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EFFECTIVENESS OF INTERNATIONAL HUMAN RIGHTS STANDARDS IN ARMED CONFLICTS: A CASE STUDY OF SOUTH SUDAN (1983-2005) //

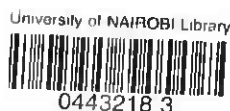
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DECLARATION

I do declare to the best of my knowledge that this research project is my original work and has never been presented before in any other university.

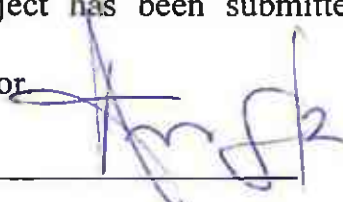
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This research project has been submitted for examination with my approval as a university supervisor

Signed 

Date 6/11/2007

Dr. KITHURE KINDIKI
(University of Nairobi)

DEDICATION

This research project is dedicated to the entire Panyako family, a family with a wide vision in academic lines. Their prayers, continued advice and encouragement have been the source of my success to this level of academic achievement.

ACKNOWLEDGEMENT

I wish to express my sincere appreciation following personalities for the part that each played in helping me to attain what I have attained and in bringing this work to completion.

I am greatly indebted to my supervisor, Dr. Kithure Kindiki, who was a source of valuable advice, support, encouragement and guidance throughout this work.

Special thanks go to all members of staff of the Institute of Diplomacy and International Studies, University of Nairobi, who contributed in one way or another to the successful completion of this study. I also thank all my classmates with whom we have journeyed in pursuit for knowledge through research.

And most of all, I thank my special contemporaries, Oita Etyang and Immaculate Waswa for the continuous intellectual and social stimulations that they have shown towards me. Lots of thanks to you, eyalama noi.

Thank you God for all your mercies.

PANYAKO Simon Oswan.

TABLE OF CONTENTS

Declaration.....	i
Dedication	ii
Acknowledgement	iii
Table of contents	iv
Abstract	vii

CHAPTER ONE:

BACKGROUND OF THE STUDY	1
Introduction	1
Problem statement	2
Objectives of the study	3
Literature review	4
Literature related to the international law on human rights	5
Literature related to the international law on human rights instruments	7
Literature review on human rights violations in South Sudan	14
Literature on the international community's response to human rights violations in South Sudan	17
Theoretical Framework	19
Hypotheses	21
Methodology	22

CHAPTER TWO

HUMAN RIGHTS AND THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS	24
Introduction	24
Human rights	25
International law on human rights	28
The Universal Declaration on Human Rights	33
The International Covenant on Civil and Political Rights	38

The International Covenant on Economic, Social and Cultural Rights	39
The Convention on the Rights of the Child	41
The African Charter on Human and People’s Rights	45
The United Nations Convention Against Torture	47
International Humanitarian Law (Laws of War)	49
Conclusion	51

CHAPTER THREE

HUMAN RIGHTS VIOLATION IN THE SUDAN CONFLICT	53
Introduction	53
Violation of Civil and Political Rights	55
The freedom of religion	61
Freedom of movement	62
Freedom of speech and press	63
Slavery, slave trade, servitude, forced labour and similar institutions and practices	64
Violation of the rights of the child	65
Violation of women’s rights	69
Violation of the international humanitarian law	71

CHAPTER FOUR

A CRITICAL ANALYSIS OF THE EFFECTIVENESS OF THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS IN THE SUDAN CONFLICT	76
Introduction	76
The United Nations as a human rights protecting body	78
Strengths of the human rights instruments	80
Charter-based instruments	80
Treaty-based instruments	81
The role of human rights defenders	84
Limitations of the international human rights instruments	86
State sovereignty	86
Conclusion	89

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS 91

Conclusions 91

Recommendations 93

Bibliography 97

ABSTRACT

Human rights are difficult to define. Generally speaking, they are regarded as those fundamental and inalienable rights which are essential for life as a human being. Due to the recognition that human rights are of international concern, many conventions and other instruments have been put in place to defend these rights. The signing of the United Nations Charter marked the formal realization that human rights are of international concern. The signing and ratifying of other conventions dealing with human rights is also a sign that human rights are not limited to national boundaries.

Human rights violations in South Sudan were very common during the conflict between the government of Sudan and the SPLM/A. The war was characterized by mass killings, bombing of the civilians, torturing of the prisoners, denial of access to humanitarian aid, abduction of women and children, slavery, denial of access to health care and other basic needs such as education, and other different forms of atrocities.

Despite the existence of the international law of human rights and its enforcement mechanisms, there is still a problem in the ensuring that human rights are respected by parties to a conflict. It is against this background that this study sought to find out the effectiveness of the international human rights standards and the international law on human rights in protecting civilians during armed conflicts.

The main objective of this study was to evaluate the effectiveness of the international human rights instruments in the protection of civilians during violent conflicts, paying attention to South Sudan. It also sought to investigate the extent to which the international community can intervene to ensure that the international human rights standards are upheld and respected during moments of war.

The study found out that there was massive violation human rights, especially the rights of the civilians, which ranged from executions, extrajudicial killings, arbitrary arrests, detention without due process of law, displacement of persons, systematic torture and restriction or denial of the freedoms of religion, expression, association and peaceful assembly. The study also found out that the international human rights instruments are not effective enough in protecting the rights of people especially of civilians in times of armed conflicts.

The study has recommended that the Government of the Sudan must honour its obligations under international law and protect all citizens against violations of their fundamental rights. International organizations and specialized agencies should participate and provide resources and expertise. As a contribution to peace and in conformity with international standards, the international community should take measures to demobilize young soldiers and facilitate their reintegration into the society. It should also support the NGOs and other agencies that are involved in the promotion and protection of human rights.

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CHAPTER ONE:

BACKGROUND

INTRODUCTION

Sudan's history since independence in 1956 has been marked by military rule and warfare. It was ruled by the military in 1958-64, and warfare had already started in the south against the Arab domination of the government. Deng and Medani have attributed the four decades of warfare to the racial/ethnic/religious fault-line which divides the south from the north.¹

An attempt had been made in 1972-3 to halt the warfare through the introduction of a regional self-government, but warfare intensified after that promise had been abrogated, and the first attempt to introduce *sharia* law made in 1983. The Sudan People Liberation Army (SPLA) was formed in 1984 and one year later a military coup ousted President Nimeri, leading to a period of peace for four years.² The change of government in 1989 increased international interest for human rights violations in Sudan, those related to warfare and the introduction of *sharia* law in 1991. According to Hubard³, attempts at peace-making included in 1997 the Khartoum Agreement with some of the southern armed groups leaving out the biggest ones like the SPLA as well as new northern armed movements based in Eritrea.

Warfare has continued during the past four decades and more than one million people were killed in confusing shifts of alliance between the many actors loosely structured into two main warring parties with considerable (albeit consistently denied)

¹ Katarina Tomasevski, *Responding to Human Rights Violations, 1946-1999* (The Hague: Martinus Publishers, 2000), p. 275.

² Ibid.

³ M. Huberd, "Peace Pact Signed for South Sudan", in *Financial Times*, 22 April, 1997.

military involvement of the neighbouring countries – Ethiopia, Eritrea, Uganda with US backing. A whole menu of atrocities has taken place from bombardments of civilian targets and denial of access to humanitarian relief; from mass abduction of children and their conversion into slaves to forced conscription.⁴

THE PROBLEM STATEMENT

Human rights are difficult to define. Generally speaking, they are regarded as those fundamental and inalienable rights which are essential for life as a human being. Due to the recognition that human rights are of international concern, many conventions and other instruments have been put in place to defend these rights. The signing of the United Nations Charter marked the formal realization that human rights are of international concern.⁵ The signing and ratifying of other conventions dealing with human rights is also a sign that human rights are not limited to national boundaries.

Human rights violations in South Sudan were very common during the conflict between the government of Sudan and the SPLM/A. The war was characterized by mass killings, bombing of the civilians, torturing of the prisoners, denial of access to humanitarian aid, abduction of women and children, slavery, denial of access to health care and other basic needs such as education, and other different forms of atrocities. Sudan is a party to the international Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, both ratified in 1986. It has also ratified or acceded to the Refugee Convention (1974), the International Convention on the Elimination of all forms of Racial Discrimination (1977), the

⁴ Katarina Tomasevski, p. 276.

⁵ Rebecca M. M. Wallace, p. 106.

Convention on the Rights of the Child (1990), and the African Charter on Human and Peoples' Rights (1986). As well, Sudan is a party to the Geneva Convention of 12 August 1949, to which it acceded in 1957, and has signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment (1986). Although Sudan has not yet ratified the Torture Convention, as a signatory, it is obligated under international law not to take any action which would contravene the treaty's purpose. Consequently, Sudan has affirmatively agreed, and is legally obligated, to promote and protect the rights of its people; these rights are not optional, but are mandated by international law.⁶

Despite the existence of the international law of human rights and its enforcement mechanisms (i.e. charters, treaties and conventions), and observing the situation in Sudan especially from the formation of the SPLM/A in 1983 until the signing of the Comprehensive Peace Agreement (CPA) in 2005, it questions the effectiveness of the international human rights standards and the international law on human rights to protect the civilians.

OBJECTIVES OF THE STUDY

The study seeks to evaluate the effectiveness of the international human rights instruments in the protection of civilians during violent conflicts, paying attention to Sudan. It also seeks to investigate the extent to which the international community can intervene to ensure that the international human rights standards are upheld and respected during moments of war.

⁶ See, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/SODA-6PG3RM?OpenDocument>

The general objective of the study is to assess the effectiveness of the international human rights standards set by charters, treaties and convention, in armed conflicts, while giving a special attention to the conflict that occurred between the Government of Sudan (GoS) and the Sudan People Liberation Army (SPLA) from 1983 to 2005. Specifically, the study will seek to:

- ❖ Examine the international instruments for protecting and promoting human rights.
- ❖ To investigate the intervention measures taken by the international community to protect the human rights.
- ❖ To identify the ways in which the human rights of the South Sudanese population were violated in the course of the war are the response of the international community to these violations.
- ❖ To make recommendations to the government of Sudan, the SPLA/M and to the international community on the appropriate ways to ensuring that human rights are respected and protected in the course of conflicts.

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LITERATURE REVIEW

This section seeks to review some literature on the human rights situation in Sudan during the conflict between the government of Sudan and the Sudan People Liberation Army (SPLA). The literature review will be categorized into three sections. The first subsection is on the concept of human rights and its subsequent development into an international law. The second subsection will focus on the international human rights instruments, the instruments that have shaped the international law on human rights. The last section focuses on the human rights violations in Sudan during the period under

study, that is, from 1983 to 2005. This review offers the background on which this study stands.

Literature related to the international law on human rights

The signing of the United Nations Charter was a significant step in bringing human rights more firmly within the sphere of international law. The atrocities committed during the Second World War pointed to the need to create an organization that would work to “save succeeding generations from the scourge of war, reaffirming faith in fundamental human rights, establishing conditions under which justice can be maintained and promote social progress and better standards of living...”⁷

Human rights as they are defined in the Universal Declaration and other international instruments include a wide spectrum of rights, ranging from elementary conditions for an existence worthy of human dignity to the right to be protected from various forms of discrimination, and the right to have at least some basic share in the country’s economic, social and cultural development.⁸

The human rights as they are described in the Charter and in the Universal Declaration have three characteristics: first, they are inherent in all human beings by virtue of their humanity alone. Then human rights are inalienable within qualified legal boundaries. Finally, human rights are equally applicable to all.

The approach underlying human rights, as spelled out in article 1 and 2 of the Universal Declaration of Human Rights is based on the ideas that human rights belong to every human being. This notion of the universality of human rights has been repeatedly

⁷ See Preamble of the United Nations Charter.

⁸ A. M. Bolin Pennegard, “Overview of Human Rights- A Regime of the United Nations” in Gundmundur Alfredsson, et al (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Moller*, (The Hague: Martinus Nijhoff Publishers, 2001), p. 23.

confirmed by the United Nations. At the United Nations World Conference of Human Rights in 1993, the final document reaffirmed severally the universality of human rights and also deals with the relationship between national and regional particularities of human rights.⁹ It also reaffirms that human rights are a legitimate concern of all nations, and that their protection is a joint responsibility especially in combating serious and grave violations occurring in any part of the world.¹⁰

Pennegard¹¹ goes on to say that although the primary responsibility for the implementation of human rights rests within the government in regard to the people under their respective jurisdiction; one cannot but conclude that the basic concept of human rights is at least partially contrary to the principle of non-interference. With the development of the Charter, the Universal Declaration and other legal instruments in the field of human rights as well as through a consistent practice carried out and confirmed by a large number of states and through international organs, the long standing principle of state sovereignty in regard to the way it treats its own nationals has been transformed. The experience of the Second World War made the international community to re-evaluate its responsibility for individuals regardless of national borders within which they live.

This development has limited the doctrine of national sovereignty in two ways: first, how a state treats its nationals is a legitimate concern of the international community and an important part of international law. Secondly, the national standards and actual standards of sovereign states in a number of domestic areas can and should be assessed and evaluated against the international standards of human rights which are

⁹ This is explicit in part one of the Vienna Convention: World Conference of Human Rights.

¹⁰ A. M. Bolin Pennegard, p. 30.

¹¹ Ibid.

applicable in a particular state. In recent years, due to the increase of wars and international strife, where civilians have deliberately been made targets of attack and denied access to humanitarian relief operations, more emphasis has been put on the responsibility of states.¹²

Literature related to the international human rights instruments

In the international human rights system of today, the Universal Declaration of Human Rights of 1948 stands out as the foundation and symbol of pivotal importance. The establishment three years earlier of the United Nations with its legal framework, the United Nations Charter, had laid the basic institutional structure. The Charter also came to include some general references to the protection of human rights and foundational freedoms.¹³

According to the Preamble of the United Nations Charter, the people of the United Nations were determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. The Charter seeks “to achieve international cooperation in solving international problems of ... and in promoting and encouraging respect for human rights and for fundamental freedoms of all without distinction as to race, sex, language, or religion.”¹⁴ The subsequent establishment of the Universal Declaration of

¹² Ibid. p. 31.

¹³ Allan Ross, “State Sovereignty and Human Rights: Towards a Global Constitutional Project” in David Beetham (ed), *Politics and Human Rights*, (Oxford: Blackwell Publishers, 1995), p. 60.

¹⁴ Charter of the United Nations, Article 1, para. 3.

Human Rights is therefore seen by some scholars as a document to give more concrete substance to such rather sweeping formulations.¹⁵

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly without a dissenting vote, though a few states abstained.¹⁶ From its Preamble, the document is “a common standard of achievement for all peoples and nations.” Its thirty articles cover a wide range of rights, from liberty and security of persons (article 3), equality before the law (article 7), effective remedies (article 8), due process (article 9 and 10), prohibition on torture (article 5), rights protecting freedom of movement (article 13), asylum (article 14), expression (article 19), conscience and religion (article 18), and assembly (article 20). It is also worthy noting that the Declaration also includes social and economic rights such as the right to work and equal pay (article 23), right to social security (article 25) and the right to education (article 26). The Declaration has a marked influence upon the constitutions of many states upon the formulation of subsequent human rights treaties and resolutions, and constitutes an obligation for members of an international community.¹⁷

The Universal Declaration is the first major instrument in the United Nations system devoted solely to human rights. Its significance cannot solely be overemphasized. It has served and continues to serve as an inspiration and direction for all other international and regional instruments in the human rights field. It constitutes a basic framework within the United Nations for ongoing effort relating to standard setting and implementation. Its provisions have also been seen as a model for numerous national

¹⁵ J.P. Humphrey, *Human Rights and the United Nations: A General Adventure* (New York: Transnational Publishers, 1984), pp. 13-19.

