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**The Return to Democracy  
in  
SUDAN**

Report of a Mission on behalf  
of  
The International Commission of Jurists

INTERNATIONAL COMMISSION OF JURISTS

International Commission  
of Jurists (ICJ)  
Geneva, Switzerland

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by

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## Preface

The human rights situation in Sudan had been of concern to the International Commission of Jurists for a considerable period of time. Throughout the 1970s and early 1980s the ICJ received repeated reports of the suppression of freedom of speech and association, in particular the repeated and massive arrest of political opponents to the government. It had also been informed of attempts by the executive to interfere in the judicial process, abuse of emergency powers, ill-treatment of detainees, and misuse of the powers of preventive detention. Numerous interventions were made with the government about these issues. More recently, the ICJ's attention focused on changes made in the legal system during 1983 (commonly referred to as «the September laws»), ostensibly to bring it in line with Islamic law. In fact the changes did not conform to Islamic law, but rather led to abbreviated judicial procedures, denial of basic rights of the defence, infringement of the independence of the judiciary and the introduction into the penal code of penalties from Shari'a law which were imposed without the guarantees of a fair trial.

These developments led the ICJ to conclude that a mission to Sudan should be undertaken to inquire more closely into the legal system and the administration of justice in Sudan. Before the mission could be launched, the government of President Gaafar Mohamed Nimeiri was overthrown on 6 April 1985.

It was decided to hold the mission in abeyance as the new government had indicated its intention to undertake major reforms of the legal system. After several months conflicting reports emerged from the country as to the reforms actually being undertaken. At this point the ICJ decided to approach the government and request its cooperation for discussions about the changes taking place and the extent to which international human rights norms would be incorporated into the transitional constitution and new legislation. The government indicated its willingness to

cooperate and welcomed the opportunity to discuss these issues with the ICJ.

The mission took place from 17 September to 6 October 1985. Its terms of reference were to enquire into and to report on the legal system and the administration of justice in Sudan, with particular reference to the guarantees for the protection of human rights to be contained in the transitional constitution, the functioning of the judicial system and guarantees for its independence, the status of the «September laws» enacted by former President Nimeiri, the revisions being made to the National Security Act, the Penal Code and the Code of Criminal Procedure, the status of the negotiations with those representing the interests of the south and the ability of lawyers to exercise freely their profession.

The members of the mission were: His Honour, Adib Halasa, a Judge of the Supreme Court of Jordan; John D. Cooke, S.C., Member of the General Council of the Bar, Ireland, and Ustinia Dolgopol, Director, Centre for the Independence of Judges and Lawyers, Switzerland.

During the course of their stay the members of the mission interviewed government officials, members of the judiciary including the Chief Justice, members of the High Executive Council for the Southern Region, prison officials and staff, the President and members of the Bar Association, representatives of several political parties, including the Umma Party, the Arab Ba'athist Socialist Party, the Islamic National Front, the Communist Party and the Republican Brothers, representatives of the National Alliance for Salvation, members of the Trade Union Alliance, leaders of the Sudan African Congress, faculty members of the University of Khartoum, representatives of the Sudanese Organisation for Human Rights, diplomats in foreign embassies, human rights activists and interested observers. The mission is grateful to all of those with whom it spoke, both for the time spent with the mission and for the frankness with which the questions were answered. Members of the mission were also able to collect extensive documentation which greatly assisted in drafting the report.

Full cooperation was given to the mission by the government. Lengthy meetings were held with the Attorney General, Omar Abdel Ati, the Minister of Interior, General Abbas Medani, Minister of Housing and Construction, Amin Mekki Medani, the Director of Prisons, General Ahmed Wadi Hassan and Major General Hamada Abel Azim Hammada of the Transitional Military Council. Considerable assistance was also given to the mission by the Ministry of Foreign Affairs.

The organised bar as well as several practising attorneys were helpful in providing information and assistance to the mission. Professors

at the University of Khartoum were extremely generous with their time, and the mission is particularly grateful to Professor Ali Sulieman Fadlalla.

A preliminary report containing the mission's initial conclusions and recommendations was published by the mission in November 1985. It is reprinted in full below.

When submitting the mission's preliminary report to the government, the ICJ indicated its willingness to publish any comments the government might wish to make on the report. Three sets of comments were received, one from the Permanent Mission to the United Nations in Geneva on behalf of the Government, one from the Director of Prisons and the other from the Attorney General's Chambers. These are reprinted below in their entirety following the preliminary report. They are followed by brief comments by the mission. The ICJ and the mission are grateful to the government departments that undertook to comment on the report and for the evident seriousness with which they approached the preliminary report and its recommendations.

