

Sudanese NGOs Alternative Report

On

The International Covenant on Civil and Political Rights
(ICCPR)

(Original in Arabic)

July 2006

Index

1	Approach	4
2	Sudan: Land and People	5
3	Comments on the Two Governmental Reports	9
4	Contents of the Alternative Report	10-38
	Article 7: Prohibition of torture	
	Article 8: Prohibition of slavery, slave-trade or enforced servitude	
	Article 9: Right to liberty and security of person	
	Article 10: Treatment of persons deprived of their liberty	
	Article 11: No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation	
	Article 19: Right to freedom of expression including seeking and/or receiving information and ideas	
	Article 22: Right to freedom of association	
	Article 24: Child right to name, nationality and equality before the law	
5	Recommendations	39
6	List of appendixes	

NGOs participated in the preparation of this report

Names of NGOs:

1. Khartoum Center for Human rights and Environmental Development of Environment
2. South Sudan Organizations Network
3. Volunteers Group “Moutawinat”
4. South Sudan Women Association for Peace
5. Institute of Child Rights
6. Southern Woman Consolidation for Peace and Development
7. Entagona Organization
8. Mawada for Peace and Development

Preface

This report on the civil and political rights submitted to the UN Human Rights Committee was prepared by Sudanese non governmental organizations (NGOs) and Sudanese personalities. It is the first report on the civil and political rights inside the Sudan to be submitted to the above Committee. Special attention was given by us to see to it that the contents of this report are based on principles of credibility and objectivity, bearing in our minds that this report is seen as one of the means to sustain and enhance the human rights in the Sudan, particularly following the signing of the Comprehensive Peace Agreement (CPA), and issuance of the Interim National Constitution for 2005 which made the International Covenant on Civil and Political Rights (ICCPR) an integral part of the Sudanese legislation that can be referred to directly which is unprecedented legislative leap in the Sudan. As a result, articles provided for in the ICCPR may directly be used in support of any argument/refutation before the judicial system without the need to have a law issued to legalize such procedure. Based on this, the umbrella of freedoms, civil and political rights will be widely broadened which serve the interests of the Sudanese citizen.

Parties involved in the preparation of this report agreed to conduct a discussion on the implications given by Article 9 of the ICCPR in light of the capabilities available to them to enable produce a reasonable and significant report.

This report has been classified into the following chapters:

Chapter 1

This chapter provides basic information about the Sudan and its stance towards the international conventions on human rights, as well as the situation of civil and political rights.

Chapter 2

This chapter contains the articles of ICCPR addressed by the report, and as follows:

- Text of the article as specified by the ICCPR.
- Sudanese legislations that go in line with the articles of ICCPR.
- Sudanese legislations that do not go in line with the articles of ICCPR.
- Violations of the rights given by ICCPR.

Chapter 3

This includes:

- (i) Recommendations; and
- (ii) List of appendixes.

Chapter 1

Sudan: Land and People

The Republic of Sudan declared its independence from the Anglo-Egyptian condominium on the 1st of January 1956, and became a member to the United Nations in 1957.

After the autonomy period that was commenced in 1953 had been over, a national parliament was elected by means of democratic elections, and the first national government assumed its functions to govern the Sudan under central administrative system. In 1958 the government was handed over by the then Prime-minister to the Sudanese Armed Forces.

In October 1964, democracy was restored following a popular revolution and a new parliament was elected. However, shortly after that the armed forces under command of Jaffer Nimiri took power again in May 1969. In 1973 Addis Ababa agreement was reached between the government and the Southern rebel groups. According to this agreement, the South was given autonomy. In 1983, the regime in Khartoum breached the agreement by incorporating amendments into the autonomy system without obtaining prior consent of the other party. As a result, a new rebellion emerged (SPLA/M).

In April 1985 the May regime was thrown away following a popular revolution. A one-year transitional government was formed. After that a democratic election was carried out as a result of which a parliament was established. Steps were made to achieve peace based on continuous talks which could have been a success, unless the coup d'état under command of Omer Al-Bashir had taken place on 30 June 1989. The war continued until the CPA was signed on the 9th of January 2005 by the Government of Sudan and SPLM. Based on this agreement, the Interim National Constitution for 2005 was issued, which provides for a decentralized government in the Sudan and that the South Sudan shall have right to self determination after elapse of six years subsequent to signing of the agreement and after the proposed elections three years following the transitional term.

On the ground of the 2005 Constitution, the Republic of Sudan maintained a partial decentralized government in South Sudan with a view to provide for a self-governance in Darfur after signing of the DPA in May 2006/Abuja with one of the rebels factions.

Situation of civil and political rights in Sudan during the years of national governance

It is known that such rights are normally respected during democratic times and, at the same time, be massively violated during times of totalitarian regimes that do not recognize other parties in exercise of such rights, however, such regimes would work to eliminate other parties whereby cases of detention became widely common and freedoms of expression and other rights restricted. It is noted that ratification processes of international conventions, including the International Covenant on Civil

and Political Rights, are usually made during democratic regimes. For instance, this Covenant was approved in 1986, i.e. during the time of the third democracy.

Based on the above and despite the fact that the Government of the Sudan became bound by the implications given in the Covenant, such implications were not included into the Sudanese legislation and consequently were neither been implemented on ground nor were allowed to be produced as part of plea argument, by reason that the Sudanese laws make it a must that such implications should be firstly included as part of the legislation and then implemented. Therefore, one good aspect of the current Constitution is that all international accords on human rights ratified by the Sudan automatically become part of the Constitution and therefore are reliable evidence before the courts of Sudan (Article 27 of the Interim National Constitution for 2005). In fact it is the first time upon which the Constitution provides for an implicit bill of rights and freedoms, which makes this bill an acceptable and a direct means of refutation before the Constitutional Court upon occurrence of violation without the need to exhausting other means of grievance procedures (Article 47 of the INC/2005).

The International Covenant on Civil and Political Rights/1966 and the Bill of Rights given by INC/2005 now determine the minimal limit of exercising such rights.

Despite the Covenant has been ratified and deemed as integral part of the Constitution, the Sudanese Government has not yet created clear mechanisms to see to the application of such articles on ground, which violates the second element (protection of rights).

In addition, the Covenant obligates governments to undertake appropriate legislative procedures that go in line with it. However, the apparent thing evidenced during the application of the two Constitutions for 1998 and 2005 is that the inclusion of rights and freedoms into the texts of these laws is not enough, because these texts would be prejudiced by laws. For, it would be provided for that such rights and freedoms are to be organized by laws which are often violate them. One example of this is the National Security Forces Act for 1999 and Press and Printed materials Act for 2004.

Based on the above rationale, civil and political rights have turned out to become inactive and their violation is becoming the norm instead of their protection. This report sheds some light in the connection.

Preliminary Information on Sudan

1. Geographical location

The Republic of Sudan is in the African continent. It shares borders with 9 countries. It has the greatest area (one million square miles) amongst the African countries.

2. Population

Population estimate is 36 million. It is composed of different African, Arab, and Afro-Arab ethnicities scattered throughout the Sudan, with different cultures and languages. In addition to the two official languages of the State, there are multiple indigenous written and non-written languages.

3. Language

The official languages of the State are Arabic and English. They are used in Government functions and higher education. There are other national languages. (Article (8) of the Interim National Constitution).

4. System of Governance

It is decentralized (Article 24 of the Interim National Constitution).

5. Parliament

The National Legislature shall be composed of two councils:

- (a) a National Assembly.
 - (b) a Council of States.
- (Article 83 of the Interim Constitution).

6. Constitution

The constitution is the Interim National Constitution for 2005.

7. Structures of the National Judiciary

- (a) The Constitutional Court) (Article 9 of the Interim National Constitution).
- (b) The National Judiciary shall be structured as follows: (Article 123 of the Interim Constitution):
 - The Supreme Court.
 - The National Courts of Appeal.
 - Any other national courts.

8. Public Attorneys and Advocacy

- (a) The Attorney General (Article 133 of the Interim Constitution).
- (b) Advocacy (Article 134 of the Interim Constitution).

9. Human Rights in the Constitution

The Bill of Rights, Part II (Articles 27-48) of the Interim Constitution.

10. Human Rights Mechanisms

- The Constitutional Court (Article 119 of the Interim Constitution).
- Human Rights Commission (Article 142 of the Interim Constitution).
- The Advisory Council for Human Rights.
- The Public Grievances Board (Article 143 of the Interim Constitution).

