



*Seeking Reparation for Torture Survivors*



## **CRIMINAL LAW REFORM IN SUDAN**

### **RESOURCE MATERIALS**

**FEBRUARY 2008**

# I. THE BILL OF RIGHTS, INTERNATIONAL HUMAN RIGHTS STANDARDS AND THEIR INCORPORATION IN SUDANESE LEGISLATION

- ***What are human rights?***

Civil and political rights (such as prohibition of torture, freedom of expression, right to a fair trial) and economic, social and cultural rights (such as right to education and right to health)

Traditionally rights against state interference-

Article 27 (2) of the National Interim Constitution stipulates broader obligations. The state has “negative” duties to respect rights, for example not to engage in torture or arbitrary arrests, and “positive” duties to protect, promote, guarantee and implement the Bill of Rights, for example to reform its laws and judicial system to enable individuals to claim their rights effectively.

- **What are the sources of human rights?**

**International level:** international treaties and customary international law binding on Sudan as a state

International treaties: in the case of Sudan in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Right of the Child and the African Charter on Human and Peoples’ Rights

International treaties oblige the state of Sudan to comply with provisions and respect, protect and fulfil rights and provide remedies as appropriate

**National level:** Human rights guaranteed in or through constitutions, laws and regulations

In Sudan: the main source is the Bill of Rights in the Interim National Constitution.

Article 27 (3) provides for adherence to international standards. It reads: “All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.”

The Bill explicitly grants a number of civil, political and economic, social and cultural rights. The state may suspend the Bill of Rights during emergencies but some rights are so fundamental that they can never be suspended. According to

Article 211 (a) of the Interim National Constitution, these rights include: the right to life; sanctity from slavery; freedom from torture; the right of non-discrimination on the basis of race, sex, religious creed; the right to litigation; and the right to a fair trial.

- **Does Article 27 (3) of the Interim National Constitution ensure full implementation of international standards?**

Article 27 (3) of the Bill of Rights contains an unequivocal statement according to which binding international human rights treaties are an integral part of the Bill.

*Issue:* What happens where provisions in the Bill of Rights contravene international standards?

*Examples:*

Article 36 (2) of the Bill of Rights allows for the imposition of the death penalty against children

Article 33 of the Bill of Rights does not contain the prohibition of inhuman, degrading or humiliating punishment

The Interim National Constitution does not provide a clear answer on how to resolve any existing conflict. This is in particular the case with regard to the rights based on Shari'a law. As a source of legislation, it may be argued that Shari'a law ranks higher than international standards. However, it is a commonly recognised principle of interpretation that legal provisions need to be interpreted so that they conform to binding international law. If Sudan were to apply laws in contravention of its treaty obligations, it would be in breach of its international commitments.

- **How are rights and freedoms granted in the Bill of Rights to be implemented in legislation?**

Article 27 (2) provides that the state shall protect, promote, guarantee and implement the Bill of Rights

Article 27 (4) provides that Legislation shall regulate rights and freedoms enshrined in the Bill of Rights.

As a general rule, all arms of the state must adhere to Bill of Rights. This includes the courts which should apply the rights in its jurisprudence.

The Government through the state agencies has a duty to review existing legislation and repeal, amend and introduce legislation where necessary to ensure implementation of rights and freedoms.

- **What legal steps can individuals and others take to promote implementation of Bill of Rights?**

Individuals who are victims of rights violations can invoke their rights under the Bill of Rights in relevant criminal, civil or administrative proceedings.

If unsuccessful or where no other remedies are available, individuals can bring a petition to the Constitutional Court. The Constitutional Court has a mandate under articles 119-122 of the Interim National Constitution to promote human rights and review the constitutionality of legislation- where it declares a law as unconstitutional, the state would have to take the necessary steps to change it

Where national legal remedies have been exhausted, individuals or NGOs may also bring a case before the African Commission on Human and People's Rights, claiming a violation of a right under the African Charter and requesting the Commission to recommend specific legislative and other changes to be made.