¹⁶ Malcolm N. Shaw, *International Law*, Third Edition (Cambridge: Grotius Publications, Cambridge University Press, 1991), p. 196.

¹⁷ Malcolm N. Shaw, *op. cit.*

constitutions or other legal acts.¹⁸ The document, drafted within a considerable foresight and courage has therefore rightly served “as a common standard of achievement for all people and nations” (see Preamble).

Special legal status being granted to the Universal Declaration has been confirmed by the UN member states. In international law, declarations, unless are statements of customary norms, are not legally binding in the same sense as treaty obligations. Today, it is widely recognized that the Universal Declaration are general provisions of international law.

There are other conventions that set the international standards of the international law on human rights. We have the International Convention on the Elimination of all forms of Racial Discrimination that was signed in 1965 and entered into force in 1969. It builds on the non-discrimination provisions in the UN Charter. Racial discrimination is defined as:

Any distinction, exclusion, restriction or preference based on race, colour descent or national or ethnic origin which has the purpose or effect nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁹

State parties undertake to prohibit racial discrimination and guarantee equality for all in the enjoyment of a series of rights and to assure to all within their jurisdiction effective protection and remedies regarding such human rights.

In 1966, there was the adoption of the International Convention on Economic, Social and Cultural Rights (ICESCR). This convention entered into force in 1976. Article

¹⁸ A. M. Bolin Pennegard, *op. cit.*

¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination, Article 1, para. 1

2 of ICESCR provides that each state party undertakes to take steps to the maximum of its available resources “with the view to achieving progressively the full realization of the rights recognized in the present Covenant”. The rights included the right to self-determination (article 1), the right to work (articles 4 and 5), the right to social security (article 9), adequate standards of living (article 11) and the right to education (article 13).²⁰

Another instrument that contributed to the setting of the international human rights standards is the International Covenant on the Civil and Political Rights (ICCPR). This covenant was adopted in 1966 and entered into force in 1976. By Article 2, all state parties undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. These rights are clearly intended as binding obligations.²¹ They include self-determination, the right to life, prohibition on torture and slavery, right to liberty and security of the person, due process, freedom of thought, conscience and religion, freedom of association, and the right of minorities to enjoy their own culture.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is another instrument that sets standards for the international law on human rights. It was signed on 10 December 1984 and entered into force in 1987. The state parties to the Convention are under the duties *inter alia* to take measures to prevent such activities in territories under their jurisdiction, not to return a person to a country where he may be subjected to torture, to make torture a criminal offence and establish jurisdiction over it, to prosecute or extradite persons charged with torture and to

²⁰ International Convention on Economic, Social and Cultural Rights, 1966.

²¹ Malcolm N. Shaw. P. 199

provide a remedy for persons tortured. Part II of the Convention provides for a Committee against Torture.²²

Although the eradication of torture has long been a goal proclaimed by the international community, torture is still being practiced in many states. Many human rights experts and NGOs actively campaign so that governments give priority to this problem. Today all states agree that torture is an example of human rights violations which cannot be accepted. Yet the reports of Amnesty International, the Human Rights Watch and other human rights organizations give evidence that the factual situation in police stations, prisons and military establishments is very different from the commitment undertaken by governments in this respect.²³

It should also be noted that in 1985, the United Nations Commission on Human Rights appointed a Special Rapporteur on Torture to examine questions relevant to torture and to seek and receive credible and reliable information on such questions and to respond to the information without delay. The work of the Special Rapporteur includes the sending of the urgent appeals and country visits. He is directed to cooperate closely with the Committee against Torture.²⁴

The Convention on the Rights of the Child is another instrument that sets standards for human rights at the international level. It was adopted by the General Assembly in 1989 and provides that the interests of the child to be given primary consideration. The stipulated rights include the right to life (article 6), the right to a name and to acquire a nationality (article 7), the right to freedom of expression (article 13), the

²² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

²³ This is very common in reports by the Amnesty International, especially in situations of civil wars like in Sudan. The Amnesty International Annual Report on Sudan in 2001 has a lot of information regarding torture.

²⁴ Malcolm N. Shaw, p. 201

right to freedom of thought, conscience and religion (article 14), the right not be subjected to arbitrary or unlawful interference with privacy, family, home (article 24).²⁵

State parties agreed to take all appropriate measures to protect the child from all forms of physical and mental violence (article 19) and from economic exploitation (article 32). In addition, state parties agreed to respect the rules of international humanitarian law applicable to armed conflicts relevant to children.²⁶

The African Charter on Human and People's Rights,²⁷ like many of the above outlined treaties, proclaims the entitlement of respect for life and personal integrity, prohibits slavery, torture, cruel, inhuman or degrading punishment or treatment and enshrines the right to freedom of expression, association and assembly. Article 6 of the African Charter states that "no one may be arbitrarily arrested or detained". Article 7 says that "every individual shall have the right have his course heard". This includes the presumption of innocence and "the right to defense, including the right to be defended by counsel of his choice".

These treaties, with other international standards drawn by the United Nations and other regional organizations such as the African Union, lay down standards of conduct to which all state parties to them are bound to uphold. They guarantee, among others, the right to life, the right not to be tortured or suffer cruel, inhuman or degrading treatment or punishment, the prohibition of slavery and the right to recognition as a person before the law. These standards may not be derogated from even in "time of public emergency

²⁵ Convention on the Rights of the Child, 1989

²⁶ Ibid.

²⁷ African Charter on Human and People's Rights was adopted by the Organization of African Unity in 1981 and came into force in 1986.

which threatens the life of the nation and the existence of which is officially proclaimed” (ICCPR, Article 4).

International humanitarian law, embodied mainly in the four Geneva Conventions of 1949 and the two additional protocols of 1977, regulates situations of armed conflicts. It does not replace international human rights law, which is applicable in both peace and war, although it permits the suspension of certain rights in times of public emergency. Nevertheless, human rights law is considered to play an important complementary role to international humanitarian law, since it offers additional protection for individual rights. The four Geneva Conventions contain certain minimum guarantees for the treatment of the civilian population, and is applicable to all parties in an internal armed conflict. Its provisions forbid attacks on non-combatants (including soldiers who have laid down arms and those placed *hors de combat* by sickness, wounds or detention); torture and cruel treatment; the taking of hostages and the passing of sentences and the carrying out of executions except by properly constituted courts affording all the judicial guarantees which are recognized as indispensable by the nations of the world. Article 3 is supplemented by the Additional Protocol to the Geneva Conventions relating to the Protection of International and Non-International Armed Conflicts. Sudan has not ratified these protocols, but many of their provisions have the status of customary law, having been developed through practices, resolutions *opinion juris* and more flexible interpretations of the current legal framework; and as such remaining binding on all states. For example articles of Additional Protocol II include the prohibition on making civilians the object of attack (article 13); the prohibition on the destruction of articles essential to the survival of the civilian population and the use of

starvation (article 14); and the forced displacements of civilians (unless the security of civilians is involved or imperative military reasons so demand) (article 17).

Literature review on human rights violations in South Sudan.

During the twenty-one years of civil war, the governments of both the north and south of Sudan committed numerous violations of civil and political rights by killing and torturing their citizens, abducting people (including women and children), recruiting children into armed forces, attacking villages, and forcibly displacing millions of people. The government of Sudan has signed and ratified most important international human rights treaties. It was supposed to act to guarantee the civil, political, economic, social and cultural rights of the south Sudanese.

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Sudan is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both ratified in 1986. It has also ratified or acceded to the Refugee Convention (1974), the International Convention on the Elimination of All Forms of Racial Discrimination (1977), the Convention on the Rights of the Child (1990), and the African Charter on Human and People's Rights (1986). Furthermore, Sudan is a party to the Geneva Conventions of 12 August 1949, which it acceded to in 1959; and has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1986). Although Sudan has not yet ratified the Torture Convention, as a signatory, it is obligated under international law not to take any action which would contravene the treaty's purpose. Consequently, Sudan has affirmatively agreed, and is legally obligated, to promote and

protect the rights of its people; these rights are not optional, but are mandated by international law.²⁸

Incommunicado detentions without access to the outside world and without any outside inspection provides the ideal conditions for torture to take place. In Sudan, where, in the years immediately after 1989, torture of political detainees was reported systematically, torture appeared to diminish from about 1997. Torture takes place particularly in detention centres under the control of national or military security where detainees remain cut off from the outside world. Reports of torture at the hands of the police later became fewer, due not only to better access to police stations by lawyers and non-governmental organizations but also beatings of the poor and the displaced went generally unreported.²⁹

Students who are detained by the Government of Sudan security forces appear to be those suspected of leading student movements, membership of opposition groups or participating in demonstrations. The severe beating of students suggests that torture and cruel, inhuman or degrading treatment may be used as a punishment and a warning to younger political activists that they should not continue to protest. Some of the students of Khartoum University who were arrested in October and November 2002, mostly in connection with demonstrations on the university campus, were beaten in the security forces headquarters in Khartoum, near the Farouk cemetery, before being transferred to the political section of Kober prison.³⁰

²⁸ Sudan: Empty promises? Human rights violations in government-controlled areas (Amnesty International 16 July 2003, AI Index: AFR 54/036/2003).

²⁹ Amnesty International, online documentation archive.

³⁰ Sudan: Empty promises? Human rights violations in government-controlled areas (Amnesty International 16 July 2003, AI Index: AFR 54/036/2003).

The basic standards of fair trial are laid down in the provisions of Article 14 of the ICCPR. Detainees who were brought to trial in Sudan frequently suffered trials which fall far short of these standards for fair trial. After summary and unfair trials, some receive sentences involving cruel, inhuman or degrading treatment or punishment, prohibited by the international human rights standards.

According to the Human Rights Committee (General Comment 10) the right to hold opinions without interference permits no exception of restriction. As the committee stated, "effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for under the Covenant." On September 2002, the NPC seized the day's issue of *al-Hurriya* and the *Khartoum Monitor*, apparently because both newspapers were to run articles criticizing the government's decision to withdraw from the Machakos peace talks. The Managing Director of *al Hurriya*, Hajj Warrag, and Lubna Ahmad Hussein, a journalist of the newspaper, were summoned the next day before security officials, who interrogated them about the article. They were released without charge or trial. On September 5, the NPC confiscated the entire press run of *al-Sahafa* after it had reportedly published an article critical of the government's withdrawal from the Machakos peace negotiations.³¹

In 1998 the United Nations General Assembly unanimously adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In Sudan, over the past three years, human rights defenders have frequently

³¹ Ibid.

been arrested and sometimes detained for up to three months for work connected with the defense of human rights. At the same time, human rights organizations and other non-governmental organizations have had restrictions imposed on their activities including the need to re-register their association every year.

Women have tended to be particular targets of human rights violations on account of their gender. They have even less access to lawyers and justice than men, and are often singled out for cruel, inhuman or degrading punishments in ways which do not affect men. On 17 May 2003, a fourteen-year old girl, unmarried and nine months pregnant, was sentenced to 100 lashes of the whip on charges of adultery. The man charged in connection with this case was acquitted because of lack of evidence. On 2 June 2003, eight women activists representing the Nuba Mountains region were prevented by the security forces from traveling to Kauda, in the Nuba Mountains to attend a conference on peace and development. They were arrested in Omdurman, searched and interrogated about their activities. The security forces confiscated some of their documents and equipment and made them sign an “undertaking” that they would not travel without the permission of the national security forces. They were all released after one night.³²

Literature on the international community’s response to human rights violations in South Sudan.

According to Tomasevski³³, human rights are safeguards against the abuse of power by governments and hence rely on government self-restraint. The safeguards always emerge as retroactively, through mobilization of shame which compels

³² Amnesty International Annual Report, Sudan, 2004.

³³ Katarina Tomasevski, *op. cit.*

governments into self-restraint. Because international law is horizontal, the peer pressure is crucial for translating political commitments into legal rules, ultimately into state practice.

The protection of human rights is a process which depends on institutions and procedures for challenging their denials and violations. Unless there are institutions willing and able to effectively oppose abuses, substantive human rights guarantees remain parchment promises.

The United Nations General Assembly placed Sudan on the violation-list in 1992 and the Commission on Human Rights appointed a Special Rapporteur in 1993 to keep Sudan on the violations agenda thereafter. Sudan challenged its placement on violations agenda, claiming that it was an abuse aimed at attacking Islam. It accused the Special Rapporteur of pursuing an agenda whose main objective was the abolition of *sharia* law and suggested that he be brought to justice for his irresponsible remarks³⁴. A public scandal broke out in 1994 when Sudan called the UN Special Rapporteur a blasphemer, leading to a condemnatory resolution adopted by a large majority.³⁵

According to Amnesty International,³⁶ until 1989, its delegates made a number of visits to Sudan, to carry out research and to raise the Organization's concern about the human rights record of the government. After the visit by the then Amnesty International Secretary General to meet the members of the Sudanese government and raise human rights concerns with them, Amnesty International was not allowed to visit Sudan for 13 years. During this time the Organization continued to publish reports on Sudan including

³⁴ Commission on Human Rights, Comments by the Government of Sudan on the Report of the Special Rapporteur, Mr. Gaspar Biro, Annex to UN Doc. E/CN.4/1994/122

³⁵ Commission on Human Rights. Situation of Human Rights in Sudan, Resolution 1994/79 of 9 March 1994.

³⁶ Amnesty International Annual Report, Sudan, 2002.

Sudan: The tears of Orphans- No Future Without Human Rights (AI Index: AFR 54/02/95, January 1995) and *Sudan: The Human Price of Oil* (AI Index: AFR 54/01/00, May 2000). It has continued to raise concerns with members of the Sudanese government in person, through letter and in public appeals. The Organization has also visited has also visited areas under the control of the SPLA and by militias allied to both sides. Amnesty International has frequently raised human rights concerns with leaders of the SPLA and with leaders of independent or allied militias.

While human rights treaties, if ratified or acceded by a country, create legal obligations, they depend upon pressure by governments and international agencies for implementation. Sudan has ratified the most significant human rights instruments and has also signed a peace agreement with explicit human rights provisions, but is failing to promote and protect the rights of most of its citizens. Donor governments, the UN Secretary General, and international agencies must hold both the Government of Sudan and South Sudan accountable and demand that they enable their citizens, particularly the south Sudanese to enjoy their human rights and fundamental freedoms.

THEORETICAL FRAMEWORK

A theory is a body of internally consistent empirical generalization of descriptive, predictive and explanatory power.³⁷ A theory explains, describes and predicts phenomena. Since a theory provides a framework within which to operate, it is hard to

³⁷ T. Columbis and J. Holfe, *Introduction to International Relations: Power and Justice*, (New Delhi: Prentice Hall of India, 1986), p. 29.

think without a theory.³⁸ In this case, a theory provides a coherent framework for the investigation of phenomena. In this study we are using the *natural theory* to the foundations of human rights.