11. The Sudan National and International Obligations with regard to Civil and Political Rights

- The International Declaration on Human Rights, 1948.
- The International Covenant on Civil and Political Rights, 1966, ratified in 1986.
- The African Chart for Human and People's Rights, 1981, ratified in 1986.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, 1986(signed).

Comments on previous government reports

Below are the common points between the two reports “1997-2005”:

- The two reports focused on Sudanese laws.
- The reports have taken note of the Sudanese laws without criticizing the articles not complying with the Covenant.
- The reports have not mentioned that the Sudanese laws not in conformity with the Covenant shall be repealed or amended.
- There are no statistics of cases of violation of civil and political rights.
- National mechanisms to protect human rights in Sudan have not been demonstrated.

Sudan Report of 2005

This report has overlooked observations of the Committee on the previous report and has not been in line with them, such as para 12 (a, b, c, d, e).

(Paras 13, 15, 17, 18, 19).

There have been deteriorations in some laws such as the National Security Forces Act, 1999 in which detention period has been extended from 4 months up to 9 months.

Immunities provided for in the Sudanese laws have been increased such as those granted by the Armed Forces Act, 1986 to armed forces personnel (this Act has become unenforceable because it was not been adopted within the prescribed period), and also the decree issued by the Minister of Justice No. 1, 2005 [sic].

Chapter 2

Contents of the Alternative Report

Article 7: Torture

It stipulates: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.

Torture is still practiced in Sudan. This practice persists due to the fact that laws grant immunities that encourage impunity. Furthermore, keeping people in a systematic and secret detention by the National Security Service and depriving them of communicating with the external world for long periods constitute ill treatment.

Government dissidents whether university students, trade unionists, human rights activists, humanitarian workers, and those suspected of belonging to Darfur armed groups are targeted and subjected to torture. Torture is practiced in the premises of the National Security Service, the police, prisons, and what is known as “ghosts’ houses. Torture takes different patterns:

- Solitary detention.
- Deprivation of sleeping, food, and health care.
- Whipping with the hose.
- Hanging the detainee in a form of aircraft.
- Forcing the detainee to do severe exercises.
- Burning by using an iron or a cigarette.
- Whipping genital organs or the sole of the foot using a stick.

Hereunder are some examples of people who have been subjected to torture:

On 10 December 2001, the student Hisham Abdullatif, was arrested for declining to give his statements before Al-Douaim Criminal Court. He was released after he was been subjected to torture.

On 7 March 2004 the police arrested Gadafi Mohamed Ahmed Salim, 30-year old, in Rabak. He was been charged with killing Salwa Yahiya. He was been subjected to torture, during the investigation, by the investigation personnel in order to force him to give an admission. Later, he was been acquitted by the court.

On 25 February 2006 the police arrested Kwat Paul Shol, in Al’uzuzab, in Khartoum according to police report no. 233/2006 made before Al-Shajara Prosecution. He was been tortured, the thing which caused him hemiplegia. Later, the prosecution cancelled the report for insufficient evidences.

On 5 May 2006 the student Faisal Adam Suleiman was arrested and severely beaten which caused him serious injuries. A report under number 386/2006 was made against him thereafter. Accordingly, he appeared before the court. However, the plaintiff didn’t appear before the court for 6 court hearings, so the judge hadn’t other option but to reserve the report.

The findings with regard to the conformity of the Sudanese laws with Article 7 of the Covenant:

1. The Sudanese legislations which preclude torture, cruel, inhuman or degrading treatment or punishment are as follows:
 - a. The Interim Constitution, 2005 treats the acts provided for in Article 7 of the ICCPR according to Article 33 of the Bill of Rights which reads: “No one shall be subjected to torture, inhuman, or degrading treatment or punishment”.
 - b. Article 115, para 2 of the Criminal Act, 1991 stipulates: “Every person who, having public authority entices, or threatens, or tortures any witness, or accused, or opponent to give, or refrain from giving any information in any action, shall be punished, with imprisonment, for a term, not exceeding three months, or with fine, or with both”.

Although torture constitutes a crime according to the Interim Constitution, 2005 and that Article 7 of the ICCPR is part and parcel of the Constitution in accordance with Article 27, para 3, there are some laws that do not only encourage torture, but also provide impunity for the perpetrators by the way of immunities they enjoy. This would be clear from the following:

First: Immunities

- a. Article 33 of the National Security Act, 1999 reads as follows:

Members and collaborators shall have the following immunities:

- (a) no member, or collaborator shall be compelled to deliver any information about the conditions, or activities of the organ, or such business, as he may have obtained, in the course of discharging his duty;
 - (b) Without prejudice to the provisions of this Act, and without affecting any rights to compensation against the State, no civil, or criminal proceedings shall be instituted against a member or collaborator for any act connected with the official work of the member, save upon approval of the Director, and the Director shall grant this approval, whenever there transpires that the subject of responsibility is not connected with the same;
 - (c) There shall be secret every trial before an ordinary court of any member or collaborator during service or after the termination thereof, as to such act, as may have been done thereby, in connection with his official work.
- b. Article 11 of the Criminal Act, 1991 stipulates: No act shall be deemed an offence if done by a person who is bound, or authorized to do it by law, or by legal order issued from a competent authority, or who believes in good faith that he is bound, or authorized so to do”.
 - c. Article 46 of the Police Forces Act, 1999 reads: Save in flagrante delicto, it is not authorized to take any criminal procedures against a policeman in a crime that took place while he was performing his duty or for ex officio without an approval from the Minister or his delegate.

- d. The decree issued by the Minister of Justice no. 1, 2005 on acts committed by regular forces, which may constitute a crime and the procedures taken in this respect as follows:
- If the prosecutor receives any information which raises his suspicions as to the commitment of a crime or if a report or a complaint is submitted to him concerning facts showing the commitment of a crime, he may carry out preliminary investigation to establish the credibility of such facts in accordance with Article 47 of the Criminal Procedures Act, 1991.
 - After completion of investigation mentioned in para (a), the preliminary investigation record shall be submitted to the senior competent prosecutor.
 - If the senior competent prosecutor considers that there is a preliminary evidence which requires opening of a criminal lawsuit, then the investigation record shall be submitted to the Attorney General.
 - If the Attorney General believes that there is preliminary evidence available for opening a criminal lawsuit, he shall submit a recommendation to that effect to the Minister of Justice in order that the Minister of Justice addresses the competent authorities to get an authorization for continuing the criminal procedures against the quarters enjoying legal immunity.
 - When getting authorization from the competent authorities, the prosecution shall follow the procedures of making a criminal lawsuit and shall take into consideration the position of the defendant, being charged with maintaining order and security when he/she committed the act.

This is considered as protracting procedures without justification.

Second: Legal Articles encouraging torture

a. Detention and arrest

- National Security Forces Act for 1999: All paragraphs of Article 31.
- Criminal Procedures Act for 1991: Article 68 (cases of arrest), paragraph 2 that reads “The policeman or People’s administrator may arrest, without warrant, any person:
 - a. suspected, or accused of committing an offence in which arrest without warrant may be made, in accordance with Schedule II, hereto;
 - b. found in suspicious circumstances, and does not present reasonable causes for his presence, or is unable to give satisfactory particulars in such circumstances;
 - c. found in his possession property suspected to be stolen, or reasonably suspected to have committed an offence relating to, or thereby; provided that he shall inform the Prosecution Attorney forthwith of the same;
 - d. who has breached his bond executed under the provisions of sections 118 and 120, hereof;
 - e. who commits, in his presence, or is accused of committing an offence of the offences in which no arrest without warrant may be made, where such person refuses to state his name, or address he believes is not true name and address;
 - f. who actually obstructs him in the course of discharge of his duties;
 - g. who escapes, or attempt to escape from legal custody.

- Emergency and Safety Protection Act: Article 5 which reads “Following the Declaration, the competent authority shall exercise any of the following powers within limit of the emergency arrangements”. One of these powers is the implication given by Para (c) which specifies that “arrest of persons suspected of participating in a crime related to the Declaration”. It is noted that these sections provide for an immense size of power of arrest and detention without existence of prosecution monitoring, which indicates likelihood of committing torture as well as providing those who are engaged in committing torture a legal argument by demanding that they are carrying out their duties in accordance with the law.

