of those suspected to have perpetrated rapes, attacks or looting. But when Amnesty International asked the judiciary and the police in Darfur about investigations of some of the massive violations which have occurred, they were told that nothing could be done because “most of the perpetrators are unknown”. Those who are said to be under prosecution all seem to be cases unrelated to the government-supported, *Janjawid* militias.

Yet the security forces – whether the police, the National Security Forces, the military intelligence or the “Positive” Security – do not hesitate to arrest civilians *en masse* after security incidents in Darfur, or rumours of a plot against the government, often without any evidence against them other than affiliation to an ethnic group or status within a specific community. If the security forces were instead putting their efforts into arresting the perpetrators of the large-scale killings which caused the crisis, impunity would have by now reduced in Darfur.

An international presence in every district of Darfur is needed, both to monitor the multiple violations which are still occurring against civilians and to give some feeling of security to the traumatised IDPs who have lost all trust in the authorities. But it is not a substitute: re-establishing the rule of law in Darfur, investigating the large-scale and often systematic abuses against civilians and addressing impunity are the only way to redress the situation in the region. For this, an independent and strong judiciary is needed as well as a genuine willingness by the authorities to restore fairness and justice. Amnesty International believes that the work of UN, AU and other human rights monitors should be strengthened in Darfur and in the whole of Sudan, in order for them to have the capacity to follow-up on each human rights violation. However, the Sudanese government holds the key to facilitate the work of human rights monitors: legal reforms in order to conform to minimum internationally recognised human rights standards.

Amnesty International was allowed access in Sudan in September and October<sup>30</sup> and appreciates the opportunity to discuss its human rights concerns with government officials. However, the possibility of advancing more deeply into considering safeguards needed to end abuses remains blocked: this is because of persistent denial on the part of the authorities of the scale of the crisis and their own responsibility in it. Notwithstanding Amnesty International's recommendations on the emergency and security laws, on the Specialised Courts, on incommunicado detention and the protection of civilians, the government continues to use repressive policies, to hide behind denials and laws which are inconsistent with international standards, and to preserve a shadowy, parallel and unaccountable security force. The government seems to think that the international community will either believe it or reduce its pressure in front of the sheer intractability of the situation. The international community must not accept the endless routine of human rights violations in Sudan.

Many of the violations now occurring in Darfur have happened elsewhere in Sudan. Many of them have been justified by the Sudanese government because of armed conflict within its territory, and given legality under a state of emergency. By definition, a state of emergency is a temporary legal response. A perpetual state of emergency is a contradiction in terms. Unfortunately, in Sudan it has become virtually permanent and the cover for grave abuses of human rights. There can be no lasting peace without an end to unfair emergency laws.

Amnesty International is again calling on the Sudanese government to admit the massive violations which have occurred in Darfur and to address them in good faith by full, independent and impartial investigations. The results of such investigations should be made known to the Sudanese people. Recognising violations and addressing responsibility for them is a prerequisite for peace and reconciliation. The organization also calls, once again, on the Sudanese government to immediately stop arbitrary arrests, detentions and torture in Darfur and Khartoum. In order to restore the rule of law and reverse injustices, the Sudanese government must abandon its repressive policies and start applying basic standards of human rights. The organization believes this is the only way for the Sudanese government to start rebuilding trust with the displaced in Darfur.

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<sup>30</sup> Visas for a follow-up visit in November, to study policing issues, were still not granted as of 24 November 2004.

## 7. Recommendations

### **7.1 To the Sudanese government:**

Amnesty International is calling on the Sudanese government to immediately abolish legislation which contravenes its obligations under international human rights treaties to which it is a party. In particular, the government should:

- 1) **Abolish Articles 31 and 33 of the National Security Forces Act**, which allows the security forces to keep people in prolonged incommunicado detention and gives them immunity for their actions.
- 2) **Abolish provisions which contravene international standards** for fair trials in the 2001 decree on Special Courts, which are still used in the Specialised Criminal Courts, including: the provision which only allows defence lawyers to act as “friends” of the accused, therefore legally recognising practices already operated by judges of such courts; the provision which prevents the accused from withdrawing confessions; and re-establish the full rights of appeal of the accused, on all convictions and sentences.
- 3) **Ensure that emergency measures do not contravene fundamental human rights which are non-derogable** in international law in any circumstance, such as the right to life (Article 6 of the ICCPR); the prohibition of torture (Article 7 of the ICCPR); freedom of thought, conscience, religion and belief (Article 18). Any suspension of rights under emergency laws must not involve discrimination on grounds of race, colour, sex, language, religion or social origin. The African Charter does not allow state parties to derogate from their treaty obligations, even during armed conflict.
- 4) **Prepare its outstanding report to the Human Rights Committee**, which monitors compliance with the ICCPR, to obtain assistance and guidance in implementing its human rights obligations.
- 5) Ensure that legal fees in criminal cases are not perceived as a barrier to obtain effective remedies and **ensure that everyone, including the poor, have equal access to justice.**