## **II. PRINCIPLES OF CRIMINAL LAW**

- **What is criminal law?**

Criminal law is an integral part of any legal order and necessary to guarantee a safe and peaceful society. The term "criminal law" is used for all laws that prescribe offences and punishment for serious wrongs. The term "criminal justice" refers to the whole system of criminal law and the investigation, prosecution, trial and punishment of offenders.

- **What is the purpose of criminal laws?**

Criminal laws are meant to protect society from crime by stipulating penalties for offences. Punishments are designed to deter offenders from committing crimes. They are also meant to serve as punishment for the wrong committed. They may also be designed in such a way that offenders can be reintegrated once they have undergone the particular punishment.

- **What is problematic about criminal laws?**

Criminal laws may restrict liberties (e.g. imprisonment) and result in violation of fundamental human rights.

1. *Example:* A law that gives a judge the broad powers to determine what constitutes unacceptable conduct and what the punishment should be

2. *Example:* Law that fails to criminalise serious violations and protect victims, for example rape laws in Sudan

*General Principle:* Criminal law needs to strike a balance between the interest of the state to prosecute and punish wrongdoers and to respect and guarantee individual rights and freedoms

- **What are the principles of criminal law that are meant to protect individuals against arbitrary law-enforcement?**

## **I. Legality**

Nullem crimen sine lege = there should be no punishment without a legally prescribed offence at the time when the act was committed (Article 34 (4) of the Bill of Rights, Article 15 (1) International Covenant on Civil and Political Rights).

This principle protects individuals from prosecution for acts that were lawful at the time. The main reason behind this principle is that the individual could not know that his or her conduct was illegal and did not act with a guilty mind. If it is not clear what conduct is criminal, there would be a genuine risk that the state abuses its monopoly of power to criminalise and to punish individuals arbitrarily. This principle of legality is fundamental; it generally requires that criminal offences must be clear and well-defined and should be interpreted narrowly.

The only exception to the principle that there should be no punishment without a prescribed offence is international crimes (Article 15 (2) International Covenant on Civil and Political Rights). Anyone can be expected to know that genocide, war crimes and crimes against humanity are criminal acts even if they are not specifically mentioned in national criminal laws.

## **II. Presumption of innocence**

This is an important principle to protect individuals from arbitrary prosecution and punishment (Article 34 (1) of the Bill of Rights; Article 14 (2) of the International Covenant on Civil and Political Rights). It was developed in recognition of the drastic powers inherent in criminal law, such as the power to deprive an individual of his or her liberty.

This principle is to be ensured by the following rules and rights:

- The prosecution must prove the guilt of the accused beyond reasonable doubt
- The suspect/accused has the right to remain silent;
- The suspect/accused should not be forced to give evidence by unlawful means, such as torture.

### **III. Prohibition of undue punishment**

This principle is meant to prevent punishments that are excessive in light of the gravity of the offence or are inherently inhuman (Articles 6, 7 and 14 (7) of the International Covenant on Civil and Political Rights).

The following rules apply to ensure this principle:

- Punishments must be adequate (must reflect the seriousness of the crime);
- Double jeopardy: no-one should be punished twice for the same crime;
- Prohibition of corporal punishments;
- Prohibition of death penalty without due process and where imposed on minors.

- **What are the principles of criminal justice that are meant to protect individuals against arbitrary law-enforcement?**

Individuals have a number of procedural rights to protect them from unlawful and arbitrary arrest and detention, and the right to a fair trial to ensure equality of arms in the determination of guilt or innocence (Articles 29 and 34 of the Bill of Rights; Articles 9, 10, 11, 14 of the International Covenant on Civil and Political Rights).

In particular:

- The right to have access to a lawyer and to challenge the legality of detention as protection against arbitrary arrest and detention;
- The right to defend him/herself either in person or through a lawyer in a fair and public hearing as key fair trial rights

- **What are the principles of criminal law and justice when applied to crimes allegedly committed by state officials?**

The same general principles apply to crimes committed by state officials. It is generally recognised that officials have a special responsibility. The state holds the monopoly of power, and punishments against officials should be more

severe to reflect the breach of trust where they abuse their status or violate the law.