Third: Legal Articles that allow legal entities to accept information obtained by use of torture

- Article 10 of the Evidence Act for 1993, reads:
 1. Without prejudice to the provisions on the inadmissible evidence, evidence shall not be rejected merely because it has been obtained by unlawful means whenever the Court is satisfied with the genuineness of its substance.
 2. A court may, whenever it deems it appropriate to achieve justice, not institute conviction by virtue of the evidence mentioned in sub-section (1) unless it is supported by further evidence.
- Article 206 of the Criminal Procedure Act for 1991, reads: “No error, as to admitting evidence, nor the presence of formal defect in the procedure shall be ground for quashing any judicial measure, where the same is sound in substance, and no estimable injury results thereout, to any of the parties”. Such implications allow courts to accept evidences and confessions extorted under torture.

Fourth: Cruel, inhumane or degrading treatment/punishment

Physical punishment “whipping” is seen as the most common punishment in the Sudanese Criminal Act for 1991, which is specified by Article 14 thereof. This punishment is daily applied by criminal courts and public order courts according to rulings issued by these courts. A best example of this, on 16 August 2006 the Environment Court of Khartoum found 27 juvenile suspects (all are vendors) guilty and punished them by 10 whippings for each and a SD 30, 000 fine.

Several Acts provide for the application of whipping, such as:

- (i) The Criminal Act for 1991 in articles 25, 67, 69, 80, 81, 125, 148, 149, 151, 152, 153, 154, 160 and 174.
- (ii) Rules of procedure of Prisoners Treatment.
- (iii) Public Order Act Khartoum state.

Article 8: Prohibition of slavery, slave-trade or enforced servitude

Article 8 specifies that:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. a. No one shall be required to perform forced or compulsory labour; b. Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court; for the purpose of this paragraph the term “forced or compulsory labour” shall not include:
 - (i) any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community; and
 - (iv) any work or service which forms part of normal civil obligations.

In order to talk about Article 8 we should address the phenomenon of abduction. This is defined as “the process of leading on, forcing, taking compulsorily or deceiving a person in order to leave a certain location or status for the purpose of causing physical harm to him/her or restrict his/her freedom”. This practice is exercised by bordering tribes that usually move in the areas between north Baher El-Gazal, south Kordofan and south Darfur. This normally takes place in summer time when there is shortage in access to water resources and that the scarcity in grasslands becomes even more limited. Dispute arose as a result of committing abduction would immediately be settled by the tribal administration of these tribes.

In the year 1983, during which the civil war broke out in South Sudan and IDPs began to flow towards the north, abduction rates increased to include men and women, which was not the case before that time when abduction had only been limited to children and few women.

In 1988 the Dinka villages in north Baher El-Gazal were set on fire, their cattle were stolen and their farms including crops were burnt. As a result, large numbers of children and women escaped the atrocities of war and famine towards the north in their way to Kordofan, Darfur and other parts of North Sudan. While on road, they were faced by El-Marahil (a group that was armed to fight during the war) who took women, children and men forcibly under threat of their guns to different areas in north, south and west Kordofan and also north, south and west Darfur.

How abducted persons are treated?

Abducted groups would be distributed by abductors amongst their relatives to conduct enforced servitude, or would be sold for money (2 cows against each victim) to be received by abductors by the end of the year and nothing would be given to the abductees.

Children would be separated from their mothers, given Arabic names to conceal their ethnic backgrounds, deprived to speak their local dialects and would bear the names of abductors as their custodians.

Women would be exposed to sexual harassment, assaults and rape.

Women abducted would be taken by abductors as their wives without undertaking any marriage legal procedures. When such women gave birth to children, they would be expelled and deprived from their babies. Some arbitrary disappear cases took place.

Young girls (1-13 years old) would be forced to go looking after the cattle of abductors and would be exposed to different types of physical and sexual violence without any protection.

Male children would also be exposed to wild animals while looking after the cattle in the woods and would be brutally beaten upon loss of any of the cattle. It was evidenced that one of the children's hand was burnt as a punishment of losing some cattle. The child is still suffering from a deformed hand resulting from such inhumane treatment.

Abductees do not receive the minimal level of human rights neither in terms of medical care nor clothing. In fact they are likely more treated as animals than humans.

Efforts exerted

Some efforts were exerted by the Dinka tribes, who constituted a high committee to register missing/abducted persons. They were able, in cooperation with the international organizations, to register about 14,000 abducted persons, in addition to 3,500 abductees reported by Arab tribes.

In July 2003, a field survey was carried out in the areas under control of SPLA (north Baher El-Ghazal), whereby 12,000 abducted persons were registered. The last raid against Gobrial city did take place on 29 May 2002, whereby large numbers of women and children were abducted.

Following the above date, 6,000 abductees were registered by the Dinka high committee. By adding the aforementioned registered numbers, the total number arrives at 20,000 cases/abducted persons, out of which, 1,500 were set free in cooperation with international organizations (UNICEF, Sweden and British Child Care International Organization and El-Bir International Organization).

Establishment of the Committee of Eradication of Abduction of Women and Children (CEAWAC)

CEAWAC was established based on the decision issued in May 1999 by the Minister of Justice, which was so issued in response to the resolution undertaken in April 1999 by the UN Human Rights Committee on eradication of abduction and as how to address the issue.

The most important functions of CEAWAC are:

- Facilitation of secured return of abducted women and children.
- Carrying out investigations on reports of abduction of women and children, as well as reporting names of persons suspected of supporting or participating in abduction acts.
- Conducting investigation on reasons behind abduction of women and children, enforced servitude, slavery and the like as well as submitting recommendations and treatment mechanisms.

CEAWAC Organization Charts

- (i) Governmental non-full-time structures at the federal, state and local levels constituted to exercise financial and technical control over the process of work.
- (ii) Joint Tribal Committees, each consists of 10-16 members representing respective tribes on equal basis. These are made responsible for field work.
- (iii) Federal tribal structure consisting of 6 persons supported by tribal leadership committees (Dinka high committee, El-Myssiria high committee for field work and El-Rizygat high committee for field work).
- (iv) Work relationships with donors and international organizations.

CEAWAC accomplishments

CEAWAC was able to document 1,842 cases during the period from 1999 to 2004. 1,497 were reunified with their families in cooperation with UNICEF, Sweden and British Child Care International Organization and El-Bir International Organization (please see CEAWAC report 2004).

In addition, CEAWAC also documented 7,240 cases from March to December 2004, 1,500 out of whom were reunified with their families in SPLM areas and 200 cases in the Northern areas.

Total 9,082 cases were documented by CEAWAC, 3,197 out of whom were reunified with their families, i.e. 35% of the total documented cases. If we consider the total registered cases, i.e. 20,000 ones, only 4,697 out of whom were set free including those released by CEAWAC, i.e. 23.4%.

If we take into account that 50% of the abducted people are women in reproductive age, and that if we assume that two children were born by each woman during the period under consideration as a general birth average rate, children born under abduction arrives at 20,000, which makes the number of abducted persons reaches 40,000 cases or more.

In 2004, the Presidential decree¹⁴ was issued providing that CEAWAC committee shall be made under the direct supervision of the Presidency to enable facilitate financial and technical work. Following the above-mentioned decree, CEAWAC work was limited to west Kordofan and south Darfur only. Whereas, abduction is widely spread in the areas of north, south and west Kordofan and north, south and west of Darfur where large numbers of abducted persons are laying under seizure of the abductors and, at the same time, there are not few numbers of abducted persons in different parts of north and middle Sudan.

The restriction of CEAWAC activity to west Kordofan and south Darfur only, made it possible for the abductors to be excessive in exercising detention, unpaid enforced servitude, and degrading of abducted persons, as well as in concealing and supporting those persons who commit abduction.

The situation after signing the CPA

We regret that, despite being an awful phenomenon that falls in violation of human rights and that many people are suffering a great deal of it as well as having in mind that the Sudan government has ratified the International Covenant on Civil and Political Rights, the Comprehensive Peace Agreement (CPA) does not refer or address abduction.

CEAWAC is held still and has not made move forward since March 2005 up until now. In addition, neither did the Government of National Unity nor the Government of South Sudan undertake any initiative or action-plan to release the abducted persons and reunify them with their families who are currently being multiplied by reproduction day after day.

There are 5,000 cases under hostage of abductors have been documented by CEAWAC. Despite the fact abductors were given written commitments to encourage them surrender the abducted persons, no one of them - up to the moment - was set free. We wonder until when those victims will remain under the mercy of abductors under the eyes of all respective officials including the government? Until when the abductors will be popping around free without to be subjected to punishment despite the fact that abduction is discriminated by Article 165 of the Criminal Act for 1991 and that a suspect found guilty is punishable for 3 years of imprisonment, fine or by applying the two penalties at the same time?