The natural law theory holds that certain rights are inherent in human nature and should be respected by all organized societies.³⁹ This implies that any attempt by organized societies such as a state to violate human rights is a fundamental violation of the natural law. Here, the basis of the basic human rights is prior to politics; the absence of consent by sovereign authority is not necessarily an excuse of non-observance. To the extent that human rights rest on a moral imperative, their status is both prior to independent of their formal acceptance by a government. In part, the naturalist case is an appeal to the conscience of the rulers, or to the conscience of every political actor, in his actions as they regard rights. This is an essential ground for claiming that human rights are universally valid.⁴⁰

According to Falk,⁴¹ the natural law theory has a bearing on public opinion and may have some repressive policies. It may provide the most effective case to build popular support for taking human rights seriously. In addition, the influence of the natural theory may express itself in relation to the normal desire that most rulers and ruling groups have to be regarded with respect. With the transnational groups active in publicizing gross violations of human rights, there seems to be an incentive to avoid

³⁸ A. J. R. Groom, "Paradigms in Conflict: The Strategist, the Conflict Researcher and the Peace Researcher" in J. Burton and F. Dukes (eds), *Conflict Readings in Management and Resolution*, (London: Macmillan, 1990), pp. 74-79.

³⁹ Richard Falk, *Human Rights and State Sovereignty*, (New York: Holmes and Meier Publishers, Inc., 1981), p. 42.

⁴⁰ Ibid.

⁴¹ Ibid, p.44.

censure even when no government or international institution is prepared to object strenuously to a pattern of violations in a particular foreign society.

The natural theory has a doctrine that all persons should be protected against state abuse. As such, particular politics associated with the serious promotion of human rights contributes to the formulation of a movement for global reform in which the central objective is the well being of people rather than the sanctity of states. This theory remains the underpinning of human rights, validating in the most fundamental way certain minimum standards of behaviour. Such validation is prior to and takes precedence over any agreement to uphold certain rights that may exist, even if it is binding by way of treaty commitment.

HYPOTHESES

In order to achieve the goals in this research, the hypotheses bellow will guide the investigation:

- i. There was a massive violation of human rights during the Government of Sudan – SPLA civil war due to the insufficient enforcement measures in the international arena.
- ii. International human rights standards are not effective enough in curbing international human rights violations because of the principle of state sovereignty.
- iii. The international community did not work sufficiently to stop the human rights violations because of its insufficient enforcement mechanisms.

METHODOLOGY

This study will make use of both primary and secondary data. The tool of research that will be used to collect primary data will be the use of interviews. The questions will be open ended. The study sample will be drawn the personnel of relevant diplomatic missions of the Republic of Sudan and also of South Sudan; personnel from the United Nations High Commission for Human Rights and the UNHCR; personnel from NGOs dealing with human rights in Sudan such as the Refugees International and Human Rights Watch. Scholars in the field of international law on human rights and international humanitarian law will also be requested to offer information. Where possible, displaced people from South Sudan who are living in refugee camps and other cities and towns in Kenya will also be interviewed.

Primary data will be important as the researcher goes out to the field to test hypotheses for himself. It also puts the researcher in touch with the reality under study. This method of study as a source of data will complement the limited literature that exists on the subject matter.

The study will make use of secondary data as well. It will explore and critically analyze works that have been published and that are in public domain. Such works include books, journals, articles, newspapers, relevant papers presented at different for a, and print and electronic media that have a relation to this area of study. International instruments such as conventions and charters on human rights, law and war will be of very significant use.

CHAPTER OUTLINE

Chapter 1: Background of the study

Chapter 2: Human rights and the international human rights instruments

Chapter 3: Human rights and the Sudan conflict

Chapter 4: A critical analysis of the effectiveness of the international human rights instruments in Sudan conflict

Chapter 5: Conclusions and recommendations.

CHAPTER TWO:

HUMAN RIGHTS AND THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

INTRODUCTION

Human rights are international norms that help to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to engage in political activity. These rights exist in morality and in law at the national and international levels. They are addressed primarily to governments, requiring compliance and enforcement. The main sources of the contemporary conception of human rights are the Universal Declaration of Human Rights (United Nations, 1948b) and the many human rights documents and treaties that followed in international organizations such as the United Nations, the Council of Europe, the Organization of American States, and the African Union.⁴²

In this section we are going to explore the meaning of human rights. We will also look at the way in which they are an international concern leading to the creating laws protecting human rights. In this section, we will carefully study the international instruments that have set standards for the human rights, and mechanisms put in place by these instruments to ensure that human rights are respected by all.

⁴² J. Donnelly, *Universal Human Rights in Theory and Practice*. 2nd Edition (London: Cornell University Press, 2003), p. 17.

Human Rights

Human rights are international moral and legal norms that aspire to protect all people everywhere from severe political, legal, and social abuses. They rights are minimum standards of legal, civil and political freedom that are granted universally. These rights take precedence over other claims by individuals, groups or states. Human rights refer to the perception that humans, no matter what ethnicity, nationality or legal influence, have universal rights.⁴³ These rights usually include the right to life, freedom from torture, freedom of movement, the right to an adequate standard of living, freedom of religion, the right to self-determination, the right to participation in cultural and political life and the right to education. Many international as well as national laws safeguard the human rights of its inhabitants, although these laws and their implementations vary.

Human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are not ordinary moral norms applying mainly to interpersonal conduct. Instead, they are those basic standards without which people cannot live in dignity. To violate someone's human rights is to treat that person as though she or he were not a human being. In conclusion, human rights belong to all people simply because they are human beings.⁴⁴

The human rights have escaped a universal acceptable definition, presenting a problem to international regulation. However, under the contemporary international law, they are

⁴³ R. Claude and B. Weston (Eds.) *Human Rights in the World community* (Philadelphia: University of Pennsylvania Press, 1987), p. 22

⁴⁴ Stanford Encyclopedia on Human Rights, on <http://plato.stanford.edu/entries/rights-human/>

subdivided into three classifications: the first, second and third generations. First-generation human deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature, and serve to protect the individual from excesses of the state. First-generation rights include, among other things, freedom of speech, the right to a fair trial, freedom of religion, and voting rights. They were first enshrined at the global level by the 1948 Universal Declaration of Human Rights. Second-generation human rights are related to equality and are fundamentally social, economic, and cultural in nature. They ensure different members of the citizenry equal conditions and treatment. Secondary rights would include a right to be employed, rights to housing and health care, as well as social security and unemployment benefits. Like first-generation rights, they were also covered by the Universal Declaration of Human Rights.⁴⁵

Third-generation human rights are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development. The term "third-generation human rights" remains largely unofficial, and thus houses an extremely broad spectrum of rights, including group and collective rights, Right to self-determination, Right to economic and social development, Right to a healthy

⁴⁵ Rebecca M. M. Wallace, *International Law* (London: Sweet & Maxwell, 1997), p. 205.

environment, Right to natural resources, Right to communicate, Right to participation in cultural heritage and the Rights to intergenerational equity and sustainability.⁴⁶

Wallace⁴⁷ went ahead to say that as far as the definition of human rights is concerned, a major contributing difficulty has been that many states regard human rights as falling within domestic jurisdiction, and not a matter to be tackled by international law. However, the position of international law is that severe violations of human rights can no longer fall within the exclusive jurisdiction of states. This is the basis of the justifications of the international humanitarian interventions. Nevertheless, there is no clear definition of severe violations of human rights. In the African Union, the Peace and Security Council (PSC) has the authority to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.⁴⁸

According to Griffin,⁴⁹ the most obvious way in which human rights exist is as norms of national and international law created by enactment and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them

⁴⁶ D. Kaufmann, "Chapter in Human Rights and Development: Towards Mutual Reinforcement" in Philip Alston and Mary Robinson (eds), *Human Rights and Governance: The Empirical Challenge*, found on: http://en.wikipedia.org/wiki/three_generations_of_human_rights

⁴⁷ Ibid. p. 206

⁴⁸ *Constitutive Act of the African Union*, article 4(h).

⁴⁹ J. Griffin, "First Steps in an Account of Human Rights" in *European Journal of Philosophy*, Vol. 9, (2001), pp. 306-327.

into international law. For example, the human right not to be held in slavery or servitude in article 4 of the European Convention and in article 8 of the International Covenant on Civil and Political Rights exists because these treaties establish it. At the national level, human rights norms exist because they have through legislative enactment, judicial decision, or custom become part of a country's law. For example, the right against slavery exists in the United States because the 13th Amendment to the U.S. Constitution prohibits slavery and servitude. When rights are embedded in international law we speak of them as human rights; but when they are enacted in national law we more frequently describe them as civil or constitutional rights.⁵⁰ As this illustrates, it is possible for a right to exist within more than one normative system at the same time.

International Law on Human Rights

When a government violates the human rights of its residents they may be able to appeal to the country's laws or bill of rights and get a court to order that the violations stop and that the government provide remedies. If suitable national laws and bills of rights

are unavailable, however, victims of human rights violations may seek help from international law and organizations. Traditionally, international law did not confer rights and protections on individual persons; its concern was exclusively the rights and duties of countries or states. Victims of human rights violations could appeal to heaven, and invoke standards of natural justice, but there were no international organizations working to formulate and enforce legal rights of individuals. After World War I the League of Nations had some success in using minority rights treaties to protect national

⁵⁰ J. Donnelly, p. 21.

minorities in Europe, but the effort ended with the rise of Nazi Germany and the beginning of World War II.⁵¹

International law now contains many functioning human rights treaties. A number of them have been ratified by more than three-quarters of the world's countries. This section sketches the development of international measures to promote and protect human rights. The efforts to protect human rights through international treaties began in 1919 in the League of Nations and expanded after World War II in international organizations such as the United Nations, the Council of Europe, the Organization of American States, and the African Union. The international promotion and protection of human rights complements the legal protection of human rights at the national level.⁵²

Many human rights violations have occurred during the centuries with many countries resisting the acceptance of universal human rights, beyond metaphysical or philosophical principles. In some countries massive popular upheavals took place and gave birth to Human Rights Charters.

The international era of the human rights debate began in earnest with the creation of the United Nations Commission on Human Rights in 1946, which was composed of 18 member states. During its first sessions, the main item on the agenda was the Universal Declaration of Human Rights. The Commission set up a drafting committee which

⁵¹ C. Wellman, *Real Rights*. (New York: Oxford University Press, 1995), p. 19.

⁵² T. Van Dervort, *International Law and Organization*, (Thousand Oaks: Sage Publications, 2005), p.13

devoted itself exclusively to preparing the draft of the Universal Declaration of Human Rights.

The promotion and protection of human rights has been a major preoccupation for the United Nations since its creation in 1945. In 1948, the General Assembly adopted the Universal Declaration of Human Rights and declared that respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world". Over the years, a comprehensive body of legally binding instruments covering a broad range of civil, political, economic, social and cultural rights has been developed; and a whole system of human rights mechanisms has been established to promote and protect these rights, to confront human rights violations wherever they occur, and to assist governments in carrying out their responsibilities.⁵³ Today, virtually every United Nations body and specialized agency is involved to some degree in the protection of human rights. This information sheet offers an overview of the main UN bodies and mechanisms that work for the promotion and protection of human rights.

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International human rights law began as a response to the horrors of war, in particular World War II, although the Geneva Conventions had begun earlier. The formation of the United Nations gave human rights international legitimacy, particularly because many nations signed the United Nations Charter, which specifically mentions human rights (Preamble, Chapter I). Since the formation of the United Nations, it has passed many agreements and resolutions binding the signatories to respect human rights.

⁵³ L. Werner, *Contemporary International Law: A Concise Introduction*, 2nd edition. (Boulder: Westview Press, 1999)

Additionally, it has set up tribunals to charge those suspected of egregious violations of human rights. Furthermore, several other organizations, created by various treaties, have come into existence. Many nations have ratified international human rights instruments put forward by the United Nations. Thus, many human rights instruments, tribunals, and declarations have been created since World War II, some drawing inspiration for early human rights proclamations, such as the Universal Declaration. Human rights continues to be a growing body of international law.

Documents such as the Universal Declaration of Human Rights proclaim the ideals of nations aspiring to respect the human rights of people of all nations. Legally, however, human rights are protected by treaties, where nations agree to abide by certain restrictions on their conduct and to uphold certain freedoms and basic needs for citizens. Thus, international human rights law, through treaties, acts upon states. Commissions and other bodies monitor compliance with these treaties. The enforcement of human rights treaties naturally requires nations to comply with the terms of their agreements. Groups of nations, such as the United Nations and the Council of Europe may impose sanctions or other measures against recalcitrant states to ensure compliance. Individuals may also be held accountable for human rights violations if they are brought before an international tribunal. A notable example is the International Criminal Tribunal for the former Yugoslavia, which was set up to charge officers of the Serbian military who had allegedly committed war crimes during the breakup of Yugoslavia. It drew precedent from the Nuremberg Tribunals. The law of human rights is therefore an international

body of law of treaties and cases from international tribunals, although individual states may have laws that protect what are traditionally thought of as human rights.⁵⁴

The Commission on Human Rights has, since its creation, been the main policy-making body dealing with human rights issues. Set up in 1946 by the Economic and Social Council to draft the Universal Declaration on Human Rights, the Commission was responsible for monitoring existing international standards, recommending new international human rights standards, investigating allegations of human rights violations and handling communications relating to them, submitting proposals for new programs and policies related to human rights, providing advisory and technical services to countries needing assistance in protecting human rights, and pursuing other related objectives.

The Commission, which was made up of representatives of 53 Members States elected for three-year periods, adopted about a hundred resolutions, decisions and Chairperson's statements on a wide range of themes and issues every year during its six-week session in Geneva. These included: economic, social and cultural rights; civil and political rights; racism; the right to development; human rights situations in different countries; the human rights of women, children, migrant workers, minorities and displaced persons; indigenous issues; the work of the Sub-Commission, treaty bodies and national institutions; and advisory services and technical cooperation in the field of human rights. The resolutions and decisions adopted by the Commission on each theme

⁵⁴ Javaid Rehman. *International Human Rights Law: A Practical Approach*. (Harlow: Pearson Education Limited, 2003), p. 23

set the framework for the work of human rights mechanisms, special procedures and other bodies for the upcoming year.

On 15 March 2006, the Commission on Human Rights was disbanded and replaced by the Human Rights Council. This was because the Commission was often criticized for the high-profile positions it gave to member states that did not guarantee the human rights of their own citizens. The new human rights body was created with the approval of 170 members of the (then) 191-nation Assembly. Only the United States, the Marshall Islands, Palau, and Israel voted against the Council's creation, claiming that it would have too little power and that there were insufficient safeguards to prevent human rights-abusing nations from taking control, as in the Commission it replaced. Belarus, Iran and Venezuela abstained from the vote, and a further seven countries (Central African Republic, North Korea, Equatorial Guinea, Georgia, Kiribati, Liberia and Nauru) were absent from the session.⁵⁵

The Universal Declaration of Human Rights

On 10 December 1948, at the *Palais de Chaillot* in Paris, the 58 member states of the United Nations General Assembly adopted the Universal Declaration of Human Rights, with 48 states in favour and eight abstentions (two countries were not present at the time of the voting). The General Assembly proclaimed the Declaration as a "common standard of achievement for all peoples and all nations", towards which individuals and

⁵⁵ See, www.unhchr.ch

societies should "strive by progressive measures, national and international, to secure their universal and effective recognition and observance".⁵⁶

During the two-year drafting process of the Universal Declaration, the drafters maintained a common ground for discussions and a common goal: respect for fundamental rights and freedoms. Despite their conflicting views on certain questions, they agreed to include in the document the principles of non-discrimination, civil and political rights, and social and economic rights. They also agreed that the Declaration had to be universal.