Geneva  
May 1986

Niall MacDermot  
Secretary General,  
International Commission  
of Jurists



# I.

## Preliminary Report of the Mission

### Introduction

The mission was well aware during its stay in Sudan of the enormity of the problems facing the country. It is one of the world's 25 poorest countries, with a per capita income of approximately US\$ 440. It has an external debt of 9 to 10 billion dollars, with a debt servicing obligation of 1.2 billion dollars which is greater than the country's yearly export earnings of 800 million dollars. There are strong suggestions that much money was mis-spent during the Nimeiri years and that corruption was rampant. Sudan has also faced a disastrous drought as well as widespread famine; it is estimated that 6 million people out of a population of 22 million are affected by the famine. Because of the economic conditions in the country, between 500,000 and 1,500,000 Sudanese are working abroad, mostly in the Gulf States. Despite its economic difficulties, Sudan has accepted between 650,000 and 1 million refugees.

Civil strife is a cause of major concern. As a result of President Nimeiri's June 1983 decision to divide the south into three regions in abrogation of the Addis Ababa agreement of 1972, which ended 17 years of internal conflict, a new war broke out in the south. The introduction of Shari'a law further inflamed the conflict as many southerners perceived this action as an attack on their cultures and their religions. Although the Sudan People's Liberation Movement (SPLM) led by John Garang has stated that it is not a regional movement and is working for the total liberation of Sudan, it is clear that relations between the predominantly Arab north and the predominantly African south, and the need for southerners to have a greater voice in national politics, figure prominently in its concerns. It is recognised by many that the SPLM and its army, the

SPLA, played a role in bringing about the downfall of President Nimeiri and this has created much good will in the general population.

Despite this, substantive negotiations have not progressed since Nimeiri's downfall and tensions are increasing between the government as well as groups in the north and the SPLM. However, efforts to strengthen the negotiating process are continuing at all levels. It is clear that this is one of the most urgent problems facing the country as neither real economic or political development can take place until this conflict is resolved. Also in this regard account needs to be taken of the conflicts that exist between the central government and groups in the west and east of the country as well as the Nuba mountain region. The legitimate aspirations of all ethnic groups must be taken into account when devising the permanent structure of the national government.

The country is faced with the need to restore democracy and democratic institutions after 16 years of dictatorial rule. General Nimeiri came to power in May 1969 as a result of a coup d'état. Under the 1973 Constitution President Nimeiri was Head of State, Head of Government, Head of the Civil Service and entitled to appoint all judges. He also held legislative powers when the People's Assembly was not in session and could issue provisional orders which had immediate effect. He was given wide powers in the event of a state of emergency, and it was through the medium of these powers that he instituted many of the legal changes which took place in 1984. A State Security Act was put into place in 1973 to ensure that the «May revolution» would not be undermined. It has been estimated that up to 20,000 full time and 20,000 part time officials were employed in the state security apparatus. Not only were these officials distrusted by the general population, but they were also mistrusted by the branches of the armed forces.

Prior to the Nimeiri's rule Sudan had known two periods of democratic government. The first was from independence in 1956 until 1958, when the multi-party, democratic government was overthrown by a military coup d'état led by Ibrahim Aboud. Military rule continued until 1964 when popular uprisings forced Aboud to relinquish power. This began the second period of democratic rule. A transitional government was formed and general elections were held in 1965 for a Constituent Assembly. Political faction fighting led to the holding of new elections in 1968. Democratic rule came to an end with the «25th of May Revolution» led by Major General Nimeiri and a group of young officers. A Revolutionary Command Council was formed and held both legislative and executive powers.

The regime was briefly disrupted in July 1971 by a coup d'état in

which the communists seized power, however the coup was overturned after three days. In August 1971 an order of the Council called for the election of a president by national referendum and the establishment of a People's Assembly. On 12 October Nimeiri was elected President. The People's Assembly was formed in 1972 by executive order and consisted of both elected and appointed members. During 1972 the Sudan Socialist Union became the sole authorised political party of the State.

The catalysts for Nimeiri's downfall were the forceful imposition of aspects of Islamic law as he conceived them and the harshness of the application of that law including the execution of 76 year old Mahmoud Mohamed Taha, Nimeiri's apparent disregard for the situation of his countrymen evidenced by speeches in which he suggested that part of the food crisis was caused by people insisting on eating three meals per day, and the taking of harsh economic measures. Demonstrations started on 27 March 1985 after the announcement of food price increases. On 1 April the Alliance of Trade Unions composed of professional organisations such as doctors, lawyers and engineers called for a general strike. The call was widely heeded despite the arrest of Alliance leaders and strikes occurred throughout Sudan starting on 3 April.

The strikes continued until 6 April when the army stepped in and announced that it was on the side of the people and that President Nimeiri had been removed from power. Shortly thereafter on 9 April the Transitional Military Council was formed. At about the same time the Trade Union Alliance and the political parties formed the National Alliance for Salvation. They insisted that the transitional government have a civilian component and on 10 April an agreement between the military and the National Alliance was announced. Under the terms of the agreement the transitional government was to be composed of a Transitional Military Council and a civilian Council of Ministers. This government was to remain in power for one year. Elections were to take place for a Constituent Assembly which would appoint the new government. The Council of Ministers, except for the Attorney-General, was appointed on 25 April 1985; civilians control all ministries except that of Defence and Interior.