This principle is not always reflected in national laws that result in impunity, in particular:

- Where criminal laws do not fully capture wrongful conduct of officials, for example making torture and international crimes offences under national law
- Where officials are not subject to prosecution because of immunity laws.

### **III. NEED FOR AND GOALS OF CRIMINAL LAW REFORM**

- **Criminal law and human rights: why is there a need for criminal law reform in Sudan?**

Criminal laws in Sudan have facilitated violations because they are overly broad and contain offences and punishments that violate human rights. They have also failed to provide adequate protection against serious crimes such as rape. The laws do not proscribe international crimes in line with international definitions, and provisions such as immunity legislation have resulted in impunity for officials. The criminal justice system has suffered from inadequate laws and recourse to emergency rules that foster arbitrary arrests, detention and torture and raises concerns about the lack of fair trials. These shortcomings have been identified in a number of reports by national, regional and international actors and bodies. There is widespread recognition that the criminal laws need to be changed in order to implement the Bill of Rights contained in the Interim National Constitution, and to better ensure human rights protection, particularly for the most vulnerable members of society.

- **What are the goals of criminal law reform?**

Criminal law reform may serve one or several goals. It may: (i) implement particular notions of order and/or justice by defining human relationships and (un)acceptable conduct; or (ii) pursue “legal-technical” purposes of clarifying terminology and ensuring coherence and consistency of the law; or both.

Policy objectives of law reform may be, in terms of their intended impact on human liberties and human rights:

- I. **“Neutral”**: to respond to changed circumstances or gaps in a given system with a view to preventing crime, for example criminalising

harmful conduct arising out of the use of modern technology, such as cyber crime, or to abolish offences that are no longer relevant

- II. **“Negative”**: to use criminal laws as a means of quashing dissent by restricting political and personal freedoms, for example criminalising peaceful demonstrations and imposing excessive punishments
- III. **“Positive”**: to respond to perceived shortcomings and to change criminal laws so that they reflect a society with respect for fundamental rights while protecting the populace from crime.

In Sudan, the main “positive” goal should be to promote full implementation of the Comprehensive Peace Agreement and the Bill of Rights.

This requires that:

- criminal laws are brought in line with fundamental liberties, human rights and the rule of law.

To ensure the highest legal standards, laws should be drafted in clear and coherent language and should be consistent, both internally and externally in relation to other laws.

Law reform concerns not only the result but also the process. It is a way of raising awareness about rights and giving everyone concerned a chance to voice their concerns in a fair manner so as to ensure that the laws are the outcome of a genuine debate and reflection.

To this end, the process should:

- be broad-based and transparent
- reach out to all stakeholders in society
- ensure that perspectives of those affected by laws are taken into consideration.

## **CASE STUDY**

### **RAPE LEGISLATION IN SUDAN**

*“Sudan government vs. al-Sir Muhammad al-Sanussi:* In 1986, a man reported to the local police station in Khartoum the case of a 6 year-old child whom he found lying unconscious nearby a football stadium with clear indications that she had been sexually assaulted. Authorised medical examination confirmed that the child had indeed been raped. The police launched an investigation, which led to the arrest of the suspect al-Sir al-Sanussi on charges of raping a minor. It was revealed that the suspect had picked up the victim who had been playing with her siblings and other playmates in front of their house. Pretending that he wanted to buy her sweets, the suspect took the girl to a remote spot where he sexually assaulted her and left her unconscious.

The criminal court found the accused al-Sir al-Sanussi guilty as charged on grounds of compelling evidence gathered by investigators, which comprised of:

- the medical evidence that the victim had been raped;
- the testimonial evidence account of the victim which confirmed the events leading to her ordeal, while also pointing at the accused;
- the fact that the victim and her playmates easily recognised the accused in an identity parade;
- the fact that the blood stains which were found on the suspect’s clothes belonged to the same blood group of the victim.