As Pennegard has put it, the Universal Declaration is the first major instrument in the United Nations system devoted solely to human rights. Its significance cannot solely be overemphasized. It has served and continues to serve as an inspiration and direction for all other international and regional instruments in the human rights field. It constitutes a basic framework within the United Nations for ongoing effort relating to standard setting and implementation. Its provisions have also been seen as a model for numerous national constitutions or other legal acts⁵⁷

According to the Universal Declaration of Human Rights, human rights are "inalienable rights of all members of the human family". Thus, human rights are, in principle, applicable to every person, regardless of their nationality. The Universal Declaration gives an example of the substance of human rights agreements (although it is not itself a treaty, many nations have agreed to abide by its principles, and it serves as an inspiration for treaties on human rights). Specifically, the Universal Declaration calls on

⁵⁶ Universal Declaration of Human Rights, found on <http://www.un.org/Overview/rights.html>

⁵⁷ A. M. Bolin Pennegard, p.23

nations to respect the rights to life, liberty, and security (Article 3). It also states that no person should be enslaved, tortured, or deprived of the right to a trial before a "national tribunal." Thus the Declaration proclaims negative rights, whereby national governments may not engage in certain activities against persons. Positive rights are also part of the Declaration. It states that everyone should enjoy the right to an education and basic standards of living. In doing so, it calls on nations to provide for all of their citizens without discrimination. Human rights, in substance, are protections against abuses by all states, and guarantees that people shall receive benefits from states.⁵⁸

For the first time in history, the international community embraced a document considered to have universal value -- "a common standard of achievement for all peoples and all nations". Its Preamble acknowledges the importance of a human rights legal framework to maintaining international peace and security, stating that recognition of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world. Elaborating the United Nations Charter's declared purpose of promoting social progress and well-being in larger freedom, the Declaration gives equal importance to economic, social and cultural rights and to civil rights and political liberties, and affords them the same degree of protection. The Declaration has inspired more than 60 international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights.⁵⁹

⁵⁸ L. Henkin, *Human Rights* (New York: Foundation Press, 1999), p. 6.

⁵⁹ See document, "Universal Declaration of Human Rights" on:
<http://www.un.org/rights/HRToday/declar.htm>

The Universal Declaration covers the range of human rights in 30 clear and concise articles. The first two articles lay the universal foundation of human rights: human beings are equal because of their shared essence of human dignity; human rights are universal, not because of any State or international organization, but because they belong to all of humanity. The two articles assure that human rights are the birthright of everyone, not privileges of a select few, nor privileges to be granted or denied. Article 1 declares that "all human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article 2 recognizes the universal dignity of a life free from discrimination. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁶⁰

The first cluster of articles, 3 to 21, sets forth civil and political rights to which everyone is entitled. The right to life, liberty and personal security, recognized in Article 3, sets the base for all following political rights and civil liberties, including freedom from slavery, torture and arbitrary arrest, as well as the rights to a fair trial, free speech and free movement and privacy.

The second cluster of articles, 22 to 27, sets forth the economic, social and cultural rights to which all human beings are entitled. The cornerstone of these rights is Article 22, acknowledging that, as a member of society, everyone has the right to social security and is therefore entitled to the realization of the economic, social and cultural rights "indispensable" for his or her dignity and free and full personal development. Five

⁶⁰ Ibid

articles elaborate the rights necessary for the enjoyment of the fundamental right to social security, including economic rights related to work, fair remuneration and leisure, social rights concerning an adequate standard of living for health, well-being and education, and the right to participate in the cultural life of the community.

The third and final cluster of articles, 28 to 30, provides a larger protective framework in which all human rights are to be universally enjoyed. Article 28 recognizes the right to a social and international order that enables the realization of human rights and fundamental freedoms. Article 29 acknowledges that, along with rights, human beings also have obligations to the community which also enable them to develop their individual potential freely and fully. Article 30, finally, protects the interpretation of the articles of the Declaration from any outside interference contrary to the purposes and principles of the United Nations. It explicitly states that no State, group or person can claim, on the basis of the Declaration, to have the right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Universal Declaration.

Although the Declaration, which comprises a broad range of rights, is not a legally binding document, it has inspired more than 60 human rights instruments which together constitute an international standard of human rights. These instruments include the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of which are legally binding treaties. Together with the Universal Declaration, they constitute the International Bill of Rights.

The International Covenant on Civil and Political Rights

The Universal Declaration of Human Rights of 1948 was codified into two Covenants, which the General Assembly adopted on 16 December 1966. Together with the Optional Protocols, they constitute the "International Bill of Human Rights". The Covenant is a landmark in the efforts of the international community to promote human rights. It defends the right to life and stipulates that no individual can be subjected to torture, enslavement, forced labour and arbitrary detention or be restricted from such freedoms as movement, expression and association.

Civil and political rights are political norms that primarily impose responsibilities on governments and international organizations. Second, they are minimal norms in that they protect against the worst things that happen in political society rather than setting out standards of excellence in government. Third, they are international norms establishing standards for all countries — and that have been accepted by more than 150 of the world's countries. Finally, it is plausible to make claims of high priority on their behalf, and to support these claims of importance with strong reasons.⁶¹ Consider the right to freedom of movement. One approach to justifying this right and its high priority would argue the importance of free movement to being able to find the necessities of life, to pursuing plans, projects, and commitments, and to maintaining ties to family and friends. A related approach argues that it is impossible to make use of other human rights if one

⁶¹ S. Joseph, J. Schultz, and M. Castan (Eds.), *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, (New York: Oxford University Press, 2000), p. 78.

cannot move freely. The right to political participation is undermined if a person is not permitted to go to political rallies or to the polls.⁶²

Most civil and political rights are not absolute—they are in some cases overridden by other considerations and rightly set aside in those cases. For example, some civil and political rights can be restricted by public and private property rights, by restraining orders related to domestic violence, and by legal punishments. Further, after a disaster such as a hurricane or earthquake free movement is often appropriately suspended to keep out the curious, to permit access of emergency vehicles and equipment, and to prevent looting. The International Covenant on Civil and Political Rights permits rights to be suspended during times "of public emergency which threatens the life of the nation" (article 4). But it excludes some rights from suspension including the right to life, the prohibition of torture, the prohibition of slavery, the prohibition of ex post facto criminal laws, and freedom of thought and religion.⁶³

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly in 1966. It came into force in 1978 and together with its sister Covenant, the International Covenant on Civil and Political Rights (ICCPR), forms part of the International Bill of Human Rights. Historically, civil and political rights were given more legislative and judicial protection. This was in part because economic, social and cultural rights (ESC rights) were thought to be "policy objectives" and the responsibility of national governments. This means that ESC rights

⁶² Ibid.

⁶³ S. Joseph, et al, p. 93.

were to be used only as general principles for governments in the management of public affairs. Now, there is growing international recognition that the two sets of rights are closely related. That is, the right to live a dignified life requires that the basic necessities of life, e.g., work, food, housing, health-care, education and culture, are available to everyone.⁶⁴

The ICESCR is composed of thirty-one articles contained in six sections: the preamble and parts I to V. Part I, which is identical to the parallel part of the ICCPR and comprises solely article 1, proclaims the right of all peoples to self-determination, including the right to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources. Although the inclusion of a right of “peoples” may be problematic (particularly where the definition of the “people” remains difficult), it could be said to provide a necessary context within which the realization of rights within the Covenant is to take place.⁶⁵

The heart of the Covenant is found in part III, articles 6-15, which outlines the rights to be protected. These include, broadly, the right to work (art. 6), the right to fair conditions of employment (art. 7), the right to join and form trade unions (art. 8), the right to social security (art. 9), the right to protection of the family (art. 10), the right to an adequate standard of living, including the right to food, clothing, and housing (art. 11), the right to health (art. 12), the right to education (art. 13) and the right to culture (art. 15). The protection given to economic rights in the Covenant is broad but general.

⁶⁴ Ontario Human Rights Commission, *Human Rights Commissions and Economic and Social Rights*, <http://www.ohrc.on.ca/english/consultations/economic-social-rights-paper.shtml>

⁶⁵ P. Sieghart, *The Lawful Rights of Mankind* (Oxford: Oxford University Press, 1986), p.164.

Article 7, for example, provides for a right to equal remuneration for work of equal value (rather than just the more restrictive equal pay for equal work), and gives recognition to a wide range of other rights such as the right to safe and healthy working conditions and the right to reasonable limitation of working hours. Similarly, article 8 provides not only for the right to join and form trade unions but also for the right of trade unions to function freely and the right to strike.

The Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) is the clearest and most comprehensive expression of what the world community wants for its children. It arose in the 1970s as a reaction to the weakening global humanitarian response to children.⁶⁶

Formal international recognition of the existence of children's rights can be traced to the passage of a resolution by the Assembly of the League of Nations in 1924 that endorsed the Rights of the Child as defined by the NGO, 'Save the Children International Union.' On November 20, 1959, the United Nations General Assembly passed the "Declaration of the Rights of the Child," which served as a basis for the Convention. The Convention itself was adopted by the General Assembly on November 20, 1989 and entered into force on September 2nd 1990. Two subsequent protocols have been passed that deal with the sale of children, child prostitution, and child pornography, and child

⁶⁶ S.A Detrick, *Commentary on the United Nations Convention on the Rights of the Child*, (The Hague: Kluwer Law International, 1999), p. 9

soldiering. Through the deliberations that led to its passage and eventual ratification, it is clear that compromises with regard to a number of controversial issues were made so as to create a document acceptable to so many different constituencies. Some of those compromises included a deliberate decision to refrain from defining the minimum age of childhood (at birth or at conception) and elimination of explicit mention of the right of a child to exercise personal choice with reference to religious affiliation (instead, in article 14, parents and legal guardians should “provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child”). In addition, the minimum acceptable age for a child to join the military was stipulated as being as low as 15 (even though human beings below the age of 18 were considered children unless applicable laws state otherwise).⁶⁷

The UNCRC is an international human rights treaty, which focuses on the rights of the child from a developmental-ecological perspective. It assumes that the child's overall development is a function of a number of factors (psychological, social, educational, and cultural) and contexts (home, school, community, and country). The convention's developmental framework represents the latest thinking in international child-related policies.⁶⁸

The UNCRC is comprised of fifty-four articles that seek to safeguard and uphold children's minimal health, civil, humanitarian, and family rights. It can be divided into

⁶⁷ Nigel Cantwell, “The Origins, Development and Significance of the United Nations Convention on the Rights of the Child,” in Detrick, S., ed., *The United Nations Convention on the Rights of the Child: A Guide to the “Travaux Préparatoires”* (1992), as excerpted in Steiner, Henry J. and Philip Alston. *International Human Rights in Context: Law, Politics, Morals*. (New York: Oxford University Press, 2000), pp. 514-515.

⁶⁸ Ibid.

three main parts: key principles, specific rights, and ways in which the convention should be monitored. Protection of children against discrimination, abuse and neglect, and armed conflict are issues outlined in Articles 2, 19, and 38, respectively. Parent-child relationships are defined in several articles, including Articles 5, 9, and 10. The treaty also calls on states and countries to ensure survival of children to the maximum extent (health care, food, and clean water in Article 24; education in Articles, 28 and 29).⁶⁹

The Convention spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.⁷⁰

By agreeing to undertake the obligations of the Convention (by ratifying or acceding to it), national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. States parties to the Convention are

⁶⁹ S. Muscroft (Ed.), *Children's Rights: Reality or Rhetoric?* (London: International Save the Children Alliance, 1999)

⁷⁰ See, <http://www.unicef.org/crc/index.html>

obliged to develop and undertake all actions and policies in the light of the best interests of the child.

The UN General Assembly's *Convention on the Rights of the Child* asks us to nurture and protect children. Ethics notwithstanding, doing so is essential to species survival. Children are, in countless ways, maltreated, exploited, deprived, abandoned, and neglected. Even institutions purporting to care for children, including orphanages, have sometimes instead been infernos of abuse and neglect. In natural disasters, children are at primary risk to suffer injury.⁷¹

Children are especially vulnerable in conditions of armed conflict or economic deprivation. War tears children from their families, to be held in captivity, to be pressed into military service, and to be maimed or killed. War and poverty alike reduce children's access to medical care, food, and water. Regarding poverty, the least economically developed nations have populations with the most children, leading to children's disproportional impoverishment on a global basis. Escalating numbers of "street children" around the globe (who live on the street more than in their family home) have been abused by law enforcement authorities. Children are over-represented among refugees and the homeless.⁷² According to UNICEF's

⁷¹Catherine Brooks and Lawrence Wrightsman. *Children's Rights in the United States: In Search of a National Policy*. (Thousand Oaks, CA: Sage Publications, 1999), pp 23-25.

⁷² Michael Jupp, "The UN Convention on the Rights of the Child: An Opportunity for Advocates" in *Human Rights Quarterly* 12(1), 1990, pp130-146.

⁷² UNICEF, *State of the World's Children: Executive Summary 2006*. UNICEF.

(2006) report “The State of the World’s Children,” one-third of the world’s children lack adequate shelter, 31% lack basic sanitation, and 21% have no access to clean, protected water. Illness, malnutrition, and premature death are harbored when children lack the most basic protections.⁷³

The African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples’ Rights was adopted in 1981 by the Organization of African Unity, now the African Union. It has been ratified by all the 53 OAU member states. The first discussions on the adoption of the regional treaty for the protection of human rights in Africa dates back to the 1961 Lagos Conference, which was organized by the International Commission of Jurists. This was followed by several meetings which culminated into adoption of the Charter in 1981. The Charter entered into force 21st October 1986. Since then, 21st October is celebrated as the African Human Rights Day.

At the heart of the debates were concerns how to produce a Charter that would reflect the realities of the African conditions and would not be a blueprint of other international human rights instruments. The end product is the African Charter which contains some provisions that do not exist in other international human rights instruments such as collective rights, the right to development and the right to a healthy and satisfactory environment. The most controversial commentary from critics is the concept

of duties of individuals included in the Charter, towards the family, society the State and the international community.⁷⁴

This treaty obligates ratifying countries to recognize the rights and duties listed and to adopt legislation or measures to bring them into effect (article 2). The African Charter is divided into two parts. The first part sets forth rights and duties and the second part establishes safeguards for them. Like the American Convention on Human Rights, the African Charter does not simply identify rights but also explicitly imposes duties upon individuals (articles 27-29). These individual duties, included perhaps to counter claims that human rights promote excessive individualism, consist of duties to family, society, state, and the international community.

According to Baker,⁷⁵ the African Charter explicitly posits group rights — the rights of peoples. Examples of such rights include the right of a group to freely dispose of its natural resources in the exclusive interest of its members (article 21), and the right of a colonized or oppressed group to free themselves from domination (article 20).

