

SUDAN

The Specialised Criminal Courts in Darfur

“There are always fears of a miscarriage of justice under the Specialised Courts”,

- a lawyer in Darfur expressing fears about the administration of justice.

Special Courts instituted by decrees under a 2001 State of emergency in Darfur were reformed into “Specialised Criminal Courts” in all three states of Darfur in March 2003, following another decree by the Chief Justice in Khartoum. Jurisdiction over offences such as armed robbery and *haraba* (banditry); unlicensed possession of firearms; crimes under articles 50-57 of the Penal Code (offences against the State); public order offences; and “anything else considered a crime by the Governor of the State or the Head of the Judiciary” (Article 4) was passed onto these new Courts.

The Specialised Criminal Courts are defended by the Sudanese authorities as a notable improvement for the rights of defence; in particular they are now headed by only one civilian judge, compared to the Special Courts which were also headed by members of the security forces. According to the Ministry of Justice, the Specialised Criminal Courts are formally under the responsibility of the judiciary; they have been established for reasons of “expediency”. However lawyers in Darfur see little difference between the Special Courts and the Specialised Criminal Courts. Many of the flaws remain.

Use of confessions extracted under torture

The 2003 Decree institutionalising such courts still fails to ensure that confessions extracted under torture are not used as evidence against the accused, even if they are later retracted. For instance, **Ibrahim Yaqub Bakur**, a Zaghawa, was arrested in January 2004, on charges relating to

banditry, the day after two lorries were looted near Al-Fasher. He was reportedly tortured by the security forces, and beaten with gun butts and small sticks. He confessed to the looting during the torture. He appeared in front of the judge only on 27 June 2004, when he reportedly told the judge he had confessed under duress and withdrew his confession. The judge is said to have refused to withdraw the confession.

No adequate legal representation

Another flaw that the new Decree fails to address is that relating to legal representation. It does not overrule Article 5 (g) of the Decree on the Special Courts specifying that defence lawyers are not allowed to represent the accused and that only “friends” of the defendants can appear before the court to help. While lawyers in North and South Darfur state report that Specialised Courts judges frequently allow them, in practice, to fully represent their clients, this remains at discretion of the judge. For instance, on or about 28 January, **Al-Tayeb Ali Ahmad** was sentenced to death after an unfair trial where he had no legal representation. He was convicted of opposing the government by using violence, and being a member of terrorist and criminal groups, by a Special Court in Al-Fasher. He lodged an appeal against the judgement.

Death Penalty and other cruel, inhuman, degrading treatment or punishment:

Specialized Criminal Courts continue to sentence convicted persons to cruel, inhumane and degrading punishments and the death penalty, with limited rights of appeal. Sentences over five years’ imprisonment can be appealed within

seven days to the Darfur Court of Appeal, whose verdict is final except in cases involving amputation or the death penalty, which may be appealed to the Supreme Court in Khartoum and the Constitutional Court, which has sometimes overturned cases because of lack of evidence.

Hundreds of people are said to have been sentenced by such courts in Darfur, mainly on charges of armed robbery and possession of unlicensed weapons. Many have been sentenced to death for offences not involving a lethal act. Between June and August 2004, at least five persons were sentenced to death in North Darfur. On 12 June 2004, **Abdallah Mohamed al-Taher**, was sentenced to death. He appealed the sentence. On 27 August 2004, **Mohamed Adam Khamis**, a 35-year-old Zaghawa man, was reportedly sentenced to death on charges of armed robbery and possession of a weapon without licence; an appeal is pending.

Minors are also at risk from the death penalty. For example, **Al-Sadiq Bakhit al-Bagir**, aged 17, and **Faruk Ali Yaqub**, aged 16, were among seven displaced persons who were arrested in Kalma camp. They stand accused of the murder of Abdel Rahman Ahmad Madibo, a volunteer in a workshop organised by an international NGO, on 12 August 2004. All deny the accusations, and at least one, Faruk Ali Yaqub, alleges that he was beaten by a police officer. They are being tried by the Nyala Specialised Criminal Court, and if convicted, could face the death penalty.

Use of Specialised Courts to try supposed members of armed opposition groups:

The Sudanese authorities also use the Specialised Courts to try ordinary people on suspicion of belonging to, or supporting, rebel groups. In Darfur, there are two opposition groups – the Sudan Liberation Army and the Justice and Equality Movement. Amnesty International is concerned that the Specialised Courts, which accept confessions extracted under torture as evidence, can be used by the Sudanese authorities to pass sentences of death or other cruel, inhumane and degrading treatment, on such detainees.

The Sudanese authorities have frequently arrested and tortured civilians into confessing to belong to rebel groups.

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

WRITE TO THE SUDAN GOVERNMENT CALLING ON IT TO:

- Amend the 2003 decrees of the Chief Justice in Khartoum which reformed Special Courts into Specialised 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 does not constitute torture or cruel inhuman and degrading treatment.

ACT NOW!

► Please send your appeals to:

- Mr Ali Osman Mohamed Taha
First Vice-President
People's Palace
PO Box 281, Khartoum, Sudan
Fax: + 249 183 771025/779977
Salutation: Dear Vice President
- Mr Ali Mohamed Osman Yassin
Minister of Justice and Attorney General
Ministry of Justice, Khartoum, Sudan
Fax: + 249 183 770883
- Mr Mustafa Osman Ismail
Minister of Foreign Affairs
Ministry of Foreign Affairs
PO Box 873
Khartoum, Sudan
Fax : + 249 183 779383
Salutation: Dear Minister
- Dr Abdel Moneim Taha
Advisory Council for Human Rights
PO Box 302, Khartoum, Sudan
Fax: + 249 183 779173/770883
Salutation: Dear Sir
- Chief Justice
Supreme Court
Khartoum, Sudan
Telegram: Chief Justice, Khartoum, Sudan
Fax: + 249 183 774 063
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/topic/sudan>

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