The court accordingly found the accused guilty of the crime of rape stipulated in article 317 of the 1983 penal code (sexual intercourse with a minor) and sentenced him to 10 years imprisonment and 100 lashes.

Yet the Supreme Court overturned the trial court verdict on the grounds that there was no sufficient evidence to substantiate the charge of committing a *zina* with a minor as stipulated in article 316 and 317 of the 1983 penal code. The Supreme Court, in a correct application of the existing law, concluded that the evidence needed was four male witnesses or a confession. In the absence of either of the two, the Supreme Court ruled to return the case to the trial court to apply the minor penalty prescribed under article 319 (committing an indecent act on the body of another).

The Criminal Code of 1991 essentially follows the 1983 Code.

#### **What is problematic about the case?**

- The reliance on confessions and the four witness rule makes convictions unlikely even where there is strong evidence. This results in impunity and a lack of deterrence against rape;

- The existing law fails in its function to protect society, here mainly girls and women, from serious assaults on their sexual integrity.

**What are further problematic features of rape legislation in Sudan, both with regard to the offences and procedures in rape cases?**

**1. Offences of rape, adultery and gross indecency**

**Rape:** Section 149 of the Sudanese Criminal Act 1991:

- (1) There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent.
- (2) Consent shall not be recognized, when the offender has custody or authority over the victim.
- (3) Whoever commits the offence of rape, shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, unless rape constitute the offence of adultery, or sodomy, punishable with death.

NOTE: Section 149 does not apply to 'domestic rape' committed by a husband against his wife.

**Adultery:** Section (145) of the Sudanese Criminal Act:

- (1) There shall be deemed to commit adultery:
  - (a) every man who has sexual intercourse with a woman, without there being a lawful bond between them;
  - (b) every woman, who permits a man to have sexual intercourse with her, without there being a lawful bond between them;
- (2) Sexual intercourse takes place by the penetration of the glans, or its equivalent into the vulva.
- (3) There shall be deemed, to be lawful bond, marriage which, by consensus is rules void.

**Gross indecency:** Section 151 of the Sudanese Criminal Act:

There shall be deemed to commit the offence of Gross Indecency, whoever commits any act contrary to another person's modesty, or does any sexual act, with another person not amounting to adultery, or sodomy, he shall be punished, with whipping, not exceeding forty lashes, and he may also be punished, with imprisonment, for a term not exceeding one year, or with fine.

- (1) Where the offence of gross indecency is committed in a public place, or without the consent of the victim, the offender shall be punished, with whipping, not exceeding eighty lashes, and he may also be punished, with imprisonment, for a term not exceeding two years, or

with fine.

Section 151 is vague and does not allow for adequate punishment in cases of serious sexual harassment.

## **2. Lack of specificity of rules on consent**

Consent according to the interpretation and explanation of the Criminal Act 1991 section (3), means acceptance, and it shall not be deemed consent which is given by:

(a) A person under the influence of compulsion or mistake of fact, where the person doing the act knows that the consent was given as result of such compulsion or mistake; or

(b) A person who is not an adult; or

(c) A person unable to understand the nature or the consequence of that to which he has given his consent by reason of mental or psychological instability.

## **3. Possible counter-charges**

A victim of rape who complains about forced sexual intercourse may face adultery charges if the crime of rape cannot be proved. This may prevent rape victims from bringing complaints about rape.

## **4. Difficulties in securing independent medical examinations**

Until recently, rape victims need to obtain a special form, Form 8, from the police to undergo a medical examination whose findings would be accepted by a court. Even though the rules have apparently been changed, there are still reports that women are asked to obtain Form 8 and that independent medical examinations are not accepted by courts.

## **5. Lack of adequate complaints procedures**

There are no complaints procedures in place, such as women's desks, that would allow victims of rape to complain confidentially to a member of the same sex.

## **6. Immunity in case of officials**

The general rules that grant immunity to officials for any acts committed in the course of their duty unless lifted by the head of the respective forces applies equally to rape cases. Immunity often results in impunity.