The Charter created an African Commission on Human and Peoples' Rights to promote and ensure the protection of human and peoples' rights in Africa. (Article 30). The Commission meets twice a year and consists of eleven members of the African community who serve six year terms in their personal capacities. The functions of the

⁷⁴M. Evans, and R. Murray (Eds.), *The African Charter on Human and People's Rights: The System in Practice, 1986-2000*. (Cambridge: Cambridge University Press, 2002), p. 36

⁷⁴J. Baker, *Group Rights* (Toronto: University of Toronto Press, 1994)

Commission are the promotion of human rights, the protection of these rights, interpretation of the African Charter, and the performance of "any other tasks" requested by the AU" (article 45). The Commission is also authorized to perform studies regarding problems in the area of human rights; formulate rules addressing human rights problems; investigate alleged human rights violations by any appropriate means; and prepare reports discussing human rights abuses; and make recommendations to the AU Assembly (articles 45-54). Furthermore, states are required to submit regular reports to the Commission on their human rights problems and efforts to address them (article 62).⁷⁶

The United Nations Convention Against Torture

The Convention is divided into three parts, in addition to a five-paragraph preamble. Part I (Articles 1-16) deals with the substantive provisions, including *inter alia* a comprehensive definition of torture, the provision of universal criminal jurisdiction over torturers, and the espousal of the extradition principle *aut punire aut dedere*. Part II (Articles 17-24) covers the implementation provisions establishing the Committee - a supervisory body consisting of ten independent experts appointed by the Parties and acting in their individual capacity - and providing for its competences. Part III (Articles 25-33) contains the usual final clauses concerning ratification, entry into force, amendments and the like; in particular, it includes the two aforementioned reservation clauses concerning the competence of the Committee and the judicial settlement of disputes.⁷⁷

⁷⁶ M. Evans, and R. Murray, *op cit*.

⁷⁷ Chanet, "La Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants", 30, *Annuaire français de droit international* (1984), p. 625

Under Part II of the Convention, the Committee has been granted the authority to exercise four kinds of monitoring and implementing functions.⁷⁸ First of all, in accordance with Article 19, the Committee is to receive and consider periodical state reports - one every four years - concerning the internal measures that have been taken to implement the Convention. The Committee may make comments on individual reports and forward them to the states concerned, which in turn may reply. The Committee can include its comments and the states' counter-observations in its annual report to the General Assembly.⁷⁹

Secondly, in accordance with Article 20, if the Committee receives reliable information about systematic torture practices within a State Party, it may institute confidential proceedings (if possible, in cooperation with the state under scrutiny) involving consultation, requests for information, inquiries and, with the agreement of the state concerned, a fact-finding mission to its territory. A brief account of these proceedings may be inserted in the annual report to the General Assembly.

Thirdly, in accordance with Article 21, the Committee may examine a written communication from a Party alleging that another Party is not fulfilling its obligations under the Convention. Following such a communication, if the interested states do not

⁷⁸ Nowak, 'The Implementation Functions of the UN Committee against Torture', in Nowak, Steurer, Tretter (eds.), *Fortschritt im Bewußtsein der Grund- und Menschenrechte. Festschrift für Felix Ermacora* (1988), p. 493.

⁷⁹ See the first report of the Committee against Torture, United Nations, *Official Records of the General Assembly*, Forty-third session, Supplement No. 46 (A/43/46).

settle the matter through direct negotiations, the Committee makes available its good offices or, when appropriate, sets up an *ad hoc* conciliation commission.⁸⁰

Finally, in accordance with Article 22, the Committee may consider communications from individuals (who have exhausted all local remedies which are not unreasonably long or ineffective) claiming to be victims of a Party's violation of an obligation under the Convention. The Committee examines such individual communications in closed meetings and the state concerned is required to submit explanations on the matter.⁸¹

Of these four implementation procedures, only the first one - the reporting system under Article 19 - is mandatory for all States Parties. Resort to the procedure under Article 20 may be excluded by an *ad hoc* reservation, while the competence of the Committee to receive complaints by states and by individuals under Articles 21 and 22 must be explicitly accepted.

International humanitarian law (Laws of war)

International law contains a system of rules referred to as the "laws of war." These rules establish the red lines that a combatant or occupying state may not cross. Among the instruments in which the rules are stated are the *Hague Convention*, of 1907, and its regulations, and the four *Geneva Conventions*, of 1949.⁸²

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² H. Tolley, *The U.N. Commission on Human Rights*, (Boulder: Westview Press, 1987), p. 14.

Tolley⁸³ goes on to explain that the principal concept of the laws of war is that, even in wartime, all acts are not allowed. Humanitarian law does not deal with the question of whether the war is justified, but with the means used during the conflict. For example, the rules limit the parties in order to minimize the harm to non-combatants, such as prisoners of war, the wounded, and civilians. In addition, humanitarian law contains provisions restricting the arms that may be used during the conflict.

The Hague Regulations, which establish the laws for conducting war on land, are considered part of international customary law. The Regulations state the rights and duties of the combatants, and limits the means to injure the enemy. Among their provisions are the duty of the occupying state "to ensure public order and safety" in the occupied territory and the prohibition on collective punishment of the civilian population. The Regulations also forbid expropriation of property of residents of the occupied territory.⁸⁴

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The four Geneva Conventions for the protection of victims of war, of 1949, and its protocols of 1977 comprise the major part of humanitarian law applying to war and occupation. The First Geneva Convention deals with the wounded, sick, medical teams, and military religious personnel. The Second Geneva Convention deals with war at sea. The Third Geneva Convention deals with prisoners of war.

The Fourth Geneva Convention deals with the protection of civilians during war or under occupation, and therefore relates to Israel's actions in the Occupied Territories.

⁸³ Tolley, p.15

⁸⁴ See article on: http://www.btselem.org/English/International_Law/Humanitarian_Law.asp

The Convention prohibits, among other things, violent acts against residents of occupied territory, the taking of prisoners, injury to the civilians' dignity, acts of retaliation against them, collective punishment, and mass or individual deportation. The Convention also protects children by ensuring maintenance of relations between family members who have been separated as a result of war, protects property, provides safeguards for detainees and prisoners, and states many other protections. The Convention also sets due process standards for criminal trials conducted against residents of occupied territory, and prohibits occupying states from settling its citizens in occupied territory.⁸⁵

Conclusion

The most obvious way in which human rights exist is as norms of national and international law created by enactment and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them into international law. The international law on human rights is defined by the treaties signed by States. By signing the treaties, States agree that the principles set forth are indeed a law. The Vienna Convention on the Law of Treaties is widely accepted as codifying the customary rules relating to treaty interpretation and application and as the governing international treaty on such matters. This treaty governs, for example, the validity of reservations and the obligation of a state upon signing a treaty to bind itself in good faith to ensure that nothing is done that would defeat the treaty's "object and purpose," pending ratification.

Treaties may also be referred to as conventions or covenants. Treaties often codify rules of customary law and are of growing importance. They are the major

⁸⁵ Ibid

instrument of co-operation in international relations and are often an instrument of change. Treaties, once signed and ratified, are binding on the party. Upon signing an international instrument, the party agrees to bind itself in good faith to ensure that nothing is done which would defeat the object and purpose of the treaty, pending a decision on ratification, if ratification is required. A signature does not however, create an obligation to ratify but, once ratified, the treaty becomes binding on the nation. The nation is considered to have consented to be bound.

The international conventions discussed above have been signed and ratified by the Sudan government. This implies that they have to be respected by it and are a standard setting for the Sudan in terms of respecting and upholding the human rights of its citizens.

CHAPTER THREE

HUMAN RIGHTS VIOLATIONS IN THE SUDAN CONFLICT

INTRODUCTION

Since the independence of Sudan in 1957, the country has enjoyed only 11 years of peace; an earlier war in the south, and border areas between north and south, was ended by the Addis Ababa agreement of 1973 which gave the south regional self-government. War broke out again in 1983. A number of moves towards a peace process have taken place and failed: in 1989 under Prime Minister Sadiq al-Mahdi, before Major-General Omar Hassan El-Beshir's coup d'Etat; in 1997 when a declaration of principles was signed but nothing was done to implement it. Talks which continued under various mediators – Nigeria, Libya, Egypt and IGAD - appeared to lead nowhere.

According to Holly,⁸⁶ both sides of the conflict in southern Sudan have committed human rights abuses and violations of international humanitarian law by killing, wounding and torturing civilians, abducting civilians, including women and children, recruiting children into armed forces, attacking villages and destroying property and crops, forcing millions of people to become internally displaced or refugees. The grave human rights abuses carried out by forces of the SPLA and militia allied to it - extrajudicial executions, killings of civilians, rape, abductions, looting and forced displacement - have been documented by Amnesty International. They are not the subject of this report. However grave the violations of international humanitarian law by the SPLA and armed groups allied to it, they can never excuse or be used as justification for

⁸⁶ Holly Burkhalter, "Human Rights in Sudan." United States Department of State, Country Reports on Human Rights Practices for 1990, pp. 381, 396.

breaches by a government of the international and regional human rights treaties it is bound to respect.

The breaches of international humanitarian law which have caused so much suffering are the result of a lack of accountability of the security forces. The government army, the Popular Defense Forces -a government paramilitary force- and northern and southern militias supported by the Sudanese government have killed civilians, raped and abducted women, kidnapped and recruited children and destroyed homes and property. By failing to investigate or bring the suspected perpetrators of such abuses to justice the government has shown that these actions are condoned and even encouraged.

As a Member State of the United Nations, the Sudan is bound by the Charter of the United Nations. Further, it is obliged to respect the human rights and fundamental freedoms of all persons within its territory, as set out *inter alia* in the following instruments to which the Sudan has become a party: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Slavery Convention, as amended; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention relating to the Status of Refugees and the Additional Protocol thereto.⁸⁷

All parties to the conflict have committed atrocities, but the Sudanese military and its militia groups are responsible for the majority of widespread atrocities being

⁸⁷ Commission on Human Rights, Fifty-Fifth Session, Agenda Item 9

committed upon innocent civilians. The UN reported "[consistent and undisputed evidence indicates that the war is being conducted in disregard of human rights and humanitarian law principles, and that violations are perpetrated by all parties, albeit with varying degrees of responsibility, the greater portion being attributable to the Government," and that government supported militia groups "are given free reign to perpetrate destructive and predatory attacks against the civilian population, including the abduction of women and children." The UN expressed great concern that innocent civilians are the primary victims of the atrocities that are being committed and that the human rights situation in Sudan should be top priority for the international community.

Violation of Civil and Political Rights

The government in Khartoum has successfully implemented a genocidal strategy targeting those groups it believes to be a threat to its rule because of religion, ethnic identity, race, and/or different political views. So far, over 2 million people – mostly innocent civilians in south and central Sudan – have died as a result of war related causes and another estimated 4.5 million have been internally displaced (refugees within their own country) comprising the largest population of internally displaced persons in the world. Khartoum is engaged in a governmental practice of intentionally, incessantly and indiscriminately bombing civilian targets and humanitarian relief sites. The present military regime intentionally and repeatedly bombs sites such as schools, churches, hospitals and refugee camps, targeting black African Christians and those of traditional beliefs, and harmoniously inter-religiously tolerant groups such as the Nuba peoples, of which some are Muslim and some are Christian.

The government of Sudan was notoriously engaged in chattel slavery. The practice of abduction and slavery had died out for the most part in Sudan until its revival in the 1980s during the civil war by pro-government forces operating under Sudanese government authority targeting primarily southern civilians. Tens of thousands of southern women and children have been taken as slaves and sent to the north as concubines and laborers. Many of them have been raped by government militias.

The Sudanese government and its militias also carry out "scorched-earth" campaigns against the south that in addition to enslaving women and children, kill men, kidnap, forcibly convert boys and induct them into the regime's military, and annihilate entire communities or relocate them into concentration camps called "peace villages" where "convert to eat" policies are enforced. Individual Christians, including clergy, have been imprisoned, flogged, tortured, crucified, and assassinated for their faith. In 1993, an edict declared the persecution of "apostates," licensing the persecution of Muslims who oppose Khartoum's political policies.

According to Rummel,⁸⁸ in this civil war, bombing from the air killed many of those who lived in heavily populated areas of the South; even schools were bombed and children killed. Hospitals did not escape. There were many bombing attacks on the Samaritan's Purse, the largest hospital in southern Sudan. Bombers often attacked other medical facilities as well, sometimes with cluster bombs. Even more monstrous, the North bombed the wells that provided southerner's water, as well as sites with foreign

⁸⁸ Democide In Sudan: Dither, Delay, and Doublespeak While People Are Murdered Wholesale, July 31, 2004, See: <http://www.hawaii.edu/powerkills/COMM.9.8.04.HTM>

relief supplies, including food for the starving southerners. All this, in addition to the regime's socialist economic policies, has contributed to a massive famine.

In 1993, the Commission on Human Rights, under the United Nations General Assembly appointed a Special Rapporteur to keep Sudan under the human rights violations agenda.

The Special Rapporteur has received numerous reports that the Government of the Sudan has intentionally targeted civilian targets in its aerial bombardments. Between March 1998 and December 1998, four hospitals run by the Norwegian organization Norwegian People's Aid (NPA) were reported to have been bombed over a dozen times. NPA reported a bombing on 5 March of their hospital at Yei that left 16 people dead and 22 wounded; two others on 10 April and 20 July with the latter leaving two persons wounded. On 9 August the hospital at Nimule was bombed and that of Yei again on 23 August. Labone hospital was bombed on 10 September and that of Nimule on 30 September leaving two dead and three wounded.⁸⁹

Since the outbreak of the civil war in southern Sudan in 1983, it is estimated that at least 1.2 million individuals have lost their lives. During the past five years thousands of civilians are reported to have been killed in deliberate and indiscriminate attacks, including aerial bombardments on civilian targets by government forces. In the Nuba Mountains, a large number of civilians, including women and children, Muslims and

⁸⁹ Commission on Human Rights, Fifty-fifth session, Agenda item 9, 1996-2000. See, <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a32a934fa6d8682a802568180049c6aa?Opendocument>

Christians alike, have been killed in these attacks or summarily executed. Others are reported to have lost their lives as a result of brutal torture in secret detention centres run by the security organs or in military barracks, and tens of army officers have been summarily executed after secret trials by special courts. Previous reports of the Special Rapporteur contain details regarding these facts.⁹⁰

During his 1994 fact-finding mission, the Special Rapporteur received testimonies confirming previous reports indicating that in the war in southern Sudan prisoners of war are the exception. Those captured have been and are being tortured and summarily executed. This practice is particularly prevalent in the case of local chiefs, soldiers belonging to different rebel factions and those civilians who are suspected of actively collaborating with the Government of the Sudan or one of the rival factions. If a prisoner is captured and he refuses to change sides, he is cruelly tortured and executed.

In June 1994, government troops reportedly entered Loka and took reprisals against the civilian population. A man who left the area on 24 July 1995 told the Special Rapporteur that on 18 June 1994 a group of 37 government soldiers deported 73 families from the Jebel Loka area. According to the witness, 24 men were separated and taken to Loka barracks where they were interrogated immediately upon arrival. During interrogation those men who denied that they were actively involved with the Sudan People's Liberation Army (SPLA) as soldiers or collaborators were beaten. Seven who refused to cooperate with the Government were summarily executed. The witness stated that 15 men agreed to join the government troops and 2 others were taken to Juba.

