



*Seeking Reparation for Torture Survivors*



## CRIMINAL LAW & YOUR RIGHTS

MARCH 2008

## What are your rights?

As a human being and as a citizen you automatically have certain rights. These rights are not a gift from anyone, including the state. In fact, the state must protect your rights. For example, the right to be free from torture means that no state agents are allowed to torture you. Further, the state must do all it can to prevent torture and to punish those guilty of torture.

The most important rights are often called basic rights. In Sudan, these rights are listed in the Bill of Rights of the National Interim Constitution. The Constitution is the highest law in Sudan. It was adopted in 2005. The Constitution says that "We, the People of Sudan, are committed ...to uphold values of justice, equality, human dignity and equal rights and duties of men and women." The Bill of Rights makes international human rights part of Sudanese law. These are the rights recognised by states around the world. Sudan has ratified some of the most important international human rights treaties like the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. This means that the state has agreed to respect these rights and to apply them in Sudan.

### The basic rights listed in the Bill of Rights include:

- **The right to life.** It is one of the most important rights and is fundamental to all other rights.
- **The right to liberty and security.** It is understandable that persons who are suspects or have been convicted of serious crimes may have to be arrested and imprisoned. But there is always a real danger of abuse, because people who are arrested or detained may be completely innocent and there may be no justifiable reason to take away their freedom. There are many rights that protect you from such arbitrary arrest and detention. For example, in any case where the police want to arrest you, you should be informed of the reasons and you should be given the right to see a lawyer.
- **The right to fair trial.** This means that anyone who is a suspect or an accused must be allowed to defend him or herself. If you become a suspect or an accused, you have the right to be presumed innocent. Being accused of a crime doesn't mean that you are guilty; it is just an accusation. The police and prosecutors must prove that you have actually committed the crime and are guilty. You also have the right to a lawyer which is very important so that you can defend yourself and there is less risk of abuse of power. All trials should be public and fair. There is a saying that it is "better that ten guilty persons escape than that one innocent suffer."
- **Prohibition of slavery and forced labour, and the prohibition of torture.** It is widely recognised that the whole international family bears some guilt for allowing slavery to have taken place. The same attitude of shame

should apply to torture. Torture is one of the worst experiences that anyone can suffer; it often leaves permanent physical and psychological scars. There can never be any excuse for torture, not even trying to prevent or solve the most horrible crime because torture violates fundamental human dignity. Whatever you have done, the authorities should never beat you or inflict pain to force you to do something or for any other reasons.

- **Freedom of expression, assembly and association.** These are important rights. They allow you to speak freely, to meet up with others, and to form groups and organisations, as long as you are not doing harm to the rights of others or disturbing public safety as determined by law.
- **Other rights include:** the right to respect private and family life, the right to freedom of thought, conscience and religion.

All these rights are constitutional rights. The Constitution is called “the father of laws” which means that the Constitution is supreme and higher than ordinary laws. All laws should follow the Constitution and should be compatible with constitutional rights. For example, the Bill of Rights says that you have the right to be free from torture or cruel, inhuman or degrading treatment. However, if you are a victim of torture, the ordinary laws do not say that those responsible for all forms of torture should be prosecuted and punished, and that you have the right to obtain compensation and justice. This is a weakness with the ordinary laws, as they should clearly protect your rights; anyone who violates the rights should be prosecuted, tried, and, if guilty, punished.

## **What is the law?**

- The law is a set of rules that have been developed to make sure that citizens and others know what their rights and responsibilities are.
- Laws are made by parliament and are applied by the authorities, such as the police or general prosecution.
- The courts should interpret the law and rule on any disputes or accusations.
- The highest court in Sudan is the Constitutional Court.
- All persons in Sudan have the right to bring a case to the courts and judges should be independent in doing their work.

## **Why does criminal law matter?**

- Criminal law deals with crimes and punishments. Most of the crimes are defined in what is called the Penal Code. This Code contains the definitions of the

acts which constitute crimes and the punishments for committing them. It also determines the rules of criminal liability. But there are other laws which also contain crimes and punishments: pharmaceutical laws, for example, criminalise certain acts connected to selling medical drugs.