## **7. Evidence Act: The Four Male Witness Rule**

A conviction for rape requires eye-witness testimony from four male witnesses. This is not only discriminatory as it gives priority to the evidence of male witnesses. It is also almost impossible to obtain in practice, making a conviction almost impossible unless it is based on a confession.

## **8. No protection of women pre-trial and during trial**

There are no special procedures in place that provide protection and psychological assistance to victims of rape in the course of criminal proceedings.

- **REFORMING RAPE LEGISLATION**

### ***What should be the objective of reforms?***

Reforms should enhance:

- Protection of potential victims;
- Support of victims; and
- Accountability of perpetrators.

To this end, rape legislation should be brought in line with the Bill of Rights and international standards.

### ***What are the standards that should be guiding reforms?***

Bill of rights, international standards, best comparative practices from other countries, such as Pakistan, where rape legislation has been changed recently.

### ***What should new rape and sexual violence legislation look like?***

- Separate the offence of rape from the offence of adultery
- Recognise the crime of domestic rape
- Repeal the crime of gross indecency and insert instead the crime of sexual harassment that carries adequate punishments
- Specify rules on lack of consent in rape cases
- Establish special complaints procedures
- Recognise independent medical examinations in rape cases
- Remove immunity legislation, in particular in cases of alleged rape
- Change evidentiary requirements, in particular allowing medical reports and circumstantial evidence to secure conviction
- Provide protection and support to victims of rape throughout proceedings, including against cross-examination designed to attack the dignity of the victim.

*How should it be done?*

There have already been several workshops on reform of rape law and sexual violence involving civil society, official bodies and UN representatives. Any law reform efforts should use both specific work with relevant bodies to advance the legal issues through research, discussions or other means as well as advocacy campaigns. Such campaigns should stress the need for reform as a matter concerning all women and ultimately society as a whole, which should not accept any form of sexual violence.

## IV. How does law reform work?

- **How is the process of law reform triggered?**

Law reform is a process that involves a multitude of actors. It is triggered by an interest in and the motivation to change legislation.

The interest to bring legislation in line with the Bill of Rights and international standards can be generated by:

- Government itself where members are committed to the Interim National Constitution and the rule of law
- Official bodies tasked with human rights protection and law reform
- Political parties/Members of Parliament
- The Constitutional Court through its jurisprudence
- Civil society and media through advocacy
- Regional and international bodies through various means of support.

- **What is the procedure of law reform in Sudan?**

### **1. Legislative power**

The responsibility for enacting laws in Sudan rests primarily with the state Legislative Authority, formally known as the National Assembly. It is divided into two Chambers: a 450-member National Assembly and a 50-member Council of State. The two legislative Chambers work closely together on legislation brought before them.

The responsibility for approving all new, amended, or repeal legislation lies with Parliament. The Parliament has these powers in respect of all proposed laws, with the exception of certain financial measures. (Money Bills must be introduced in the NA by the minister of finance and there are special considerations laid down in sections 110-114 of the Constitution).

The fundamental laws are the supreme laws of the state. Certain matters can only be regulated by act of law, while others may be regulated in the form of secondary legislation (ordinances), provided the Government has regulatory authority based either directly on the Constitution or on delegation from Parliament.

### **2. How are bills prepared?**

A Bill is a draft of a legislative proposal, it is first called a Draft Bill and later a Bill once it has been formally submitted to parliament.

The Government initiates most legislative proposals presented to Parliament.

Bills are normally prepared by the Ministry of Justice or any other ministry concerned, such as the ministry of defence. If a bill is prepared by another ministry, it will be sent to the Law Reform Committee of the Ministry of Justice, which will examine the legal technical aspects of the bill, such as drafting.

Bills can also be prepared by anyone if it the bill is to be introduced as a private member bill. However, there is no such practice to date.