⁹⁰ Report of the Special Rapporteur, Mr. Gáspár Bíró, submitted in accordance with Commission on Human Rights resolution 1995/77

Several other sources reported similar incidents. Therefore, the Special Rapporteur concludes that killings and summary executions continued to take place in southern Sudan in 1995. Instances of extrajudicial killings and summary executions by parties to the conflict other than the Government are described in the section of the present report on violations and abuses committed by those parties⁹¹

Indiscriminate and deliberate aerial bombardments by the Government of Sudan (GOS) forces on civilian targets continued in 1995. On 21 June 1995, an Antonov aircraft operated by government forces dropped 22 bombs in the Nuba Mountains and six civilians were killed and 12 others were seriously injured. Eyewitnesses reported that the bombardment was concentrated on a densely inhabited area, indicating an intent on the part of the Government to terrorize the civilian population and to force people to flee the area. The airstrip at Regifi was also targeted. In September bombardments were also reported on Chukudum and on targets near Nimule and Mughale, seriously disrupting operations of Operation Lifeline Sudan (OLS).⁹²

Many victims were held incommunicado detention for months at a time. In cases where the relatives contact the competent organs to inquire about the arrest or whereabouts of a missing person, the authorities refuse to release any information. Accordingly, the missing person was reported to have disappeared. It is widely believed, however, that thousands of persons have disappeared as a result of this practice of the Government. The vast majority of these cases remained unknown to the public and consequently were undocumented. This was particularly true in the case of

⁹¹ Commission On Human Rights, Fifty-second session, Item 10 of the provisional agenda

⁹² Report of the Special Rapporteur, Mr. Gáspár Bíró, submitted in accordance with Commission on Human Rights resolution 1995/77, para. 11.

unaccompanied minors who were rounded up by the police on the streets of major towns in northern Sudan.

During his fact-finding mission, the Special Rapporteur received further testimonies from victims of torture. One victim from Kassala, provided to the Special Rapporteur both a verbal testimony and a handwritten declaration concerning his case. The following is an excerpt from his written declaration:

"I was arrested on 10 January 1995 and released in March 1995. That was after a long period of torture. The torture was applied to many parts of my body, including the head, the eyes and the genitals. During [my] detention my wife was compromised by members of the Sudanese security, then she became pregnant. I was continuously moved [during detention] from one 'ghost house' [a secret detention centre] to another while blindfolded. I was able to recognize one of the detention centres which is near the General Command of the National Armed Forces in Khartoum. This centre is supervised by foreign elements trained in the various methods of torture for political reasons. They have used many instruments, such as electric chairs. Many Sudanese political detainees have died inside these detention centres without the knowledge of their relatives. Also my son was arrested, as were other sons of political detainees opposing the regime."⁹³

The Special Rapporteur reported that puncture wounds, which the victim explained were caused by nails being driven into his arms and the soles of his feet, were clearly visible to him. Numerous burn marks were also seen on his torso. The victim's eyes were inflamed and blood-shot from gas that had been sprayed into his eyes during his detention.

⁹³ Report of the Special Rapporteur, Mr. Gáspár Bíró, submitted in accordance with Commission on Human Rights resolution 1995/77, para. 17.

During his mission the Special Rapporteur was able to verify, or obtain corroboration of, allegations of torture and other cruel, inhuman or degrading treatment or punishment. He became convinced that torture was practiced widely by the security forces in most cases of detention. In addition, the Special Rapporteur was made aware of the brutality to which southern Sudanese are subjected at the hands of the security forces.

Most of the estimated 1,000 detainees held since 1989 were not informed of the reason for their arrest, and were routinely denied access to legal counsel. Many of those arrested were never charged or tried. Some people were held in detention without formal charges for over 18 months before being released. The State Department's Country Reports on Human Rights Practices for 1991 maintains that detention, interrogation and torture continue to be widespread in Sudan despite provisions introduced in 1991 to subject all detentions to judicial review. The State Department estimated that at least 65 long-term political detainees remained in prison at the end of 1991, not including a far larger number of short-term detainees kept in "ghost houses" (see below) or in security offices. Amnesty International has documented at least 60 cases of physical abuse of detainees.⁹⁴

The freedom of religion

The freedom of religion was not enjoyed either by the people of South Sudan. Under the 1991 Criminal Act, non-Muslims may convert to Islam; however, conversion by a Muslim was punishable by death. In practice converts usually were subjected to

⁹⁴ United States Department of State, Country Reports on Human Rights Practices for 1991, pp. 378-379. Benaiah Yongo-Bure, "Sudan's Deepening Crisis," in *Middle East Report*, September-October 1991, p. 10. Amnesty International (USA), Urgent Action, Sudan, "Fear of Torture/Legal Concern," 18 October 1991, "UA345/91"

intense scrutiny, ostracization, intimidation, torture by authorities and encouraged to leave the country. The Government required instruction in Islam in public schools in the north. In public schools in areas where Muslims were a minority, students had a choice of studying Islam or Christianity. Christian courses were not offered in the majority of public schools, ostensibly due to a lack of teachers or Christian students, which meant that many Christian students attended Islamic courses.

The Special Rapporteur received numerous allegations concerning the demolition of Catholic centres by government authorities. It is alleged that this was a calculated plan based on government policy, albeit undeclared, to make the community expression of the Christian faith extremely difficult, particularly by preventing Christians from having places of worship and by destroying the places they have built. The reasons given by authorities for the destruction of these centres are to improve urban planning, to build new roads or public utilities, or to upgrade the quarter targeted.

Freedom of movement

Although the Sudanese Constitution provides for freedom of movement and residence, including exit from and entry into the country, the Government severely restricted these rights in practice. The Government denied exit visas to some categories of persons, including policemen and physicians, and maintained lists of political figures and other citizens who were not permitted to travel abroad. For example, the Government banned all travel to several outspoken human rights activists in Khartoum. Some former political detainees were forbidden to travel outside Khartoum. The Government also restricted the external travel of Joseph Okel and other southern political leaders who were arrested in 2000 after meeting with a foreign diplomat. During the same year, the

Government claimed it had canceled the exit visa requirement for its citizens; however, in practice the Government still denied travel privileges to certain individuals when they arrived at exit ports. Women cannot travel abroad without permission of their husbands or male guardians.

The SPLA also restricted freedom of movement among populations under its control. Citizens from the north or from government-controlled areas reportedly were denied permission to enter SPLM areas and were treated as foreigners. Insurgent movements also required foreign NGO personnel to obtain permission before traveling to areas that they controlled; however, they generally granted such permission. NGO workers who have worked in government-held areas encountered problems receiving permission to work or travel in insurgent-held areas. There were reports in June 2001 that SPLM/A commanders were ordered not to permit persons to attend a reconciliation conference in Kisumu, Kenya. In addition, a conference held by Justice Africa in Kampala on Nuba and Blue Nile civil society was attended poorly because the SPLM/A did not permit the participants to obtain transportation clearance.

Freedom of Speech and Press

Freedom of Speech and Press was hardly enjoyed by the people of Sudan. The Government exercised control of news reporting, particularly of political topics, the war, and criticism of the Government, through the National Press Council and security forces. Newspapers were prohibited from publishing articles about the war with the exception of information provided by the Ministry of Defense or official government statements. The National Press Council applied the Press law and was directly responsible to the

President. It was charged with licensing newspapers, setting press policy, and responding to complaints. The National Security Offices imposed restrictions on press freedom by suspending publications, detaining journalists and editors, confiscating already printed editions, conducting prepublication censorship, and restricting government advertising to pro-government media only.

Slavery, Slave Trade, Servitude, Forced Labour and Similar Institutions and Practices

In 1997, the Special Rapporteur had come up with findings, conclusions and recommendations regarding the question of slavery, the slave trade and similar institutions and practices in the Sudan. The Special Rapporteur based his conclusions not only on independent and reliable sources, but also on testimonies taken between 1993 and 1997, including during his September 1997 mission to Khartoum, from victims of these practices and institutions and eye-witness accounts of several other individuals who have witnessed such practices in various parts of the Sudan. These testimonies, accompanied by written accounts and other documents, such as copies of correspondence between local chiefs and authorities in the former states of Kordofan and Darfur, and documents on cases of retrieval of abducted children raised before courts in various locations in northern Sudan, were corroborated by a large number of independent sources.

The Special Rapporteur again draws attention to the fact that in his reports the concepts referred to in this regard are clearly defined by the relevant international instruments to which the Sudan is a party. Therefore, not only should the concept of "slavery" as such, in many cases implying only chattel slavery, be taken into account, but all practices and institutions similar to slavery, the slave trade, servitude or serfdom and

enforced labour as defined in international instruments should, in the light of the facts reported, also be taken into account.

Violation of the rights of the child

Children's rights are the building blocks for a solid human rights culture, the basis for securing human rights for future generations. Children are entitled to all the rights guaranteed by the *Universal Declaration of Human Rights* and the various treaties that have developed from it. Children are also guaranteed additional rights, notably under the *UN Convention on the Rights of the Child* – the most widely ratified human rights treaty – because they need special protection and care. They must be able to depend on the adult world to look after them, to defend their rights and to help them develop and realize their potential. Governments are obliged to protect all the rights of the child - economic, social and cultural rights as well as civil and political. States are not only responsible for the violations committed by their own state officials, but they are also obliged to take positive measures to prevent abuses against children by private individuals, whether in the community or in the family.⁹⁵

Violations of children's rights were all too common in Sudan during the civil war. Children were beaten and tortured, forced to work long hours under hazardous conditions, or warehoused in detention centers and orphanages. Many of them were forced to serve as soldiers in the armed conflict. In documenting human rights abuses, Human Rights Watch has traditionally focused its efforts on monitoring state compliance with civil and political rights. But the denial of economic and social rights, such as the

⁹⁵ “The Human Rights of Children: Overview” See, http://www.amnesty.ca/themes/children_overview.php

right to education, health, or shelter, often bars individuals from the effective enjoyment of their civil and political rights.

Children are especially vulnerable to this dynamic. They frequently do not benefit from the progressive realization of economic and social rights. On the contrary, they often suffer discrimination in basic education, health care, and other services. In particular, girls are often subjected to intentionally discriminatory treatment or disproportionately affected by abuses. The deprivation of these fundamental rights prevents children from realizing their full potential later in life. With limited capacity to participate as equals in civil society, they are ill-equipped as adults to defend their rights and to secure these rights for their own children.

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Children in the Sudan during the conflict were the most vulnerable group and the easiest target for all kinds of violations of human and children's rights. They were the first to die or to suffer from the long-lasting effects of starvation or the disruption of food distribution. Following the February/March 1998 ban on relief flights in Bahr-el-Ghazal, the malnutrition rate among children, five years and under, soared by 50 per cent. During the crisis, three children were dying each week at a feeding centre run by *Médecins sans Frontières* in the town of Mapel.

Thousands, perhaps millions of southern children have been the main victims of the brutal war conducted against the civilian population by government and rebel troops alike. In Bahr-el-Ghazal an unknown number of children were been abducted during raids by Murahaleen militia, in some cases when the latter formed the escort for the train to Wau. In the Nuba Mountains, thousands of children are allegedly held in the so-called

peace villages, where they are subjected to abuse. In the IDP camps children are often deprived of education or, when they were provided by it, it was in a language foreign to them and they had no possibility of studying in their mother tongue. Furthermore, they were forcibly converted to Islam and, if older, they could be recruited into the armed forces.

Many children died or were abandoned by their parents during flight. Several displaced women arriving in Wau from Gogrial county in July 1998 had had to abandon their children on the road because they were too weak to continue; others had watched their children die of starvation. As a result of these experiences, a large number of women were reported to be suffering from mental problems.

An estimated 4,000 to 5,000 unaccompanied children resided in IDP camps in southern Sudan. In Wau, the Special Rapporteur was informed that the main social problem that confronted humanitarian agencies was single-parent families and the increasing number of families headed by children caring for smaller siblings. In a situation of total disruption, the traditional concept of the extended family, which normally functions as a safety-net, also broke down. About 16,000 children in Wau were given up for adoption, many by single mothers who could no longer cope in view of their own precarious conditions. A campaign to register unaccompanied children was initiated in November 1998 by the ICRC with a view to tracing and reuniting them with their families who might have been staying in a different camp.

Children and women in IDP camps are exposed to uncurbed abuses. In Wau, there are persistent rumours that, after curfew hours, military, police and other security

personnel went on the rampage and numerous incidents of rape inside the camps had been reported. Just a few days before the Special Rapporteur's visit, a seven-year old rape victim had been taken to the hospital for treatment.

Demobilizations of child soldiers took place in several countries. In late February, the United Nations Children's Fund (UNICEF) coordinated the demobilization of over 2,500 children between the ages of eight and eighteen from the Sudan People's Liberation Army (SPLA) in Southern Sudan, airlifting them to transition camps. By September 2001 the last of the group had been reunited with their families. UNICEF indicated that the process of demobilization would continue in 2002 until all SPLA child soldiers-an estimated 10,000 before the February initiative-were demobilized.

The Government demonstrated no significant concern for the rights and welfare of children. A considerable number of children suffered serious abuse, including enslavement and forced conscription in the war zones. The Government ran several camps for vagrant children. Police periodically swept the streets of Khartoum and other major cities, taking children whom police personnel deemed homeless to the camps, where they were detained for indefinite periods. These children could not leave the camps and were subjected to strict discipline and physical and military training. Health care and schooling at the camps were generally poor; basic living conditions were also often primitive. All the children, including non-Muslims, must study the Koran, and there was pressure on non-Muslims to convert to Islam.

Violation of Women's Rights

The UN Charter affirms 'the equal rights of men and women', 'the dignity and worth of the human person' and the realization of fundamental human rights as the UN's core principles and objectives of the organization. These principles have been further articulated through the adoption of international legal standards and binding treaties setting out the obligations of governments to secure human rights for individuals within their territory and subject to their jurisdiction 'without distinction of any kind'.⁹⁶ Indeed the right not to be discriminated against is so fundamental that it is one of the rights that cannot be set aside (derogated from) in any circumstances.

These treaties and standards, and the mechanisms and institutions created to enforce them, form the international human rights law system which applies equally to men and women. This international system works to ensure the implementation of human rights in the national systems of states and, with national mechanisms, to monitor their implementation.

Women have tended to be particular targets of human rights violations on account of their gender. They have even less access to lawyers and justice than men and are often singled out for cruel, inhuman or degrading punishments in ways which do not affect men. Women continued to be harassed and ill-treated by police enforcing the Public Order Law which restricts women's freedom of movement, behaviour and dress. Under this law women are not allowed to travel without a guardian; they are not allowed to talk

⁹⁶ The fundamental principle of non-discrimination is articulated in the 1948 Universal Declaration of Human Rights (UDHR) in its Article 2 as 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' The 1989 Convention on the Rights of the Child further elaborates on this principle in its Article 2 as 'without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.'

alone with men who are not their husbands or members of their immediate family and they are supposed to remain with their hair covered and with dress which covers the wrists and ankles. These articles of the Public Order Law are not enforced systematically, but their existence allows the police to act arbitrarily against women if they so desire.⁹⁷

In addition, articles which make adultery a criminal offence are invariably enforced only, or more strongly, against women than men. Adultery is punishable with execution by stoning, if the offender is married, or one hundred lashes, if the offender is not married (Article 146 of the Penal Code). For instance, in November 2002 17 women Western Sudan, were convicted of adultery (meaning here sexual intercourse with a man without being lawfully bound to him, according to Article 145 of the Penal Code) and sentenced to 100 lashes of the whip each. They were convicted because they had all given birth to children although they were unmarried. No individual man was brought before a court in connection with these offences and none of the women was represented by a lawyer. The sentence was carried out immediately on each woman, without obtaining any medical report, as required by law, on the fitness of each woman to undergo punishment. On 17 May 2003, a fourteen-years old girl, unmarried and nine months pregnant, was sentenced to 100 lashes of the whip on charges of adultery. The man charged in connection with this case was acquitted because of lack of evidence. The girl is appealing the sentence.⁹⁸

Violence against women appears to be common, especially wife beating, although accurate statistics do not exist. The Government did not address the issue of

⁹⁷ Amnesty International, Sudan: Empty promises? *Human Rights Violations in Government Controlled Areas*. 16 July 2003, AI Index: AFR 54/036/2003.