The organisation is also calling on the Sudanese government to undertake practical measures to ensure that basic human rights standards are respected and to carry out a comprehensive reform of the national legal system. The Sudanese government should:

- 6) **End the practice of incommunicado detention** by investigating fully and independently all reports of incommunicado detentions; instructing all security forces, including members of the National Security Agency, the military intelligence, the “positive” security and the police to inform detainees and their relatives immediately of the reasons for their arrest and any charges against them; ensuring that detainees have prompt access to families, lawyers and medical aid and are brought promptly before a judge; ensuring that all places of detention are registered and inspected by an

inspectorate service under the Ministry of Justice; giving access to all detention centres to the International Committee of the Red Cross and UN human rights monitors; giving the International Committee of the Red Cross and African Union ceasefire monitors access to all prisoners of war and persons abducted in connection with the conflict.

- 7) **Release immediately** and unconditionally all prisoners of conscience; release immediately persons, including political prisoners, who are arbitrarily detained; bringing to trial those against whom there is evidence that a recognizably criminal offence was committed, in accordance with international standards for fair trial and without recourse to the death penalty.
- 8) **End torture or other cruel, inhuman or degrading treatment or punishment, including** by publicly announcing to all forces under its command that torture or other ill-treatment will not be tolerated in any detention centre and will be prosecuted; ensuring that detainees have access to the outside world, judges and medical attention if they require it; giving independent doctors access to detainees in all detention centres, including those of the military intelligence; investigating immediately any complaint of torture or ill-treatment against any member of the security forces; bringing to justice those who have used or ordered torture, in accordance with international standards of fairness and without recourse to the death penalty; providing compensation to victims of torture as well as medical treatment and rehabilitation.
- 9) **End unfair trials** by respecting the presumption of innocence of all persons brought to trial; ensuring that defendants are always given adequate time and facilities to prepare their defence; ensuring the right to legal assistance even if the defendant does not have sufficient means to pay.
- 10) **End arbitrary arrests** by respecting the fundamental right to liberty, freedom of expression, association and assembly; putting an end to the use of repeated summoning as a means of harassment; recognizing the legitimate role of human rights activists and lawyers.
- 11) **Ensure that national commissions of inquiry are effective** and that they are composed of independent people known for their integrity, have a clear mandate, are able to compel and protect witnesses and report in public.
- 12) **End the death penalty by** commuting the sentences of all prisoners currently on death row; ensuring that all those accused of offences punishable by death in Sudanese laws have all their rights to adequate defence respected and to a fair trial, in accordance with international standards and ratifying the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

In addition, Amnesty International is asking the Sudanese authorities to demonstrate their commitment to human rights by ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations; the Rome Statute of the International Criminal Court; the African Charter on Human and People's Rights on the Rights of Women in Africa; the Protocol to the African Charter on Human and

People's Rights on the Establishment of an African Court on Human and People's Rights; and the African Charter on the Rights and Welfare of the Child.

## **7.2 To the international community**

The international community must remain determined to ensure short and long-term solutions to solve the crisis in Darfur and establish justice in Sudan. Amnesty International is calling on the international community to recognise the failures of the Sudanese legal system, which have fuelled serious human rights violations and impunity in South Sudan, the Nuba Mountains, and Darfur. The international community, in particular the UN and countries engaged in the North-South peace talks taking place in Naivasha, Kenya; in the Darfur peace talks in Abuja, Nigeria; and in the peace talks on Eastern Sudan in Cairo, Egypt, must:

- 1) Demand that the Sudanese government repeal Articles 31 and 33 of the National Security Forces Act and carry out the necessary legal reforms to bring its legal system into line with international human rights standards, in particular to ensure that confessions extracted under torture are not accepted as evidence and that rights of defence are respected in all trials.
- 2) Demand that the Sudanese government ensures that those fundamental human rights which are deemed non-derogable in international law are fully protected in Sudanese law.
- 3) Reinforce the presence and mandate of international monitors into all human rights violations, and put pressure on the Sudanese government to duly process any case of arbitrary arrest and detention, torture, unfair trial and denial of access to justice, that come to its attention.
- 4) Demand that the Sudanese government implement immediately, with a view to reform the legal system, the basic human rights standards listed above.
- 5) Fully support the work of the UN Commission of Inquiry created through Security Council resolution 1564 and mandated to investigate reports of violations by all parties of international human rights and humanitarian law and identify the perpetrators of violations with a view to ensuring that those responsible are held accountable. Based on its recommendations, support the development of a comprehensive plan for ensuring an end to impunity for suspected perpetrators of war crimes, crimes against humanity and torture in Sudan.
- 6) Ensure that reform of the legal system and respect for basic human rights standards are central to the discussions of the future international donors' conference in Norway, which is to follow the signature of the North-South peace agreement.