### **3. How do bills become law?**

Article 106 of National Interim Constitution

1: President; Presidency; National Council of Ministers, national minister or a committee of the National Legislature may table a bill before either Chamber of the national legislature subject to their respective competences. In practice, it is normally the National Council of Ministers that tables bills;

or

2: Private member bill: only after prior referral to concerned committee which determines whether bill involves issue of important public interest

The role of Parliament is triggered by the introduction of a proposal in one of the following four forms: as bill, provisional decrees, National Budget Bill and international agreements and treaties.

### **4. What happens after a bill has been tabled?**

Article 107 of National Interim Constitution:

There are potentially four readings before the National Legislature (National Assembly) in which a bill will be introduced, discussed, amended, and approved or rejected, either in parts or as a whole. The whole process can take several months.

#### **1<sup>st</sup> reading**

Bills presented to either chamber of the National Legislature shall be submitted for the first reading by being cited by the title and thereby deemed to be tabled to the appropriate chamber.

The Speaker shall refer the bill to appropriate committee which shall make a general evaluation report for the purpose of the second reading. There are several standing committees in Parliament, such as the Human Rights Committee and the Security Committee. The bill will be referred to the Committee dealing with the subject matter, for example, a bill on the Security Forces is to be dealt with by the Security Committee. This is a crucial stage of legislative reforms. According to parliamentary procedures, the Committee concerned has the power to invite concerned groups to submit their observations. This practice was followed during the deliberation of the Organisation of Humanitarian and Voluntary Work Act, 2006, which resulted in some amendments to the bill following NGO interventions. On the basis of its review and the consultations made, the Committee concerned will submit its report with its observations and suggested amendments.

### **2nd reading:**

General deliberation and approval in principle.

The Speaker or the appropriate committee may seek expert opinion on the viability and rationale of the bill; an interested body may also be invited to present views on the effect and propriety of the bill.

The bill will then be sent again to the appropriate committee to prepare a report with its observations.

If passed:

### **3<sup>rd</sup> reading:**

The bill is deliberated in details. Amendments are to be introduced and to be approved or rejected. Deliberation in detail and introduction of, and decision upon, any amendment. The third reading is dedicated to a thorough examination of the text and of its tabled amendments. The bill can be amended on the floor -- though each amendment must be found to be related, or of interest, to the bill's original subject. Following debate, a vote is taken and if the bill receives a favourable vote by the membership, a final reading is called and the bill is referred to the Committee. The competent committee must present a report about these amendments and the final bill for the last reading.

Next step:

### **Final reading:**

The bill shall then be submitted in its final form for the final reading, at such stage, the text of the bill shall not be subject to further discussion and shall be passed section by section and then passed as a whole.

## **5. How many members need to vote for a bill to pass?**

Article 97 of the National Interim Constitution

More than half of the members need to be present for a valid vote to take place; a simple voting majority of those present is sufficient unless provided otherwise.

## **6. Does the President have any role in the law making process?**

Yes, Article 108 of National Interim Constitution

### **Bill needs assent and signature of President**

Period of thirty days:

- i) assent withheld without reasons given: deemed to have been signed
- ii) reasons given: bill to be re-introduced to national Legislature

In latter case, bill becomes law if passed by two-third majority of national legislature.

## **7. When does a law formally become law?**

When Parliament has adopted a proposed law, the Government formally issues the law, a process known as promulgation. All laws – and also all ordinances – are published in the Gazette.

## **8. What are Provisional Orders?**

In the absence of the Assembly being in session and in case of emergency, the President of the Republic may take provisional measures having the force of law, provided that it must be submitted to the competent assembly as soon as possible (Article 109 of the National Interim Constitution). When the parliament adopted such measures, they are promulgated as law. However, if these measures are rejected by either chamber or if they are not confirmed before the end of the parliamentary period of sessions, they become lapse and are not retroactive.

These provisional measures cannot be implemented in the following fields: the peace agreement, the declaration of rights, the decentralized organization of the State, general elections, the budget, criminal law, international conventions or agreements concerning the State borders. Laws that have been abrogated or modified by lapsed provisional measures, become valid again from the moment the provisional measure loses its own effect.