⁹⁸ Ibid

violence against women; nor was it discussed publicly. The police do not normally intervene in domestic disputes, and no court cases involved violence against women. Many women are reluctant to file formal complaints against such abuse. Displaced women from the south were particularly vulnerable to harassment, rape and sexual abuse. Among some southern ethnic groups rape is common. No blame is attached to the practice, although the man involved must pay the woman's family if she becomes pregnant.

Violation of the International Humanitarian Law

International humanitarian law, embodied mainly in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, regulates situations of armed conflict. It does not replace international human rights law, which is applicable in both peace and war, although it permits the suspension of certain rights in times of public emergency. Nevertheless, human rights law is considered to play an important complementary role to international humanitarian law, since it offers additional protection for individual rights. The four Geneva Conventions contain certain minimum guarantees for the treatment of the civilian population, and is applicable to all parties in an internal armed conflict. Its provisions forbid attacks on non-combatants (including soldiers who have laid down arms and those placed *hors de combat* by sickness, wounds or detention); torture and cruel treatment; the taking of hostages and the passing of sentences and the carrying out of executions except by properly constituted courts affording all the judicial guarantees which are recognized as indispensable by the nations of the world. Common Article 3 is supplemented by the Additional Protocol to the Geneva Conventions relating to the

Protection of Victims of International and Non-International Armed Conflicts. Sudan has not ratified these protocols, but many of their provisions have the status of customary laws, having been developed through practices, resolutions *opinio juris* and more flexible interpretations of the current legal framework; and as such remain binding on all states. For example articles of Additional Protocol II include the prohibition on making civilians the object of attack (Article 13); the prohibition on destruction of articles essential to the survival of the civilian population and the use of starvation (Article 14); and the forced displacement of civilians (unless the security of the civilians involved or imperative military reasons so demand) (Article 17).⁹⁹

As it is a case of non-international, internal armed conflict, both opposition groups and the Government of the Sudan should be governed by common article 3 of the Geneva Conventions, which provides that "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex ...". Moreover, in its resolution 2444 (XXIII) on respect for human rights in armed conflicts, the United Nations General Assembly, expressly recognized the principle of civilian immunity and affirmed that "it is prohibited to launch attacks against civilian populations as such". In addition, customary international law and international humanitarian law prohibits indiscriminate attacks against civilian populations, starvation of civilians as a method of combat, and the pillage and destruction of civilian property.

⁹⁹ "Sudan: Empty promises? Human rights violations in government-controlled areas" Amnesty International, 16 July 2003. AI Index: AFR 54/036/2003

Although it is difficult to establish the exact number, approximately 2 million people are believed to have died in southern and central Sudan as a result of the war. In the first six months of 1998 alone, several thousand people were reported killed. Furthermore, 4.5 million people, one out of every five of the country's total population, were displaced at least once since the beginning of the war in 1983. Many lack the land or dependable security to farm, malnutrition and disease are rampant and relief efforts too many locations are impeded. According to a World Food Programme mid-1998 assessment, out of a total population of 27 million, there were 2.6 million people at risk of starvation in the Sudan, 2.4 million of them in southern Sudan, not counting the estimated 100,000 people isolated and unassisted in SPLA-held areas of the Nuba Mountains.¹⁰⁰

In addition to the displaced inside the Sudan, approximately 360,000 Sudanese were refugees in six neighbouring countries, having fled the violence in southern Sudan. Additional large numbers of Sudanese have left the Sudan and reside in countries such as Egypt, albeit without formal refugee status.

Since the civil war began in 1983, more than 2 million people died as the result of fighting between the Islamic Government in the north and insurgents in southern Sudan. The civil war continued unabated, and all sides involved in the fighting were responsible for abuses in violation of humanitarian norms. At year's end, the Government controlled most of Sudan, except for parts of the south and the Nuba Mountains. Efforts to seek a

¹⁰⁰ Commission on Human Rights, Fifty-fifth session, Agenda item 9, paragraph 42. Found on <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/a32a934fa6d8682a802568180049c6aa?OpenDocument>

peaceful resolution to the civil war were unsuccessful. According to the report of the U.N. Special Rapporteur on Human Rights in Sudan, on June 21, 1995, an Antonov aircraft of the Sudanese forces dropped 22 bombs on Regifi and surrounding areas in the Nuba Mountains, killing 6 civilians and injuring 12. Eyewitnesses reported that the bombardment was concentrated on a densely populated area, indicating the Government's intent to terrorize the civilian population and to force the population to flee the area.¹⁰¹

Both sides routinely displaced and often killed civilians, and committed numerous violations of humanitarian law, during their offensive operations, most of which were carried out by the Government. The Government commonly and deliberately targeted aerial bombing and militia raids to disperse civilians in displaced persons camps and in areas where they had congregated to receive relief supplies. In September 2004, for example, the towns of Bideet and Ombassi were bombed resulting in 15 deaths and 11 wounded. Also, a military barge fired indiscriminately on villages in the Yomcir area, displacing additional people; aerial bombing accompanied the barrage. In November of the same year, government bombers attacked several towns in Western Equatoria in what appeared to be stepped-up efforts to terrorize the populace.

Between March 1998 and December 1998, four hospitals run by the Norwegian organization Norwegian People's Aid (NPA) were reported to have been bombed over a dozen times. NPA reported a bombing on 5 March of their hospital at Yei that left 16 people dead and 22 wounded; two others on 10 April and 20 July with the latter leaving

¹⁰¹ Commission on Human Rights, Fifty-fifth session, Agenda item 9. Found on: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a32a934fa6d8682a802568180049c6aa?OpenDocument>

two persons wounded. On 9 August the hospital at Nimule was bombed and that of Yei again on 23 August. Labone hospital was bombed on 10 September and that of Nimule on 30 September leaving two dead and three wounded. Indiscriminate bombings of civilian targets continued and in January 1999, following aerial bombing from an Antonov aircraft and artillery shelling, several villages in the Menza district in Blue Nile State were reported to have been destroyed.¹⁰²

Both the Government of the Sudan, despite its signature of the Mine Ban Treaty of 4 December 1997, and the SPLA continue to use landmines, which have been planted around civilian towns and communication roads in the south of the Sudan. The then Department of Humanitarian Affairs (DHA) Mine Clearance and Policy Unit report on the situation of landmines in the Sudan (July 1997) found that the most credible estimate of the number of landmines in the country is in the range of 500,000 to 2 million. The DHA report also found that landmines are causing a great deal of death and dislocation in the Sudan and that while many areas are secure enough to permit the return and repatriation of internally displaced persons, they remain uninhabitable due to landmines.

¹⁰² Ibid, Paragraph 81-83.

CHAPTER FOUR

A CRITICAL ANALYSIS OF THE EFFECTIVENESS OF THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS IN SUDAN CONFLICT

INTRODUCTION

Both international humanitarian law and international human rights law strive to protect the lives, health and dignity of individuals, albeit from a different angle. It is therefore not surprising that, while very different in formulation, the essence of some of the rules is similar, if not identical. For example, the two bodies of law aim to protect human life, prohibit torture or cruel treatment, prescribe basic rights for persons subject to a criminal justice process, prohibit discrimination, comprise provisions for the protection of women and children, and regulate aspects of the right to food and health. On the other hand, rules of international humanitarian law deal with many issues that are outside the purview of international human rights law, such as the conduct of hostilities, combatant and prisoner of war status and the protection of the Red Cross and Red Crescent emblems.¹⁰³ Similarly, international human rights law deals with aspects of life in peacetime that are not regulated by international humanitarian law, such as freedom of the press, the right to assembly, to vote and to strike.

International human rights law lays down rules binding governments in their relations with individuals. While there is a growing body of opinion according to which non-state actors – particularly if they exercise government-like functions – must also be expected to respect human rights norms, the issue remains unsettled. On the other hand, international humanitarian law binds all actors to an armed conflict: in international

¹⁰³ Michel Veuthey, "International Humanitarian Law and the Restoration and Maintenance of Peace." *African Security Review*, Vol. 7, No. 5, 1998

conflicts it must be observed by the states involved, whereas in internal conflict it binds the government, as well the groups fighting against it or among themselves. Thus, international humanitarian law lays down rules that are applicable to both state and non-state actors.

As we have already seen earlier, Sudan is party most of the international human rights instruments. Sudan is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. Both these treaties were ratified in 1986. Sudan has also ratified or acceded to: the Convention relating to the Status of Refugees (1974); the International Convention on the Elimination of All Forms of Racial Discrimination (1977); the Convention on the Rights of the Child (1990); and the African Charter on Human and Peoples' Rights (1986). Sudan is a High Contracting Party to the Geneva Conventions of 12 August 1949, which it acceded to in 1957. It is therefore bound to apply the provisions of these treaties. In addition, Sudan has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1986); though it has not yet ratified the treaty it is obligated under international law not to take any action which would defeat its object and purpose.¹⁰⁴

In this chapter, we are evaluating the effectiveness of the international human rights instruments, owing to the fact that they are legally binding instruments following their signing and ratification by states. In a more particular way, we are going to assess the effectiveness of these instruments in the South Sudan context, basing on the fact that

¹⁰⁴ "Sudan: Empty promises? Human rights violations in government controlled areas" *Amnesty International* 16 July 2003.

there was a massive violation both the international human rights law and the international humanitarian law during the twenty-two years of civil strife.

The United Nations as a human rights protecting body

The adoption of the Universal Declaration of Human Rights in 1948 marked a new era for the recognition and protection of the inherent dignity of all human beings. By reaffirming the most fundamental rights and freedoms of each individual, the Universal Declaration served as an important inspiration for subsequent human rights standards at the international, regional, and national levels. Today, all states in the world have agreed to be bound by at least one of the six major international human rights treaties.

In the wake of the Vienna Conference, the United Nations has intensified efforts to refocus its human rights programme, shifting its main concern from standard setting to implementation. This effort was led by the main intergovernmental body in this area, the United Nations Commission on Human Rights, supported by the secretariat of the United Nations Centre for Human Rights. In 1993, the General Assembly significantly strengthened the Organization's human rights machinery by creating the post of United Nations High Commissioner for Human Rights.¹⁰⁵

Mandated to coordinate all United Nations human rights programmes and improve their impact and overall efficiency, the High Commissioner is the chief official responsible for human rights. Operating under the direction and authority of the

¹⁰⁵ Radhika Withana-Arachchi, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. See, <http://www.un.org/rights/HRToday/action.htm>

Secretary-General as his representative in the field of human rights, the High Commissioner also reports to the General Assembly, the Economic and Social Council and the Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights (OHCHR) serves as the secretariat of the Commission on Human Rights, the treaty bodies and other United Nations human rights organs, and is the focal point for all United Nations human rights activities.¹⁰⁶

In 1997, as part of wide-ranging reforms to enhance the effectiveness of the United Nations, Secretary-General Kofi Annan placed human rights at the heart of all the work of the Organization. The Secretary-General organized the work of the United Nations into four substantive fields, i.e. peace and security, economic and social affairs, development cooperation, and humanitarian affairs, with human rights as the issue fifth priority area across each of these four programme fields. The United Nations is thus enhancing its human rights programme by integrating a human rights focus into the entire range of the Organization's activities. In addition, the High Commissioner's Office and the Centre for Human Rights were consolidated into a single Office of the United Nations High Commissioner for Human Rights. This merger gave the new High Commissioner a solid institutional basis from which to lead, as the focal point of all systemwide integration of human rights activities, the Organization's mission in the domain of human rights.¹⁰⁷

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

Strengths of the human rights instruments

Human rights instruments are all reached at through consent. It is after the signing and ratifying of these instruments by states that they become binding upon them. Since they emanate from a state consensus, they serve as guiding principles for states to follow in the protection of human rights. The human rights instruments can be termed as charter-based or treaty-based.

Charter-based instruments

There is no single mechanism for the enforcement of human rights instruments on the international level. Many questions of violating human rights instruments are dealt with in political fora, such as the Security Council, the General Assembly, or the Commission on Human Rights. The Commission is mandated to discuss any matter in relation to human rights and meets in Geneva for six weeks once a year. These fora are called the Charter-based mechanisms. For the work of UNICEF, particularly important advocacy tools linked to the Charter-based mechanisms are the Special Rapporteurs on both country and thematic issues. Special mention should here be made of the Special Rapporteur on Violence against Women and the Representative of the Secretary-General on Internally Displaced Persons. Both of these report to the Commission on Human Rights and UNICEF can provide information to them or use their expertise in a certain situation. The mandates of these Rapporteurs are defined in the resolutions that create them.

As a member of the United Nations, Sudan is legally bound by the UN Charter. This is why issues of human rights abuses in South Sudan could be discussed in the political fora, such as the Security Council, the General Assembly, and the Commission on Human Rights. It is out of the same that the Special Rapporteurs could be sent to Sudan to come with reports based on first hand information on human rights violations.

Treaty-based instruments

There are several international human rights treaties which establish committees or bodies to oversee the implementation of the provisions of the treaty. Treaty-monitoring bodies, or treaty bodies, are the committees of experts set up to review States' compliance with their international obligations following from the main international human rights instruments. Committee members are independent, impartial experts elected by the governments that are States Parties to the treaty. The treaty bodies have three main functions: First, they review reports submitted by States Parties on how they are implementing the provisions of the treaty. Secondly, they make comments on the implementation of the treaty, including their interpretation of articles of the treaty. Finally, they receive individual petitions against a State Party, when such a mechanism exists.¹⁰⁸

¹⁰⁸ "An Overview of the United Nations Human Rights System." This article is found on: http://www.hri.ca/fortherecordCanada/vol_intro/UN_Guide.htm

Each human rights treaty establishes a body which monitors the implementation of the treaty. These are called treaty-based instruments on which independent experts serve, e.g. Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee against Torture Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child. These treaty-based mechanisms receive and review reports from state parties, and may review individual complaints through separate acceptance by the state parties. For example, under the CCPR, if a state has ratified Optional Protocol 1, then an individual can file a complaint against that state with the Committee. However, this type of complaints only applies to the CCPR, CERD, and CAT. Treaty-based mechanisms also provide for a complaint procedure between states, however, this is rarely used.