Article 9: Right to liberty and security of person

Article 9 of the ICCPR stipulates that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Since the Sudan is one of these countries that ratified the ICCPR in 1986, it took a pledge upon itself to respect recognized rights, as well as providing legislative arrangements to protect those rights, with a view to adopt, in consistency with the constitutional procedures, whatsoever deemed necessary for the works of the legislative arrangements or other related items. Legislative arrangements include:

The Interim National Constitution for 2005, Article 29 of which specifies that “Every one has the right to liberty and security of person; no one shall be subjected to arbitrary arrest or detention nor be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law”. By considering the text of the Article we find that it goes in line with the implications given by Para 1 of Article 9 of the ICCPR with regards to prohibition of arbitrary arrest, detention or deprivation of liberty of any person except as established by the law. By referring to the procedures organizing arrest and detention as specified by the Interim National Constitution, we find these as follows:

1. The Criminal Procedure Act 1991 contains several texts that ensure the application of this right. These are implied in articles 67 to 81 thereof. Several procedures are been provided for by these articles that if set functional, they will be adequate to ensure the personal liberty of any person.

a. Article 69 of the Criminal Procedure Act 1991 reads that: “An arrest warrant shall be in writing, and contain the reason for arrest and particulars of the preferred charge, be signed and sealed by the Prosecution Attorney or magistrate”. This Article authorizes the Prosecution Attorney or the magistrate to issue arrest warrants, which ensures that no abuse of power shall be exercised by police members over arbitrary arrest. In addition, Article 81 of the same Act specifies that “The Prosecution Attorney shall daily inspect custodies, and revise the arrests register, and verify the validity of procedure and abidance by treatment of the arrested persons, in accordance with the law”, according to which the respective Prosecution Attorney is obliged to conduct day-to-day inspection of custodies so as to monitor cases of arrest. However, all these legal guarantees are being neglected in terms of actual practice, which is the result of the weak supervision exercised by respective competent entities over Prosecution Attorneys and also due to administrative lapses in the core of the justice system (Ministry of Justice). Example of this is the report 575/2005 proceeded by Suba West Police-station with regards to what is known as “Suba case”, whereby three persons were detained for an entire one year from amongst a number of persons who had earlier been arrested by the police within context of Suba incident without having anything to do with that incident. In addition, they were never charged with any accusations nor ever been interrogated during the entire period whilst kept in custody for approximately one year. This was evidenced after the report had been prosecuted before magistrate Abdulrahim Gasm El-seed at El-Azehri Public Court, who came to find out that the above-mentioned persons, had nothing to do with the report under consideration and that their names were not included in the Inquiry Diary, and therefore they were immediately released. These are:

- Juma Majik Lik.
- Abdulaziz.
- Wali el-Din.

b. Article 79 requires that:

1. A person arrested for inquiry, by the Police, may remain in detention, for a period not exceeding twenty four hours, for the purposes of inquiry.
2. The Prosecution Attorney, where the matter requires the same, may renew detention of the arrested person, for a period, not exceeding three days, for the purposes of inquiry.
3. The Magistrate, under the report of the Prosecution Attorney, may order detention of the arrested person, for purposes of inquiry, every week, for a period, not exceeding, in total, two weeks, and shall record the reasons on the Case Diary.
4. The Superior Magistrate, in case of the arrested person, who is charged, may order renewal of his detention, for the purposes of

inquiry, every week, provided that the period of detention shall not, in total, exceed six months, save upon the approval of the competent Head of the Judicial Organ.

Para 1 of Article 80 reads as follows:

1. The court may order detention of the accused, for the purposes of trial, and may renew his detention weekly, for a period, not exceeding, in total, one month.
2. The Superior Magistrate may order monthly renewal of the detention of the accused, who is under trial; provided that the period of detention shall not, in total, exceed six months, save upon the approval of the competent Head of Judicial Organ.

The above two items allow keeping the arrested person in custody for a period that exceeds six months, which in itself represents a punishment and falls in violation with the right to fair and timely prosecution. For, such an arrested person may be released by reason of insufficient evidence or lack of relationship with the crime considered. However, in this case he/she shall have no right to prosecute the official entities that arrested him/her because such an arrest was conducted based on articles of law that authorize them to order arrest warrants as typically the case with the aforementioned Suba case, whereby persons were arrested for nearly a full year.

Second

The Emergency Act 1997 provides for powers that violate the personal liberty of persons as the case with Article 5 that reads: "Arrest of persons suspected of being participants in a crime related to the declaration". In this Act there do exist several violations represented in the following:

1. Despite the fact that the emergency status was lifted after the signature of the CPA, however actually it, save in Darfur and Eastern Sudan, was only partially lifted in terms of the geographical aspect. Violations pursuant to this Act would include individuals belonging to areas in which the Act is still in force. Therefore, the application of the emergency status characterized by a personal criterion, which is evidenced by the arrests conducted and are still being conducted to the Darfurians staying outside Darfur. In addition, arrests made by the mere reason of suspicion do violate the right to liberty and security of persons (for instance the arrest of a number of Darfurian students at El-Nieleen University).
2. According to the contents given in Para 1 of Article 4 of the ICCPR that requires the State members to the ICCPR to undertake to restrict application of emergency statuses, as well as requiring that any arrangements should not violate the other commitments. Within this context and if compared to the above, we find that the implications

given by the Emergency Act 1997 are loose and subject to different interpretations according to the views of each respective officer, i.e. lack of legal regulations or objective standards that can be referred to. Pursuant to this Act, many persons were detained and brought to special courts, for instance the Darfurian students, and the detention of Dr. Hassan Abdullah el-Turabi for more than the period prescribed by the National Security Forces Act 1999.

3. Existence of Acts that violate the constitutional rights as the case with the National Security Forces Act 1999, Para (d) of Article 30 of which is read that: “ Every member designated by the Director, by an order thereof, for the sake of executing the functions set out in this Act, shall have: (d) the power of detention of any person, for a period not exceeding three days, for interrogation and inquiry, together with showing an order extending the period of detention, for a period not exceeding the period of detention, for a period not exceeding thirty days; (e) the Director, in accordance with the requirements of national security, may order the renewal of the detention of the person, where there have been established against him, indications, evidence or suspicions of committing an offence against the State, for a period not exceeding other thirty days, together with notifying the competent Prosecution Attorney; and (f) the Director shall submit, to the Council, in any other case, as he may deem therein, for requirements of national security, the necessity of extending the period of detention of the person, for a period more than is provided for in paragraph (d) and (e), and Council may extend the period of detention, for a period, not exceeding two months; provided that he shall forthwith be released thereafter”.
4. The two paragraphs of Article 31 can be added to the above. This reads: “(1) The Director, in such cases, as may lead to terrorizing the society and endangering the security and safety of citizens, by practice of armed robbery, religious, or racial sedition, may detain any person, for a period, not exceeding three months, and may renew the period, for other three months, after notifying the competent Prosecution Attorney; and (2) The Director, in such cases as he may deem therein necessary to extend the period of detention, besides as provided for in sub-section (1), may submit the matter, to the Council, and the Council may extend the period of detention, for a period, not exceeding three months; and the detainee may present a grievance, by petition, to the competent Magistrate, against the order of renewal of his detention, and the Magistrate may pass such as he may deem fit, after knowing the grounds of the detention”. We refer to the detention of Ustaz Saleh Mahmoud, in relation to which case a petition was submitted to the Constitutional Court on lawfulness of his detention; however this has not been settled so far.

It is noted that detention can prolong for more than four months without bringing the detainee before court or being charged and without having any supervision exercised by the judiciary over detention procedures, which is deemed as an explicit violation of the articles of the ICCPR that

ensure that an arrested person or detained shall be, if any, charged as soon as possible, and be brought before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Additionally, and according to Article 9 of the ICCPR, it shall not be the general rule that persons awaiting trial. If this compared to the implications provided for in the National Security Forces Act 1999 specifically by contemplating items of Article 31 thoroughly, we find that detention period and its renew according to the functional chain makes awaiting trial is the general rule. What's more we have observed that these texts are practically being violated by over exceeding the periods specified by law, by reason that we actually found detainees kept under custody for more than a year, for example the associates of the Popular Congress Party who were detained for more than one year awaiting trial.