## **9. What are delegated legislative powers?**

The parliament or one of its chambers may, by the passing of a law, delegate to the President of the Republic, to the National Council of ministers or to a public institution, the power to put forward secondary regulations having the force of law, provided these provisions be presented to the competent chamber and be adopted or modified by a resolution of this chamber.

## **V. HOW TO ADVOCATE FOR CRIMINAL LAW REFORM?**

- **What is advocacy?**

Advocacy can be broadly described as making a case for a special issue with a view to furthering its realisation.

- **Why is there a need to advocate for criminal law reform in Sudan now?**

It is vital for human rights protection to convince all relevant actors of the need to reform legislation.

Criminal laws have not provided adequate protection against serious crimes such as rape. The laws do not fully proscribe international crimes and provisions such as immunity legislation have contributed to impunity for officials. There are also concerns about the system of criminal justice and recourse to emergency rules that may undermine the right of defence and the right to fair trial. There is widespread recognition that the criminal laws need to be changed to better ensure human rights protection, particularly the most vulnerable members of society. The Bill of Rights in the Interim National Constitution requires the Government of Sudan to implement fundamental rights. This necessitates a review and changes to criminal laws where they are found to be incompatible with the Bill of Rights. Various legislative reforms are being discussed, there is international interest to support the process and the 2009 elections may provide an opportunity to create a momentum for the necessary steps to be made.

### **CRIMINAL LAW AND VIOLATIONS**

- **Who may engage in advocacy for criminal law reform in Sudan?**

Advocacy works best if it is strategic, co-ordinated and involves all relevant actors. This includes:

- NGOs
- Community groups
- Individuals, in particular lawyers and judges
- Official bodies, such as Advisory Council on Human Rights
- Media
- Regional and international institutions

- **What should be the objectives of criminal law reform advocacy?**

The broad objective of advocacy should be to promote and expedite reform of criminal laws in line with the bill of rights, international standards and best practices. The ultimate goal is to strengthen the rule of law. This means protecting individuals and communities, in particular the most vulnerable, from violations of their rights, and by ensuring accountability of those guilty of serious violations, including state officials

The advocacy should also aim to ensure that the rights and views of individuals, communities and civil society are reflected in the law reform process and in any bills being discussed

A further goal related to advocacy is to raise awareness amongst those affected by criminal law reform about their rights and the need to engage in law reform debates.

- **What advocacy strategies and methods could or should be used?**

Advocacy methods are a means to an end; they should therefore form part of a broader advocacy strategy.

An advocacy strategy needs to be based on:

- a thorough assessment of the current situation,
- the position of key actors,
- priority areas,
- the potential impact of media campaigns, and
- the capacity of those engaging in advocacy efforts, including sustainability.

The methods chosen depend on the status of law reform with regard to particular issues. NGOs and other actors can work out how they can best contribute to advocacy within their own area of work.

Where an issue has received little attention, for example public order offences, advocacy initiatives could include the following:

- Conducting outreach and research to learn about their use in practice and impact of offences on the general public, in particular vulnerable groups and individuals;
- Seeking to engage with concerned communities, such as women and children, to involve them in advocacy efforts if they so wish;
- Seeking to build a coalition or network of like-minded organisations or groups to develop and coordinate advocacy efforts, in particular to make advocacy more effective;

- Providing training and other activities with a view to strengthening the capacity of concerned communities and others to engage in law reform;
- Generating public debate about the need for change in relation to particular issue because of its adverse impact and its incompatibility with the bill of rights. This can be done through the use of written and visual materials, meetings, conferences and media campaigns;
- Establishing a relationship with national official bodies so as to be able to share views, to raise the issues and to impress the need for changes;
- Considering the use of strategic litigation to obtain a favourable judgment or decision that may act as trigger for law reform.

Where the issue is being discussed (either as a result of the advocacy efforts outlined above or independently) but has not been tabled in the National Legislature:

In addition to the activities above, as appropriate:

- Analysing the current situation with a view to determining how effective advocacy efforts have been up to that point;
- Taking steps to make efforts more effective, such as initiating a concerted campaign. This can for example be done by means of giving more space to the voices of victims of violations, obtaining the backing of influential groups or individuals advocating for reform, getting regional or international bodies interested and involved etc;
- Drafting position papers and experts' submissions to further the reform agenda;
- Establishing a relationship with parliamentarians and official bodies in a position to further the issue, in particular by tabling bills in the National Legislature.