In addition, these bodies may issue general comments. For example, in the section on derogations the general comment on Article 4 of the CCPR issued by the Human Rights Committee is described in some details. General comments are useful in that they are a tool for interpretation of certain provisions of the treaty that the Committee is supervising implementation of. The observations on state reports and general comments issued by the various committees are not legally binding, but are important tools in understanding the contents of the treaties and should guide states in their efforts to implement their legal obligations under the treaty.¹⁰⁹

¹⁰⁹ See article on: http://coe-dmha.org/unicef/HPT_Session5Reading5_1.htm

Every four or five years, State Parties have to submit a report to the relevant treaty-monitoring body on the steps taken to implement the provisions of the treaty. Treaty bodies review those reports during sessions held two or three times a year, in the presence of representatives from the government under review. During the sessions, committee members usually engage in a dialogue with the government delegations, asking questions and/or clarifications on the content of the report. Following review of the report, the treaty body publishes its concluding observations on the State's performance in respect of its obligations and makes recommendations as to further measures which the country might take. Although these concluding observations are not legally-binding in international law, they are however considered "authoritative". States are expected to follow-up on these recommendations and to report on steps taken in subsequent reports to the treaty body.¹¹⁰

Treaty bodies are a major step towards the realization of the UN purpose of promoting and encouraging of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Article 1). They are also a realization of Article 13 (1) which notes that the General Assembly shall initiate studies and make recommendations regarding the realization of human rights for all.¹¹¹ These provisions are not an exception to Sudan. They are very relevant to it due to the diversity in race, sex, language and religion. Sudan has both Arabs and blacks, men and women, people of different language backgrounds and at the same time its citizens profess different faiths ranging from Islam, Christianity and other traditional religions.

¹¹⁰ "An Overview of the United Nations Human Rights System." This article is found on: http://www.hri.ca/fortherecordCanada/vol_intro/UN_Guide.htm

¹¹¹ Malcolm N. Shaw, *op. cit.*, p. 194.

As a party to the United Nations, Sudan has to accept the presence of the Special Rapporteurs in its territory. The reports prepared by the Special Rapporteurs on the human rights situation in its territory, and the recommendations made remain a concern to it and are taken as a reflection of the reality and so it has to appropriately respond to it.

The role of the human rights defenders

The adoption of the Universal Declaration of Human Rights in 1948 marked a new era for the recognition and protection of the inherent dignity of all human beings. By reaffirming the most fundamental rights and freedoms of each individual, the Universal Declaration served as an important inspiration for subsequent human rights standards at the international, regional, and national levels. Today, all states in the world have agreed to be bound by at least one of the six major international human rights treaties.¹¹²

However, a major gap still remains between the letter of these treaties and the actual protection of human rights on the domestic level. Domestic implementation of human rights standards largely depends on the ability of individuals and groups to promote and protect human rights and to pressure their governments to live up to their legal obligations. By documenting and exposing human rights violations and holding governments accountable, by seeking remedies for victims and educating populations on their human rights, these individuals—commonly referred to as "human rights defenders"—play a crucial role in combating violations and improving human rights

¹¹² "Analysis of the newly adopted Declaration on Human Rights Defenders." See, http://www.humanrightsfirst.org/defenders/hrd_un_declare/hrd_declare_1.htm

situations. Human rights defenders can be anyone working to promote and protect human rights, including lawyers, relatives of victims, teachers, trade unionists, journalists, members of peasants or women's organizations, and other human rights activists.¹¹³

The international community has repeatedly acknowledged the vital role of human rights defenders in the implementation of human rights on the domestic level. International monitoring mechanisms, such as the Special Procedures of the Commission on Human Rights and the UN Treaty Bodies, often rely heavily on the findings of local and national human rights activists in their assessment of domestic human rights conditions. Both the UN Secretary General and the High Commissioner for Human Rights have repeatedly expressed their strong support and admiration of the work of human rights defenders.¹¹⁴

This support of the human rights defenders by the states offers the international human rights instruments the legality and support towards the mission of protecting human rights and fundamental freedoms. In South Sudan, for example, human rights defenders, despite facing many hardships from both the Government side and from the SPLA/M, received support and encouragement from the international community.

¹¹³ Ibid.

¹¹⁴ See, e.g., the opening statement of the High Commissioner for Human Rights at the last session of the Working Group on Human Rights Defenders, February 23, 1998.

Limitations of the international human rights instruments

Although the international human rights instruments are very useful in the protection of human rights, there are certain circumstances under which they are rendered incapable of sufficiently addressing the problem of violating human rights. There are certain principles of international law that limit the capability of the international human rights instruments to address the issue of human rights violations, especially when such occur within the territory of a certain state. Some of these principles are the principle of state sovereignty and the principle of good faith.

State sovereignty

State sovereignty denotes the competence, independence, and legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without intrusions from other sovereign states. These matters include the choice of political, economic, social, and cultural systems and the formulation of foreign policy. The scope of the freedom of choice of states in these matters is not unlimited; it depends on developments in international law (including agreements made voluntarily) and international relations.¹¹⁵

The concept of sovereign rule dates back centuries in the context of regulated relationships and legal traditions among such disparate territorial entities as Egypt, China, and the Holy Roman Empire. However, the present foundations of international law with

¹¹⁵Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law," in *American Journal of International Law* 84 (1990), p. 867.

regard to sovereignty were shaped by agreements concluded by European states as part of the Treaties of Westphalia in 1648.¹¹⁶ After almost 30 years of war, the supremacy of the sovereign authority of the state was established within a system of independent and equal units, as a way of establishing peace and order in Europe.¹¹⁷ The core elements of state sovereignty were codified in the 1933 Montevideo Convention on the Rights and Duties of States. They include three main requirements: a permanent population, a defined territory, and a functioning government. An important component of sovereignty has always been an adequate display of the authority of states to act over their territory to the exclusion of other states.

The post-1945 system of international order enshrined in the UN Charter inherited this basic model. Following decolonization, what had been a restrictive and Eurocentric (that is, Western) order became global. There were no longer "insiders" and "outsiders" because virtually every person on Earth lived within a sovereign state. At the same time, the multiplication of numbers did not diminish the controversial character of sovereignty.

In accordance with Article 2 (1) of the UN Charter, the world organization is based on the principle of the sovereign equality of all member states. While they are equal in relation to one another, their status of legal equality as a mark of sovereignty is also the basis on which intergovernmental organizations are established and endowed with capacity to act between and within states to the extent permitted by the framework

¹¹⁶ Francis Hinsley, *Sovereignty* (London: Basic Books, 1966), p. 126

¹¹⁷ Stephen D. Krasner, "Compromising Westphalia," *International Security* 20 (Winter 1995—1996), p. 115.

of an organization. In 1949 the International Court of Justice (ICJ) observed that "between independent States, respect for territorial sovereignty is an essential foundation of international relations."¹¹⁸ Thirty years later, the ICJ referred to "the fundamental principle of state sovereignty on which the whole of international law rests."¹¹⁹

Within the Charter of the UN, there is an explicit prohibition on the world organization from interfering in the domestic affairs of member states. What may be the Charter's most frequently cited provision, Article 2 (7), provides that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters that are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter."

According to Reisman,¹²⁰ state sovereignty has evolved in such a way that it has made some human rights conventions to be of a diverse binding nature. This has made some conventions to be purely optional and bind only those States which have accepted them by ratifying the relevant treaties (for example, rules protecting workers). Some are binding in a region or some regions, but clearly not at the universal level or they are binding for all States, but they may be waived by an express contrary treaty. Others are seen as "peremptory norms of general public international law"⁵ and these form the main part of the famous *jus cogens*. This makes of course quite a difference when a State violates a rule of human rights. Since there exists a hierarchy among international legal

¹¹⁸ ICJ Reports, 1949, p. 4.

¹¹⁸ ICJ Reports, 1986, para. 263.

¹²⁰ Michael Reisman, *op. cit.*

rules protecting human rights, their violation does not call for one uniform response; the kind of reaction expected from other States will vary according to the degree of "bindingness" of the violated rules.

State sovereignty, if misinterpreted and misused, can lead to a massive violation of human rights by states against their citizens. This can be done through the invocation of Article 2 (7) of the United Nations Charter. The Government of Sudan carried out a massive human rights violation of its southern citizens on the pretext that it was a purely internal affair. A good example of the Government of Sudan exercising sovereignty was in 1994. The Government remained hostile toward investigation of its human rights record and was highly defensive about foreign criticism. It bitterly denounced the 1994 report on Sudan by the U.N. Special Rapporteur, Gaspar Biro, and again denied permission for Biro to visit Sudan. Biro wrote his 1995 Report, which the Government also condemned, and his 1995 Interim Report to the U.N. General Assembly based on sources outside Sudan. In February the Government revoked the permission it had granted to Amnesty International to send observers to Sudan. However, the Government allowed two other international human rights NGO's, Human Rights Watch and the Lawyers Committee for Human Rights to visit.¹²¹

Conclusion

On the analysis of the international human rights instruments, we can conclusively affirm that during the civil war in South Sudan that involved the

¹²¹ U.S. Department of State, Sudan Human Rights Practices, 1995, Section 4, "Governmental Attitude Regarding International and Non-governmental Investigation of Alleged Violations of Human Rights See, <http://www.domini.org/openbook/sudan95.htm>

Government of Sudan and the SPLA/M claimed millions any lives and left many people displaced. There was a massive violation of human rights from both the Government of Sudan as well as from the SPLA rebel group. Since human rights are an international concern, the fundamental question that we can pose is: why didn't the international community come in handy to stop the violations? One immediate response is that the international community can not provide sufficient enforcement measures against the violation of human rights arising within the territory of a particular state.

The question of sovereignty and equality of states also seems to curtail the effectiveness of the international human rights standards. From an international arena, all states are equal as sovereign entities, and so the international communities may shy away from intervening when it comes to civil wars in a particular state. The Civil war under question (in South Sudan) was seen in some sense as a Sudanese affair. Though the violation of human rights became an international concern, Sudan's sovereignty was to be upheld, and this is might have influenced the effectiveness of the international human rights standards.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

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Documents such as the Universal Declaration of Human Rights proclaim the ideals of nations aspiring to respect the human rights of people of all nations. Legally, however, human rights are protected by treaties, where nations agree to abide by certain restrictions on their conduct and to uphold certain freedoms and basic needs for citizens. Thus, international human rights law, through treaties, acts upon states. Commissions and other bodies monitor compliance with these treaties. The enforcement of human rights treaties naturally requires nations to comply with the terms of their agreements.

The prolonged war in the Sudan affected mainly the civilian population, whose plight should be regarded as one of the most important human rights concerns facing the international community. Although of rather low intensity, the war had a disproportionately high impact on the civilian population, in particular women and children, who become hostages and/or targets of the belligerents. Consistent and undisputed evidence indicates that the war was conducted in disregard of human rights and humanitarian law principles, and that violations are perpetrated by all parties, albeit with varying degrees of responsibility, the greater portion being attributable to the Government. Grave concern was also expressed in different quarters about the behaviour of the SPLA and other factional leaders.

The violations of human rights and humanitarian law by the parties to the conflict had a number of tragic human consequences, such as forced displacement, killings, rape and abduction of women and children, and slavery. The famine, which killed hundreds of

thousands in 1988, was triggered and exacerbated by a long series of acts rooted in human rights violations and abuses. During all Special Rapporteurs' the missions, grave concern were expressed about the recurrence of human rights violations that really endangered the security situation and undermined the stability of the country.

Based upon all the information obtained, including from first-hand sources, it is apparent that serious violations were committed. These violations include in summary executions, extrajudicial killings, arbitrary arrests, detention without due process of law, displacement of persons, systematic torture and restriction or denial of the freedoms of religion, expression, association and peaceful assembly.

Both sides of the conflict in southern Sudan have committed human rights abuses and violations of international humanitarian law by killing, wounding and torturing civilians, abducting civilians, including women and children, recruiting children into armed forces, attacking villages and destroying property and crops, forcing millions of people to become internally displaced or refugees. The grave human rights abuses carried out by forces of the SPLA and militia allied to it - extrajudicial executions, killings of civilians, rape, abductions, looting and forced displacement - have been documented by Amnesty International. However grave the violations of international humanitarian law by the SPLA and armed groups allied to it, they can never excuse or be used as justification for breaches by a government of the international and regional human rights treaties it is bound to respect.

The breaches of international humanitarian law which caused so much suffering were the result of a lack of accountability of the security forces. The government army,

the Popular Defense Forces -a government paramilitary force- and northern and southern militias supported by the Sudanese government killed civilians, raped and abducted women, kidnapped and recruited children and destroyed homes and property. By failing to investigate or bring the suspected perpetrators of such abuses to justice the government showed that these actions were condoned and even encouraged.

Impunity for human rights violations not only allows perpetrators to go unpunished for their actions, but also creates an environment in which further human rights violations become more likely. Failure to protect fundamental human rights and discrimination against particular groups, on grounds of ethnicity, region, religion or gender, have been the cause of present and past conflicts and contain the seeds of future conflicts. The civil and political rights described in this report are only a few of a wide spectrum of civil, political, social, economic and cultural rights which have been violated in the Sudan. In the southern Sudan the Government of Sudan tried to resolve conflicts whose deep causes lied in problems of discrimination and justice by condoning or ordering actions which have violated human rights. It was only when the human rights of all people in Sudan were taken into account to a considerable extent that a rather durable peace developed, especially into the signing of the Comprehensive Peace Agreement.

Recommendations

The Government of the Sudan must honour its obligations under international law and protect all citizens against violations of their fundamental rights. Freedom from slavery is a non-derogable right and slavery is prohibited by a number of international instruments to which the Sudan is a party, in particular, the Slavery Conventions of 1926

and 1956, ILO Conventions Nos. 29 and 105, and the Convention on the Rights of the Child.

The Government, the SPLA and any other armed groups involved in the armed conflict should comply fully with the standards set forth in the Geneva Conventions and the applicable international human rights instruments.

All parties must ensure that civilian populations, in particular women and children, are not the target of military operations. The following types of operation carried out by regular or irregular armed groups supported by the parties must be banned and transgressors punished- raids, burning and looting and physical attacks on the civilian population, including the destruction of their means of livelihood and their survival economy; reprisal against the unarmed population in response to military attacks; forced population displacement and arbitrary or discriminatory restriction of freedom of movement; recruitment of underage child soldiers; hampering access to the civilian population by humanitarian aid workers and aid delivery; the use of anti-personnel mines; other land mines must be mapped and not affect corridors used for humanitarian relief.

The Government of Sudan should ensure that perpetrators of acts against national and international laws are punished, and it must cease aerial bombing of civilians and humanitarian sites, such as hospitals. In order to put an end to slavery-like practices in the Sudan, the government should take all possible steps to prevent further perpetration of the acts of raiding villages, killing civilians and raping and abducting women and children. It should also encourage and support grassroots activities aimed at the release of abducted

women and children, and ensure the cooperation of the international community with such activities.

The government should also establish a joint Sudanese-international mechanism for the purpose of tracing abducted women and children, ensuring their reunification with their families, and providing them with income-generating activities in order to lower their vulnerability and to prevent their further enslavement. It should as well allow an enquiry into the causes of slavery in order to establish the truth and to ensure eradication of the problem. National and international organizations and specialized agencies could participate and provide resources and expertise.

As a contribution to peace and in conformity with international standards, the parties should take measures to demobilize young soldiers. Development projects by United Nations agencies and NGOs to facilitate their reintegration must be promoted and supported by the international community.

In order to ensure the prevention of torture, the Government must ensure that detainees are held only in places officially recognized as places of detention and that their names and places of detention are kept in registers readily available and accessible to those concerned, including relatives and friends. Detainees should also be granted immediate access to legal counsel. In addition, the Government should ensure that education and information regarding the prohibition of torture are included in the training of civil or military law enforcement personnel, medical personnel, public officials and other officials who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

The government should also ensure a prompt and impartial investigation when an individual alleges he has been subjected to torture; ensure that the victim of an act of torture obtains redress and has an enforceable right to fair trial and adequate compensation, including the means for as full rehabilitation as possible; and ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Finally, the Government of the Sudan should consider accepting a United Nations human rights field presence.

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