Third

With respect to item 5 of the same Article of ICCPR, we find that Article 33 of the National Security Forces Act stipulates that:

- a. "no member, or collaborator shall be compelled to deliver any information about the conditions, or activities of the organ, or such business, as he may have obtained, in the course of discharging his duty;
- b. without prejudice to the provisions of this Act, and without affecting any right to compensation, against the State, no civil, or criminal proceedings shall be instituted, against a member, or collaborator, for any act connected with the official work of the member, save upon approval of the Director, and the Director shall grant this approval, whenever there transpires that the subject of responsibility is not connected with the same;
- c. there shall be secret, every trial before an ordinary court, of any member, or collaborator, during service, or after the termination thereof, as to such act, as may have been done thereby, in connection with his official work".

It is noted in this connection that the Sudanese laws do not contain any mechanisms to see to it that justice is done to those victims, particularly in relation to those who were arrested by the National Security Forces. This is indicated by the provisions of the Article under consideration which complicate the process of lifting immunity. Applications submitted in this regard are usually rejected (for instance the murder case of Mohamed Saad Edris, a student who was killed during students demonstrations that took place on 16 September 2000 in Kosti city. The victim was hiding inside El-Mariekh Sporting Club in Kosti. In this connection, and despite the fact that sufficient evidences were made available to the Prosecution and that the latter addressed the respective security entities to lift immunity of the suspect concerned, these entities refused to do so on 27 November 2000 according to letter 681/ت/ج م د/أ). Sometimes courts consisting of martial judges are constituted within the National Security Forces, which is evidenced by (report # //2004, Mohamed shaban V Fagiri and others), whereby the compliant "Mohamed" was detained without justification but

merely for contradiction of interests between him and one of the security officers. As a result, he was detained in Koper Prison for a period of (...). In turn, and after had been released, he filed a criminal report under the above-mentioned reference against those who detained him. In this context, immunity lifting process took a full one year to have a court formed within the headquarters of the National Security Forces in Khartoum North (Bahri). However, the drama of procrastination would only continue until a decision was issued declaring that suspects were found not guilty to have the compliant right to compensation consequently dropped. He was even denied to be given copy of the above said decision to enable him initiate an appeal process.

Article 10 of the ICCPR: Treatment of persons deprived of their liberty

This requires that:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; and (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim for which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

First: Guarantees ensuring incorporation of the provisions of Article 10 of the ICCPR into the Sudanese legislations

1. Article 29 of the Interim National Constitution 2005 that reads: “Every one has the right to liberty and security of person; no one shall be subjected to arbitrary arrest or detention nor be deprived of his/her liberty except on such ground and in accordance with such procedures as are established by law”.
2. Paragraphs 1-7 of Article 83 of the Criminal Procedure Act 1991.
3. Items 1, 2, 3, 4 and 5 of Article 32 of the National Security Forces Act 1999.
4. (a) Organization of Prisons and Treatment of Prisoners Act, 1992; and (b) Rules of procedures for treatment of prisoners.

Second: Classification of persons detained or deprived of their liberty pursuant to the Sudanese legislations

- a. Persons accused or suspected.
- b. Political detainees.

- c. Persons pending completion of investigation or trials.
- d. Prisoners.
- e. Mentally disabled persons.

Third: Sudanese legislations in violation of the right to humane treatment

1. Detainees

Both the National Security Forces Act 1999 and Rule of Procedures for Treatment of Prisoners 1996 organize treatment of persons detained by the National Security Forces.

Nevertheless, some Articles thereof are in violation of the right to treatment with humanity. For, paragraphs d, e, and f of Article 30 of the National Security Act read: “Every member designated by the Director, by an order thereof, for the sake of executing the functions set out in this Act, shall have: (d) the power of detention of any person, for a period not exceeding three days, for interrogation and inquiry, together with showing the charge; provided that the Director may issue an order extending the period of detention, for a period not exceeding thirty days, together with notifying the competent prosecution attorney; (e) the Director, in accordance with the requirements of national security, may order the renewal of the detention of the person, where there have been established against him, indications, evidences or suspicions of committing an offence against the State, for a period not exceeding other thirty days, together with notifying the competent Prosecution Attorney; and (f) the Director shall submit, to the Council, in any other case, as he may deem therein, for requirements of national security, the necessity of extending the period of detention of the person, for a period more than is provided for in paragraphs (d) and (e), and Council may extend the period of detention, for a period, not exceeding two months; provided that he shall forthwith be released thereafter”.

Paragraphs 1 & 2 of the same Act are added to Article 31 (a) and it read:

1. The Director, in such cases, as may lead to terrorizing the society and endangering the security and safety of citizens, by practice of armed robbery, religious, or racial sedition, may detain any person, for a period, not exceeding three months, and may renew the period, for other three months, after notifying the competent Prosecution Attorney.
2. The Director, in such cases, as he may deem therein necessary to extend the period of detention, besides, as provided for in sub-section (1), may submit the matter, to the Council, and the Council may extend the period of detention, for a period, not exceeding three months; and the detainee may present a grievance, by petition, to the competent Magistrate, against the order of renewal of his detention, and the Magistrate may pass such as he may deem fit, after knowing the grounds of detention.

Long period of detention without presenting the detainee before a court contradicts with Article 10 Paragraphs (1) and (2) of the International Covenant of Civil and

Political Rights, and that the detention for nine months without presentation before a court is considered, in our point of view, a penalty from a body not having the right of executing a sentence. This besides the psychological effects on the detainee specially in the case of solitary imprisonment which may extend to torture as the majority of such detentions end with releasing the detainee without being accused nor presented before a court after spending the legally specified period. Examples of these are:

On 13 October 2002, Ahmed Osman Mohammed, student of University of Khartoum was detained and set free on 15 October 2002. He was exposed to stand against a wall and denied of night sleep.

On 14 October 1999, Mr. Abdelrahman Abdallah Nugdallah, one of Umma Party leaders, was exposed to have his residence searched and his personal effects confiscated.

On 09 October 2001, Dr. Hayder Ibrahim was summoned and interrogated with regard to a symposium held on 07 October 2001. Consequently, the activities of the Center were suspended.

On 13 February 2001, Ustaz Osman Yousuf was detained from his office, which was searched.

On 11 March 2001, Dr. Nagib Najmeldin, Manager of Amel Center for Therapy and Rehabilitation was detained; all computers and victims' files were confiscated.

b/ The detained person shall not be allowed to meet his family nor his lawyer while in detention for long periods under pretext of incomplete investigations. This is becoming a common practice by the National Security and Police Staff. The case of Ustaz Salih Mahmoud Osman, who was detained on 01 February 2004 released on 17 July 2004, is an example.

2. Detainees awaiting trial

Most of them are found in the police custody. Their presence is regulated by the Criminal Procedures Act, 1991, which states guarantees for their treatment but the way they are treated in reality contradicts with their rights which shall be specified as follows:

1. The custodies are not designed to provide the needs of the welfare of detainees awaiting trial such as space and light. They lack a special place for visits, whereas they are visited from behind their cells and in front of police men. Healthcare is also lacking.
2. Lawyers shall not be allowed to attend the investigation with their "accused persons" nor have a look on the investigation register though there is no legal act prohibiting this "historical practice in Sudan".
3. Personal guarantees for accused persons to release them shall be issued by a person residing within the Panel of Jurisdiction; women shall not be allowed to guarantee accused persons. This represents a gender bias.
4. Lack of separate places for juveniles in many police custodies.
5. Lack of blankets, coverlets and sheets for the restrained who sleep on the ground.

Prisoners

1. Treatment of prisoners in custody is often inhumane and rude:
2. Physical punishments “whipping” is practiced by the prison authorities when breaching regulations, which is indeed a humiliating punishment.
3. Those who are sentenced to death they remain tied with chains till execution time which is very humiliating.
4. Family visit in the first days is often not permitted, and would be, if permitted, very brief because there is no visiting room in many prisons.
5. Prisons Act, 1992 granted the inmate the right to visit his family upon a guarantee though Article 44 paragraph “2” of Prisons Regulation does not grant guarantee to certain categories of inmates like mentally disabled persons, frequent prisoners and women. The importance of the guarantee here is granting the inmate family visit for a period of time to be determined by the director of the prison once every month provided that it shall be on holidays.
6. There is an obvious discrimination in the Prisons Act, 1992 and Rules of procedures for treatment of prisoners regarding gender, religion and language:

Gender

Status of women is far better from men regarding the period of release. Women shall be released after six months from punishment if they proved good conduct and compliance with discipline whereas men shall be granted this right only after three years of punishment.

