

SUDAN

The Special Courts in Darfur

In the states of North, West and South Darfur, in western Sudan, Special Courts were set up by decrees in 2001 following a declaration of a State of Emergency in the region. Whilst Special Courts still operate in North and West Darfur, in April 2003 Special Courts in South Darfur were replaced by Specialized Criminal Courts. The decrees are broadly similar. These Special Courts are headed by one civilian and two military judges; the military judges do not need to have any legal qualifications. The Decree on the Establishment of a Special Court in Al-Fashir (Decree No. 21 for 2001 of the State Governor) states in Article 5:

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

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

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

The jurisdiction of the Darfur Special Courts and the Specialized Criminal Courts covers a wide range of offences including armed robbery and *haraba* (banditry); unlicensed possession of firearms; crimes under articles 50-57 of the Penal Code (offences against the State); public order offences; and "anything else considered a crime by the Wali (Governor) of the State or the Head of the Judiciary" (Article 4 of Decree No. 21 for 2001 of the State Governor). Under Article 5(g) of Decree No. 21, "*lawyers have no right to appear before the courts to represent the accused. The friend of a defendant can appear instead to provide help before the court*". Sentences over five

years' imprisonment can be appealed within seven days to the Darfur Court of Appeal, whose verdict is final except in cases involving amputation and the death penalty, when they may be appealed to the Supreme Court in Khartoum and the Constitutional Court, which has sometimes overturned cases because of unfairness.

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

In the Special Courts lawyers have used the possibility of appearing as the "defendant's friend" to plead on behalf of the accused, but this position does not give them the same rights as an appearance as defence counsel in the ordinary courts. They do not have the same right of access to the case file or to make a final plea (although the Special Court sometimes grants them these). The lawyer as "friend" is normally not allowed to cross-examine prosecution or defence witnesses.

On 6 April 2003, the Governor of South Darfur State, issued a decree to abolish the Special Courts in Nyala, Kass and Al-Da'ein, the main towns of the state. This followed a decision by the Chief Justice in

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

The Human Rights Committee has expressed its opposition to the use of Special Courts:

“The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14.”
(General Comment 13, para.4)

**WRITE TO THE SUDAN
GOVERNMENT CALLING ON IT
TO:**

- Amend the 2001 Presidential decrees that led to the creation of the Special Courts and the Specialized Criminal Courts in Darfur to ensure that they operate according to internationally recognised standards of justice and fair trial as outlined in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which states that:

1. All persons shall be equal before the courts and tribunals. Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty.
3. Everyone shall be entitled to be informed promptly and in a language which she/he understands of the charge against her/him; to have adequate time and facilities for the preparation of her/his defence and to communicate with counsel of her/his own choosing; to be tried without undue delay; to be tried in her/his presence, and to either defend her/himself in person or through legal assistance; to have legal assistance assigned to her/him and without payment if she/he does not have sufficient means to pay for it; to examine, or have examined, the witnesses against her/him and to obtain the attendance and examination of witnesses on her/his behalf; to have the free assistance of an interpreter if needed; not to be compelled to testify against her/himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to have her/his conviction and sentence reviewed by a higher tribunal.
6. In cases of miscarriages of justice the person who has wrongly suffered punishment shall be compensated, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to her/him.
7. No one shall be liable to be tried or punished again for an offence for which she/he has already been finally convicted or acquitted.

- Ensure that any punishment handed down by any court in Sudan respects Article 7 of the ICCPR, that it is humane and does not constitute torture or cruel inhuman and degrading treatment.

ACT NOW!

► Please send your appeals to:

- Lieutenant-General Omar Hassan Ahmad al-Bashir
President and Commander-in-Chief of Armed Forces
President's Palace
PO Box 281
Khartoum
SUDAN
Fax: + 24911 776603 / 777583
Salutation: Your Excellency
- Mr Ali Osman Mohamed Taha
First Vice-President
People's Palace
PO Box 281, Khartoum, Sudan
Fax: + 249 11 771025/779977
Salutation: Dear Minister
- Mr Ali Mohamed Osman Yassin
Minister of Justice and Attorney General
Ministry of Justice, Khartoum, Sudan
Fax: + 249 11 770883
- Mr Mustafa Osman Ismail
Minister of Foreign Affairs
Ministry of Foreign Affairs
- Dr Yasir Sid Ahmed
Advisory Council for Human Rights
PO Box 302, Khartoum, Sudan
Fax: + 249 11 779173/770883
Salutation: Dear Minister
- Mr Osman Mohamed Yousif Kubor
Governor of Northern Darfur State
c/o People's Palace
PO Box 281
Khartoum
Fax: +249 11 776432/ 771651/ 783223
Salutation: Dear Sir
- Lieutenant-General Adam Hamid Musa
Governor of Southern Darfur State
c/o People's Palace
PO Box 281
Khartoum
Fax: +249 11 776432/ 771651/ 783223
Salutation: Dear Sir
- Major-General Suleiman Abdalla Adam
Governor of Western Darfur State
c/o People's Palace
PO Box 281
Khartoum
Fax: +249 11 776432/ 771651/ 783223
Salutation: Dear Sir

► Please raise Amnesty International's concerns with your own government.

More information on the death penalty and the human rights situation in Darfur can be obtained on Amnesty International's website:

<http://web.amnesty.org>

Amnesty International
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