## **Annex 1: Testimony of X, brother of a man who was extrajudicially executed by the armed forces**

*“My brother, a merchant in Saraf Omra, West Darfur, had a lorry. The armed forces arrested him on 14 June 2003, at 8am in a lorry station, saying that he was helping the armed opposition and that the goods in the lorry were for the rebels. They brought Janjawid and other soldiers to take the goods from the lorry. Then they stole 350 million pounds from him.*

*They took him, his assistant and the driver, blindfolded them, to Sania Dari (30 km south west of Saraf Omra), a Janjawid camp. They stripped them naked and tied their arms and legs. They were taken to the valley where it is hot, dug a hole and put my brother in it and beat him saying ‘you are a rebel’. The two others were also tied and laid beside him. They put hot sand on his stomach and charcoal from a fire nearby and burnt him. So that is how my brother died.*

*Some people called me to tell me what happened. They said my brother had been buried in the middle of the valley where there is water. The armed forces took his lorry to al-Jeneina, they are still using it nowadays to drive between their camp and the Janjawid camp.*

*So I travelled to Saraf Omra to see my brother’s grave. I brought sugar and tea to sell on the way but the Janjawid stopped my car and took the goods. When I went to Saraf Omra the armed forces prevented me from going to see the grave. I hid myself so as not to be arrested. After seven days I got a donkey and went to Zalingei, then Nyala, then Kabkabiya because it is not far from Saraf Omra. I reported the murder of my brother to the police but they told me to go and see the armed forces. So I went to the Security who told me to report to the armed forces. Both asked me to pay and I paid in total 35 million [Sudanese pounds]. Then, after someone contacted the army officer in Saraf Omra, I was arrested on 20 August 2003. The armed forces took me to a military camp outside Kabkabiya and beat me, tied my feet and arms and hung me up to a tree from the morning to the evening. They were saying: “You and your brother support the armed opposition, where did you find the lorry and the goods?”. I was detained for 12 days and beaten five times a day, before the prayer, after sunrise, at night... I was released because one of my brothers paid seven million pounds to a man working for the military intelligence.*

*When I was released I went to al-Fasher and went to the Wali (State Governor) Yusuf Kibir. Yusuf Kibir who said: ‘We will provide justice to every man’ and he wrote a letter to a local Minister in North Darfur. The Minister took me to the Commander of the armed forces in al-Fasher, who sent me to the Major General. This one said: ‘We have no cars and cannot go to Saraf Omra. This office is only for the low ranks, you have to go to a 3 stars officer to follow up on your case.’*

*Until now I have not had any success in the case, even in just reporting the case. My brother had eight children and I have to look after them now. I don’t feel safe and I may still be killed. I suffer a lot because the government does not provide any protection to me. Even if you report to the police you get arrested afterwards.”*

## **Annex 2: Testimony of M., a community leader from Margasa, West Darfur about his torture by Janjawid members in For Baranga**

*“I came to For Burunga in February this year. I was at the market in a shop of Ali when the Janjawid came and took me and another one, H. from Goba with their car. They took us to Sojo camp, this is 3km north of For Burunga. They tied my arms and legs and left me under a tree. They told me that I am a Tora Bora, a rebel and that I should shut up.*

*From 3pm until 8pm they left me there under the tree. Then I had to sit and they tied my legs to my body, my hands on the back and put a stick under my legs. They hung me upside down to the tree, on the stick under my knees and then they swung me back and forth. I was beaten with sticks and whips at my feet. They were maybe 15 Janjawid. They took all my clothes off and I was naked. They left me hanging upside down with another person under this tree until morning. They read the names of 97 Tora Bora from Andrabru to me and they called me bad names. For three days this continued, they beat us every day and at night they hung me under the tree upside down.*

*They did not give us food and only a little water. They rubbed pilipili (hot pepper) in our eyes and nose. They put a blanket around our head and tied it very tight. On the fourth day they told me and another local leader to dig a well for them. They would pour cold water over our hot bodies and refused us to give us water to drink, they made us work for them and sometimes they would fire gunshots at us.*

*There were other prisoners in Sojo camp. We saw somebody of whom they cut the nerves and muscles in his elbows and shoulders; they shouted that he was not allowed to go back to For Baranga.*

*One day they showed me a letter and told me: ‘This is a letter from our leader [...]. He gives order to kill you’. They put a red cloth around my neck as a sign that I would be killed. On the fourth day another Janjawid came and told me, ‘You with the red cloth, you are chosen to die. If you pay you can save yourself.’*

*They asked for 200,000 Sudanese pounds.<sup>31</sup> They let H. walk free, because he is from Goba and not from Margasa. I and another prisoner paid them 460,000 Sudanese pounds. They let us go and told us: ‘We now let you go – but our President Omer al Bashir said that we must kill you. This is only our kindness’.*”

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<sup>31</sup> 1 Sudanese dinar equals 10 Sudanese pounds. 1000 Sudanese dinars are roughly equivalent to 4 US Dollars or 3 Euros.