Male inmate shall be granted a permission to visit his wife while female inmate shall not be granted a permission to visit her husband and family by law. The same thing applies for political prisoners.

Religion

Article 25 of Prisons Act reads: “Upon recommendation of the Director of prison, the Minister may release any inmate who learned the Quran by heart while in prison upon the recommendation of a religious committee to be formed by the administration of the prison in consultation with the Ministry of Religious Endowments without prejudice to the Sharia’a Laws”. This contradicts with Article 24 of Interim Constitution, 2005 whereas it obliges the inmate to follow a belief he is not ready to accept, which reflects a religious bias as inmates from other religions shall not enjoy this right.

Language

Regulations in the prison are written in Arabic the fact that hinders many inmates from reading them. This leads to the ignorance of inmates to the regulations, thus they become exposed to punishment without being aware.

Situations of prisons in Sudan

This information is an output of field research in the following prisons:

1. Port Sudan Federal prison.
2. Sawakin prison for men.
3. Wad Medani prison.
4. Shala (El Fashir) prison for men.
5. El Khair Khanga (El Fashir) for women.
6. Marawi prison.
7. Kosti prison.
8. Omdurman prison for women.
9. Umm Kaddada prison.

Most of these prisons “Wad Medani prison, Kosti prison and Omdurman prison for women” are very congested. This affects medical and food services. As the premises were constructed in the beginning of the last century, they are dilapidated due to the lack of periodic maintenance. Other prisons were constructed in areas where climate is not suitable for living like Sawakin prison, where high humidity causes rheumatism and high blood pressure. Umm Kaddada prison was constructed in an open Sahara region, always exposed to over heading sun. Inmates are under direct exposure to sun due to their being out of cell during daytime because it is crowd and hot.

Many prisons suffer from lack of water, Port Sudan, Sawakin and El Khair Khanga prisons. This affects directly the standards of sanitation and public health which leads to dermatological diseases. All prisons lack good drainage systems. Water Centers available are not sufficient, while disposal of wastes is not done at periodic bases.

Food

Sudanese prisons always provide what they call “Djarraya”, bread made of corn flour but it is often not well done and insufficient.

Activities

Some cultural and sport activities are found in big prisons like Port Sudan, Medani and Shala while these are not found in prisons for women and some other prisons like El Khair Khanga.

Health

Most of these prisons lack a resident doctor and other facilities: lab, pharmacy and shortage of medicine.

Reformatories

Reformatories in Sudan are designed to apply legal measures on juveniles. They are facing the following problems:

Premises

Premises of the reformatories are very old where activities can not be practiced due to lack of space. Thus, educational facilities can not be established. Reformatories in Sudan are not many. They are found only in Khartoum, El Fahir and Kosti. Remoteness of these reformatories led to separation of juveniles from their families who could not visit them.

Education

Girls in reformatories are denied education unlike boys who have access to education outside reformatories. The reason is that, girls are supposed to go under supervision of guards to guarantee their security, the fact that creates a gender bias.

Article 11:

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 29 of the Interim Constitution, 2005 stipulates: “Every one has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention nor be deprived of his/her liberty except on such grounds and in accordance with procedures as established by law.”

The above-mentioned article provides for the liberty of person and makes his/her arrest or detention subject to law. Such law shall define the charge against the person and the duration of his/her stay in detention, or in custody, more specifically.

Article 34 of the Criminal Act, 1991 (fine) reads as follows:

1/ The court shall assess fine with reference to the nature of the offence committed, the amount of wrongful gain obtained thereby, the degree of the offender’s participation and his financial status.

2/ The court may order payment of fine, either in whole, or in part as a compensation for any person aggrieved of an offence, unless an independent judgment for compensation is passed.

3/ When passing a judgment of fine, the penalty of imprisonment shall be passed as an alternative penalty in the case of non-payment of fine and if the convicted person pays part of the fine, the alternative term of imprisonment shall be shortened in proportion to the part paid of the total fine.

Article 33 of the same Act provides for the following: “Where the offence may be punished with fine only, the period of imprisonment determined by the court instead of payment fine shall not exceed (a), (b), (c) six months, in any other case.

When reading Article 33 with Article 34, Para (2), it would be understood that fine may constitute compensation for the aggrieved person. This entails that failure to pay it, no matter how much it is, will result in inflicting imprisonment sentence as an substitute punishment, provided that imprisonment shall not exceed six months.

Article 198 of the Criminal Procedures Act provides that: “Where fine, or compensation is sentenced, the court, which passed the sentence, shall order the way

of payment, and shall, in case of non-payment, pass an order for the collection of the amount, by any of the following ways (a), (b), and (c).

4/ Where the collection of the amount of fine is not possible, by the aforesaid ways, the court may order execution of a substitute penalty of imprisonment, or release the sentenced person, at any time, by bond, or bail.

5/ Where collection of compensation is not possible, by the aforesaid ways, the court may follow the civil procedures, as to the same.

Accordingly, Para (5) of Article 198 of the Criminal Procedures Act grants the court the right to follow the civil procedures to collect compensation.

- By referring to the Civil Procedures Act, 1983, Articles 243 and 244, we find:
 - Article 243 of the Civil Procedures Act provides that “Subject to the provisions of section 244, and without prejudice to any other means of execution of judgments, if the judgment is related to payment of a debt or payment of money, the court shall arrest the judgment debtor and detain him unless that has been already decided when the judgment was pronounced.
 - Article 244 of the same Act stipulates: “If the judgment debtor is detained subject to a judgment in application of the provisions of section 103 or section 243, he shall not be discharged unless (a) he pays the amount mentioned in the judgment”.

So, these are the provisions in the Civil Procedures Act whereby the debtor remains in detention and shall not be discharged unless debt is paid. This situation includes sentenced persons in re crimes of cheques who are kept in detention subject to the civil right (compensation) even after elapse of the prescribed original punishment, taking into consideration that keeping people in detention subject to payment is for sine die. This is a restriction of freedom guaranteed by Article 3 of the Interim Constitution because of the following:

1/ The debtor is kept in detention sine die subject to payment. It is unreasonable that a person is kept in detention sine die although the Constitution provides that the period of detention should be specified.

2/ The debtor with regard to civil right is not facing a charge justifying his stay in detention. He is a person who has been sentenced and he served the sentence prescribed for a crime pertaining to a public right. To restrict his freedom by putting him in detention for failure to pay a civil debt is in violation of the Constitution as long as the charge against him is not identified.

3/ Putting in detention sine die for failure to pay doesn't constitute substitute punishment. The Constitution guarantees liberty of person and restricts his detention and arrest unless in the case of a charge made against him and subject to a limited period of time. Laws should comply with the Constitution. It is unacceptable to have a law providing for detaining a person without specifying the date of his discharge. It is worth mentioning that keeping a debtor in detention does not affect the sum for which he is detained, nor does it cancel it, because as we mentioned before it doesn't constitute substitute punishment for failure to pay.

Statistics showing the number of persons in detention for failure of payment:

This statistics has been prepared in July 2006

Kosti Prison	Wad Medani Prison
10	249

Article 19: Right to freedom of opinions, expression, and to seek and receive information and ideas.

Article 19 of the ICCPR provides for these rights as follows:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 1. For respect of the rights or reputations of others;
 2. For the protection of national security or of public order (ordre public), or of public health or morals.

The Interim Constitution guarantees such right in Article 39 which reads:

- (1) Every citizen shall have the right to the freedom of expression, reception of information, publication, and access to the press without prejudice to order, safety and public morals as determined by law.
- (2) The State shall guarantee the freedom of press and other media including the right to information in a competitive environment as shall be regulated by law in a democratic society.
- (3) All media shall abide by profession ethics and not instigate hatred, ethnical, racial, or cultural hatred or provoke violence or war.

It is obvious, from the previous account, that there is acute contradiction between the provisions of the CPA and the Interim Constitution from the one side and the laws governing the Sudanese press from the other side. Comparing such laws with the ICCPR, we find the following:

- Press and Printed Press Materials Act, 2004 was set in different circumstances characterized by a dominating mentality which considers banning as the norm and permission is the exception. This is why this Act makes obtainment of a permit is a condition. The Press Council is the entity which has the power to issue license for the publisher, the newspaper, the printing press, and the newspapers.
- The law maker was specifically concerned with the Press Council. This is why most of the Articles are devoted for it. Among the 39 Articles of the Act, there are 4 Articles for the definitions, 17 Articles (5-22) for the Council and the rest for the licence conditions and conditions to exercise press profession, the conditions of publications, and penalties and sanctions which under the power of the Council.
- The Council has gone far in setting regulations which are considered more arbitrary than the Articles of the Act such as the regulation on the development of press, 2005.