Where a bill is pending in the National Legislature:

- Obtaining and examining the text of the bill in respect of its compatibility with the objectives of law reform;
- Preparing submissions on the bill, to be introduced by parliamentarians, relevant commissions or other bodies in the course of the consideration of the bill as appropriate;
- Using the media and other channels to call for changes to the bill as appropriate;
- Enlisting the support of national, regional and international individuals, groups and institutions in raising pertinent issue in public media and with relevant bodies.

## BIBLIOGRAPHY

### 1. Human rights law in Sudan

Mohamed Abdelsalam Babiker, *Application of International Humanitarian and Human Rights Law to the Armed Conflicts of the Sudan: Complementary or Mutually Exclusive Regimes?* Intersentia, Antwerp/Oxford, 2007

Amin Mekki Medani, Human Rights in the Interim Constitution, Khartoum University Students Union, KUSU, in cooperation with Sudan Social Development Organsiation, SUDO, September 2005

Abdel Salam and Alex de Waal (eds.), *The Phoenix State, Civil Society and the Future of Sudan*, Justice Africa/Committee of the Civil Project, 2001

REDRESS, *National and International Remedies for Torture, A Handbook for Sudanese Lawyers*, March 2005

REDRESS, *Accountability and Justice for International Crimes in Sudan, A Guide on the Role of the International Criminal Court*, May 2007

### 2. International human rights standards

Office of the High Commissioner for Human Rights and the International Bar Association, *Human Rights in the Administration of Justice, A Manual on Human Rights for Judges, Prosecutors and Lawyers*, [http://www.ibanet.org/images/downloads/hri/Human\\_Rights\\_Training\\_Manual.pdf](http://www.ibanet.org/images/downloads/hri/Human_Rights_Training_Manual.pdf) (English); [http://www.ibanet.org/humanrights/Arabic\\_Training\\_Manual.cfm](http://www.ibanet.org/humanrights/Arabic_Training_Manual.cfm) (Arabic)

REDRESS, *Bringing the International Prohibition of Torture Home, National Implementation Guide for the UN Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, <http://www.redress.org/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf> (English)  
<http://www.redress.org/publications/CAT%20report%20Arabic%20Final%20Version%208%20May%202006.pdf> (Arabic)

Interights, in particular database on International Case Law and Commonwealth Case Law = <http://www.interights.org>

Centre for Human Rights, University of Pretoria, *African Human Rights Law Reports*, 2000, [http://www.chr.up.ac.za/centre\\_publications/ahrlr/ahrlr-text.pdf](http://www.chr.up.ac.za/centre_publications/ahrlr/ahrlr-text.pdf)

### **Websites of regional and international bodies**

United Nations = [www.un.org](http://www.un.org) (contains documents issued by the UN Security Council and reports issued by the UN Secretary-General as well as links to general sources on international law)

UN High Commissioner for Human Rights = [www.ohchr.org](http://www.ohchr.org) (contains a database with Sudan's official reports to treaty bodies, UN documents relating to the human rights situation in Sudan, documents issued by the Commission on Human Rights and its subsidiary body, documents issued by the Special Rapporteur of Torture and general materials on thematic questions relevant to torture)

African Commission on Human and Peoples' Rights = <http://www.achpr.org/> (decisions in individual cases can be found in the annual Activity Reports of the Commission)

### **3. Law Reform in Sudan**

Akolda Tier and Balghis Badri, *Law Reform in Sudan*, Collection of workshop papers, Ahfad University for Women, 2008

Abdelsalam Hassan, *History of Law Reform in Sudan*, Background paper, January 2008

*Priorities for Criminal Law Reform in Sudan: Substance and Process*, An options paper prepared by REDRESS and KCHRED, January 2008