- Most of the basic rights should be protected by criminal laws. There should be definite crimes to punish those who violate these rights, and this will act as a deterrent against these violations.
- Accusing persons of committing crimes is a serious matter. You cannot be sure of the guilt of the suspect or the accused persons. History shows that many people were wrongfully accused, convicted and punished. Criminal justice rules must ensure that this does not happen and that individuals can defend themselves properly.
- Punishments can be harsh and disproportionate to the crime. A good example can be found in a famous 19<sup>th</sup> century's French novel titled "Les Miserables" by Victor Hugo, in which a man was treated like a dangerous criminal and was imprisoned for stealing a piece of bread to feed his hunger. There are numerous laws in Sudan that provide for harsh punishments.
- On the other hand, criminal laws sometimes fail to protect society from certain crimes. For example, under Sudanese laws it is almost impossible to prove the crime of rape because four male eyewitnesses are needed. The law does not protect girls and women against sexual violence.
- Criminal laws should always maintain the balance between the right of individuals and society to be protected from crimes and the rights of accused persons to be treated in a lawful way. Convicted criminals should be punished in ways that are proportionate to the crimes, and the punishments should not be cruel, inhumane or degrading.

## **How does criminal law affect you?**

As a private citizen and as an ordinary person you may ask why you should be bothered about criminal law. You may think that there are people who should be tasked to deal with these matters and that they would have the powers and expertise to deal with it. After all, you are a law-abiding citizen and there is nothing to make you worry about these things.

Nevertheless, there is always a possibility that you or any person you care about might be accused of having committed a crime. It has happened to all sorts of people, and it is more likely to happen where the laws are weak, unclear or unfair that the result can be wrong convictions and unfair punishments. Conversely, you or a person you care for could be the victim of crime. Either way, there is a reason for you to be concerned about criminal justice.

The rate of crime and the degree of safety affect all aspects of life. It also affects the economic prosperity of the society which benefits from the rule of law.

## **Can criminal laws be defective?**

- Laws have to be carefully phrased because they determine the rights and the status of individuals; they also affect the liberty and safety of human beings. Badly drafted law can result in a loss of rights and can have a harmful impact on the liberty and safety of individuals.
- Laws that fail to put the right balance between protecting society from crime on the one hand and the liberty of individuals on the other are flawed. Prevention of crime and respect for the rights of accused can and should go hand in hand.
- Defective criminal laws are generally those laws which contribute to violations of human rights. These laws may fail to provide adequate protection against the violations and/or may result in a lack of punishment for those guilty.
- An example is the immunity given to members of the police and security forces. Everyone should be equal before the law. Law enforcement agencies and personnel should abide by the law. Where they are accused of a crime, they should benefit from all rights to defend themselves and to have a fair trial.
- The failure of the Penal Code to provide protection for rape victims is another example. The required proof of four male eye-witnesses to the actual act makes it impossible to convict anyone of rape. In one case, a man who had raped a little girl could not be convicted for rape and received only minor punishment even though there were several witnesses and medical evidence to prove his guilt.

## **How to make your rights a reality?**

- In order to make your rights a reality you have to know your rights and know how to claim those rights.
- In Sudan your rights are listed in the Bill of Rights of the National Interim Constitution. The Bill of Rights dictates that rights enshrined in the international treaties ratified by Sudan are part and parcel of your rights.
- There has never been a better definition of rights in any of the previous Sudanese constitutions.
- Nevertheless, many laws in Sudan do not grant or contradict the basic rights found in the Bill of Rights.
- 
- The first step therefore is to change these laws so that they reflect the rights and guarantee the protection of those rights.
- The Government has set up committees and a few laws have been reformed. However, more needs to be done to ensure that criminal laws respect your rights.

- There is a need for a serious and vigorous campaign to implement the needed changes through law reform.
- Your active contribution in the campaign for law reform is a practical way to assert your rights. You can talk to family members, friends, community representatives, officials and the media. You can also talk to lawyers and human rights organisations and tell them what should be done so that your rights are respected and protected. Your voice matters and the more people say publicly how the laws should protect and not violate their rights, the more likely it is that their views will be taken seriously.
- Together we can make Sudan a better place for us and future generations.