We will deal with the right to freedom of expression by focusing on the laws governing the journalism work. The law organizing the practice of journalism work is the Press Act, 2004 which includes many guarantees to the practice of journalism work (Article 28) and immunities enjoyed by the journalist in Para 1 (a, b, c, d).

Para 2 of the same Article provides for cooperation and revelation of information to journalists (the practice shows that journalists are deprived of this right; they have been deprived access to Amry to get first hand information with regard to the situation of the citizens who are aggrieved of construction of Merowi Dam. Those journalists are as follows:

- Mujahid Abdellah “Rai Al-Sha’b.
- Abu Al-Gassim Farahna “Al-Wan”.
- Mu’taz Mahjoub “Al-Adwa”.
- Muhib Mahir “Al-Sudani”.

Para 4 provides that the Council shall take appropriate measures to protect the rights of the journalist. This is not applied in practice. Examples are as follows:

- Lubna Ahmed, journalist in Al-Sahafa Newspaper, was summoned on 13 February 2002.
- Nour Al-Din Meddani, journalist, was summoned by the security service for writing an article mentioning SPLM.
- On 20 July 2002, Khartoum Monitor was suspended for two days. Niyal Paul, journalist was subject to trial whereby he was fined 500,000 Sudanese Pounds or otherwise to be imprisoned for one month. The editor-in-chief was also fined 250,000 Sudanese Pounds.
- Mohamed Latif, columnist, was arrested on Monday 16 July 2006 for what he wrote in his column in Al-Rai Alam.

2/ Articles not consistent with the right to freedom of expression:

Article 4 defines the journalist as “every person who practices journalism as a profession and is registered with the Council, in accordance with law.”

Although this definition specifies those who have the right to practise journalism as a profession, and accordingly the subsequent rights and duties, this definition became the sword on the journalists’ necks. The Press Council is circulating lists preventing those who write regularly to newspapers of writing, justifying this by saying that they are not registered as journalists. Our believe is that this violates the right to freedom of expression provided for in Article 19 of ICCPR, whereby writing in newspapers shall be restricted only to registered journalists.

- Chapter III provides for the bodies which may issue newspapers (Article 23, a, b, and c). By specifying certain bodies which may issue newspapers, the Act deprives individuals and the groups not provided for in this Article of the right to issue newspaper, this thing which doesn’t comply with the right to freedom of expression.
- Article 24, Paras 1 and 2 provide for a licence to be obtained from the Council after payment of fees as a requirement for issuing any newspaper, a press publication or printed material. Accordingly, the right to freedom of expression is subject to the approval of the Council which either

approves or disapproves the licence. This is a discretionary power which is in flagrant contradiction with the freedom of expression.

Another factor which is also considered as restriction of the freedom of expression is that the Act provides for an annual renewal of licence.

- The Act, in Article 27 provides for the responsibility of the editor-in-chief. The editor-in-chief is the first person responsible for any offence. He is also criminally responsible. i.e. in case of any offence, he shall be tried under the Criminal Act, as well as the Press Act. This violates the legal principle “neb is in idem”.

Penalties and Sanctions

Chapter VIII provides for the sanctions and penalties. Article 36 (1) violates the right to freedom of expression by providing for the suspension of the newspaper for a period not exceeding seven days (example: Al-Sudani newspaper was suspended in July 2006). Article 36, Para 3 contravenes freedom of expression by providing that the Council may give advice to the publisher or the editor-in-chief about a published matter which may constitute contravention of this Act. Such a conduct represents a discriminative censorship over freedom of expression and consequently interference in all published materials.

Worse than the suspension of the newspaper is the revocation of licence not in case of committing an offence but in case of violating the licence conditions according to Article 37, Para 1.

One of the flagrant violations which occurred on 16 August 2006 was that 3 journalists of Al-Ayam newspaper were arrested by the Police for covering the forced relocation of 5000 households in Dar Asalam, where journalists were beaten and their papers and cameras were confiscated. They were denied Form 8. These journalists are as follows:

- Nasr El-Din Ahmed Al-Tayeb and Fakhr Al-Din Yassin, Al-Ayam Newspaper.
- Salma Fath Al-Bab, and Ballah Ali Omer, Al-Sahafa Newspaper.

Article 22: freedom of assembly and association

The last Act on voluntary work was issued in 2006, following many stages and after it had been signed by the President of the Republic on 16 March 2006. Civil society organizations have initiated a campaign through the coordinating secretariat of the civil society organizations which significantly contributed in cancelling the provisional decree of the voluntary work Act, 2005 issued by the President of the Republic on 04 August 2005, which is the decree lodged with the Parliament to be adopted.

The coordinating secretariat has continued the campaign to amend many of the provisional decree articles since it was submitted to the Council of Ministers. The secretariat was submitting proposals and memos including to the Presidency in order to harmonize the Act with the requirements of any democratic society, as well as with the Interim Constitution. In this context, the secretariat also met with the political groups in the Parliament. However, the Act, in most of its Articles violates the most important rights including the right of equality before law, and the right of assembly. Following are the articles breaching the freedom of assembly and association in accordance with Article 40/1/2 of the Interim Constitution, 2005 and article 22 of the ICCPR being an Article provided for in the Interim Constitution pursuant to its Article 27/3/4 which considers all international human rights covenants ratified by the Sudan part and parcel of the Bill of Rights enshrined in the Interim Constitution:

First: Article 7, Para 2/1 on raising and receiving of funds and grants

Para 1 of this Article provides that “Grants and fund raising for programmes of organizations shall be done through a project document approved by the Commission in accordance with rules”.

Para 2 of the same article stipulates that “No civil society organization registered under the provisions of this Act shall receive funds or grants from abroad or from foreign person within or from any other entity without the approval of the Minister”. This article breaches the right of association and assembly since it sets the approval of the Minister as a condition for receiving funds. It goes without saying that most of non-governmental civil society organizations almost rely on grants coming from abroad. Under this condition, the organization may not find funds to run its activities. The discretionary power of the Minister to approve or disapprove receiving of funds is therefore deemed in violation of the freedom of assembly and association. There are no restrictions as to the Minister’s powers in this regard since the Act doesn’t refer to any justifications for his approval or disapproval, and accordingly the organization may appeal. The paragraph prevents receiving funds from any other entity even from Sudanese individuals or national private institutions which may wish to support some projects executed by such organizations such establishment of school or hospital or digging of a well...etc.

Para 1 of the same Article restricts the right to assembly and association by only allowing submission of project document conditional to the approval of the Commission as a requirement for grants and fund raising in accordance with rules. This Para implies the State’s desire to have control over the civil society organization

through controlling their activities. There is could be an urgent need arising as a result of a disaster, how could it be that the organization submits firstly a project document in order to get financial support from foreign or national quarter to contribute in addressing such disaster? From where could the Commission get such a huge labour force tasked with approving project documents of more than hundred organizations at one time? And what are the criteria for approving the project document? The Commission may reject the document in accordance with regulations of which civil society organizations have no knowledge? Furthermore, are there regulations for this Act? This is still ambiguous. In our view, there is no way to get remedy for the content of this Act through regulations. This Act, in its entirety, restricts the freedom of assembly and association. Not only that but it also results in destroying many organizations, although they, in order to renew their registration, annually convene their general assemblies in the presence of representatives of the Ministry and the Commission in and after depositing all documents showing the projects executed during the year and specifying the source of finance and their budgets which are audited by chartered auditors. This indicates that, through this mechanism, the principle of transparency is applicable upon practicing their activities and declaration of their expenditure.

Article 9, Para 1(a) provides that the organization should submit to the Registrar a list of the names and addresses of the founding members provided that their number shall not be less than thirty. This means that an organization of less than thirty members is deprived of the right to assembly.

However, Para 2 of the same Article provides that the Minister may approve registration of any organization of less than thirty members; as if such an approval is a grant to be given by the Minister.

Article 11 provides that License of every organization shall be renewed every year in accordance with the requirements specified by the rules. This Article puts restriction on voluntary organizations and deprives them of the right to assembly at the end of each year.

Article 13 (b) provides that the Registrar may cancel registration of the organization if it violates the provisions of this Act or the regulations in force or any other applicable law. This implies that if the organization, for instance, breaches the Traffic Act, its registration may be cancelled.

In accordance with Article 22(2) of the ICCPR “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Article 14 (c) provides that registration may be revoked if the concerned organization failed, without acceptable justifications, to begin implementing its activities despite elapse of one year. Isn't it the right of the organization to suspend its activities for one year? What are the requirements to allow an organization to suspend its activities?

Article 23 provides that “Any person or group of persons undertaking activity of a voluntary organization without registration under provisions of this Act shall be deemed to have committed a violation”. This Article deprives people of a fundamental right. In accordance with the Constitution, the law maker has the power to organization and exercise of such right. Registration, in principle, enables the organization to benefit from the privileges granted by the State. An organization shall not be deprived of its right to practice its activities for the simple reason of not been registered. If, for instance, ten advocates wish to implement a programme on human rights awareness or provide legal assistance to an accused or prisoners, they shall be subject to the provision of this Article. They shall be denied the right to assemble. Not only this but also all work facilities shall be confiscated in accordance with 24, 1.

Article 24 (1) provides that “Whosoever undertakes activities of a voluntary organization without registration, shall be punished with fine and the funds raised by the organization may be confiscated. This Article threatens the simplest form of associations known in the Sudan and established within the residential areas or among relatives with the view of meeting the needs of poor families and providing assistance in difficult and good times.

Article 30 provides that “Any organization registered under this Act shall not amend its goals or purposes for which it is registered or to expand these goals and purposes or merge with any other organization without prior written consent of the Commissioner.” This Article is depriving the right to association. It should not have provided for the approval of the Commission. It should have provided instead for notifying the Commissioner under the said circumstance.

Attempts of civil society organizations

Civil society organizations’ attempts to amend the Act have never ceased. They submitted an appeal to the Constitutional Court on unconstitutionality of the Act on 27 May 2006. However, the Constitutional Court required, in order to considering the appeal, that the organization should have sustained damage as a result of the application of the Act. It is worth mentioning that among the organization which filed the appeal, there is one of which activities have been suspended in accordance with this Act. The judgment was that the damage which the organization sustained should be addressed. No judgment was made in re unconstitutionality of the Act. Thus, no damage could be addressed without deciding that the Act is not constitutional. The Act of the Constitutional Court itself contains provisions contravening the Constitution.

Article 24: Right of the child to name, nationality and equality before law

Sudan is one of the countries which ratified the regional and international conventions on the rights of the child and one of the first countries which joined the Convention of the Rights of the Child, 1989 ratified by law on 24 July 1999 whereby it became part and parcel of the national legislation in accordance with the Constitution. It also joined the Convention of the African Child.

- The law specified the requirement to acquire nationality for the Child in the Sudan. The provisions of the Act of the Child are consistent with Article 24 of the ICCPR. Article 7, Para 3 provides that following:

Every child born of a Sudanese mother or father shall have interrogative right to enjoy Sudanese nationality and citizenship.

According to this Article, any child shall be automatically given Sudanese nationality if born of a Sudanese mother or father. However, Nationality Act, 1992 provides for acquisition of Sudanese nationality if only the father is a Sudanese, the thing which is considered as discrimination on the basis of sex since it deprives children of Sudanese mother of the right to acquire Sudanese nationality. Article 4, paras 1 and 2 of this Act read as follows: 1/ With regard to the persons born before the entry into force of this Act, the person shall be Sudanese by birth, if the following requirements are fulfilled:

a/ If he/she acquired Sudanese nationality by birth.

b/ First: If he/she was born in the Sudan or if his/her father was born in the Sudan.

Second: If, when this Act enters into force, he/she is residing in the Sudan, and that his/her ancestors from the side of the father have been residing in Sudan since the first of January 1924.

(c) If the person and his/her father were not born in the Sudan, he/she may, upon fulfilling the requirements of para (b) (second) submit an application to the Minister for granting him/her the Sudanese nationality by birth.

2/ A person born after entry into force of this Act shall be Sudanese by birth, if his/her father is Sudanese by birth upon his/her birth.

3/ A person born of parents who acquired Sudanese nationality shall be Sudanese by birth, if his/her parents had acquired Sudanese nationality before his/her birth.

Despite issuance of the Child Act, 2004, only three towns throughout the Sudan have courts for juveniles. The police didn't take measures to save the children being subject to general criminal courts where they are subject to punishments inflicted on adults, although this is banned in accordance to the Child Act, the thing which leads to double standard treatment of children.

Actual situation

Concerning the right to free education, only 46,7% of children at school age are going to schools, and only 7,8% complete basic education while 45,5 drop schooling before completing basic education (Child labour survey in Khartoum, 2004).

Children belonging to higher social class are enjoying the rights of the child with regard to education because their parents can afford schooling fees, whereas those of parents belonging to medium and low social classes don't continue their basic education due to failure to pay schooling fees. This factor combined with other economic factors lead children to work in early ages.

Child Labour

Due to the poor economic situation of many of the Sudanese households, children are forced to work either to assist their families or to pay schooling fees or to cover their own expenses. They work in the different fields: agriculture, trade, and industry, as well as handicrafts which are exercised by 10.6% of children. It goes without saying that they practice such kind of works at an age when their bodies and minds are not fully grown to enable them to undertake such activities.

Children at school age are wandering in the streets selling bags, water...etc. Some of them work in industrial areas and others in public transport as collectors or shoe cleaners or cleaners in households.

Problems affecting children

- 1/ The efforts exerted by children do not suit their age, bodies, or mentality.
- 2/ They are exploited and forced to work for longer hours without rest and the wage they get is not consistent with the type or duration of work.
- 3/ They are liable to injuries and electricity threats, and exposed to sun during work.
- 4/ They are deprived of education.
- 5/ They are illegally arrested and the goods of those work in trade are confiscated.
- 6/ Young girls are exposed to sexual abuse and rape.
- 7/ They are hired on daily wage basis which doesn't guarantee the continuity of their work.
- 8/ They don't get sufficient medical care when they are ill or injured.
- 9/ There are no laws to hold accountable those employing children.
- 10/ They are prone to physical violence.

Compliance with labour legislations

Children work for 8 hours in average. However, some of them work for 10 hours in industrial areas, restaurants...etc. This exceeds the maximal legal work hours which is 7 hours including rest hours.

There are no obligations as to carry out medical tests for children.

Chapter 3

Recommendations

4. Cancellation of immunities provided for by the:
 - National Security Forces Act.
 - Police Act.
2. Exercise of judicial supervision over authority of arrest and detention.
3. Revocation of physical punishment.
4. Ratification of the Convention on combating of torture and activation of its mechanisms.
5. Providing durable resolution of abduction.
6. Releasing all abducted women, children and men including those children who were born within abduction process and reunify them with their families in their original places.
7. Developing programs to provide victims with psychological and physical treatment altogether with creating means of living.
8. Developing awareness of people living in areas associated with abduction cases in order to encourage them cooperate with the respective authorities to enable liberate all abducted persons.
9. Brining criminals to courts of law.
10. Establishing police centers in bordering areas to see to the monitoring and prevention of abduction altogether with inflicting punishment upon abductors or those who endeavor to commit abduction again.
11. Revocation of the Emergency Act and overall exceptional laws.
12. Creating detention centers with a view to respect human standards of dignity.
13. Revocation of all texts that encourage discrimination and application of physical punishments inside detention centers.
14. Revocation of sections calling for imprisonment of a person merely on the ground of inability to fulfill a contractual obligation, by the reason that such imprisonment violates the implications given by both Article 11 of the International Covenant on Civil and Political Rights and Article 29 of the Sudanese Interim National Constitution for 2005.
15. Revocation of Press and Printed materials Act for 2004.

16. Ensuring respect of religious, ethnic and cultural diversity in accordance with the principles specified by human rights international charters.
17. Journalists should not be forced to reveal the identities of their information resources to whom they pledge to maintain confidentiality, altogether with revocation of the procedure of obtainment of permit from the government in order to practice journalism.
18. The government of the Sudan is required to see to the establishment of children courts in all states of the Sudan.
19. The government of Sudan is to enhance provision of free and mandatory education by canceling overall fees payable, providing free schooling textbooks and uniforms, establishing accommodation to enable settle the issue of children transportation, providing meals to poor children (at least breakfast for instance), providing free healthcare and eradication of the reasons that encourage children to abandon schools and compel them to work instead.
20. Passing of laws that punish persons using children as workers.