Recently during the ceremony inaugurating the Transitional Constitution the Head of State, General Swareddahab, reiterated his pledge to turn over the government to civilians by April 1986. No-one the mission spoke with doubted his personal commitment to this process. However, questions have been raised about the intentions of other members of the Transitional Military Council and several high ranking military officers. Questions have also been raised about the intentions of the Islamic Front.

In preparing its conclusions and recommendations the mission does not seek to minimise any of the difficulties facing Sudan. It hopes that its comments may make a modest contribution towards a solution to those problems, while bearing in mind the paramount goals of national reconciliation and the protection of fundamental human rights. The mission has submitted the following conclusions and recommendations to the government and has indicated its willingness to publish with the final report of the mission any comments the government may wish to make upon them.

## Conclusions and Recommendations

### General

(1) The mission is fully conscious of the fact that its visit has taken place in the immediate aftermath of 16 years of repression, of rule by executive decree and emergency powers; that the country is in a state of transition and that it has the difficult task of having to restore democratic institutions and processes destroyed by the previous government while also facing economic, social and political problems.

(2) From 1972 to 1985, all political activities had to be conducted through the Sudan Socialist Union. The existing parties were either banned or prevented from conducting independent political activities. President Nimeiri also used «divide and rule» tactics in his dealings with the traditional parties, looking first to one then another to gain support for his rule. As a result, the relations between parties were often acrimonious. This legacy of political divisiveness is one of the more difficult hurdles which will have to be overcome in the ensuing months.

(3) It is perhaps a testimonial to the Sudanese people that they succeeded in overthrowing the government by a popular and peaceful revolution. It was the recognition of the need to harness this spirit and to use it to ensure the complete restoration of democracy that led to the formation of the National Alliance for Salvation, consisting of the major political parties and the Alliance of Trade Unions (this organisation is composed of professional unions such as doctors, lawyers and engineers). It was the National Alliance that insisted on a civilian component in the transitional government, and which negotiated with the Transitional Military Council of Ministers. It continues to meet, raise issues with the government and to be a representative force in society, as well as being a

forum for seeking resolution of the differing viewpoints of the various political groupings.

Given the nature of the present situation, it is to be hoped that the constituent members of the National Alliance will continue to work in a spirit of compromise and be willing to sacrifice short term partisan advantage in the interest of long term political stability and the unity of the country.

### **Ethnic Diversity**

(4) Sudan is rich in ethnic, cultural and religious diversity. These are elements which can be a dynamic force for creative progress or they can be permitted to tear the nation apart. If the unity of Sudan is to be preserved (a goal on which all appear agreed), no one group can hope or expect to regulate the country in accordance with its own exclusive concept of society and suppress the legitimate aspirations and expectations of others to express their beliefs, customs and way of life. A prerequisite for the successful outcome of this transition period is the genuine and open recognition by those in positions of leadership of the fundamental diversity of Sudanese society and a commitment to tolerance and to the harmonious preservation of that diversity in the institutions of government, the constitution and the fundamental laws.

(5) A major effort towards education in ethnic/racial understanding needs to be made at all levels of education and among the adult population. This would serve to counter those who might try to use ethnic differences as a means of causing political upheaval with a view to attaining power. Effective use could be made of the media, particularly television, in this regard.

### **The Southern Conflict**

(6) The continuing conflict in the southern portion of the country is clearly the most urgent problem. The vast majority of those the mission spoke with both within and outside the government recognised that no military solution was possible and that only a political solution could lead to lasting peace. In considering this problem, it must be remembered that the people of the southern area do not seek to be independent of Sudan, but rather seek to have their interests fully and adequately protected; and that there are different «peoples» in the south and no one representative of the southern interests. Concerns have been expressed that the government has not taken sufficient notice of either the regional

government or other representatives, and the mission thinks these concerns should be addressed.

(7) It is imperative that neither side to the armed conflict take intransigent positions, engage in making rash pronouncements, or let immediate military considerations overtake the long term goal of peace and stability. It is also necessary that the government, both the Transitional Military Council and the Council of Ministers, give its full support to the efforts of the Minister designated to handle the negotiations, who has developed a keen understanding of the difficult road ahead.

(8) We must also express our concern at the army's having undertaken on its own initiative the distribution of arms to villagers in southern Kordofan, ostensibly for the purpose of protecting themselves against the «rebels». Unfortunately these weapons have now become a factor in pre-existing tribal disputes and can only serve to escalate the level of violence in the country.

#### «September Laws»

(9) During 1983 and 1984 President Nimeiri instituted a series of changes in the laws of the country ostensibly to create a legal system based on Islamic law. Included in these laws were changes to the Penal Code, the Judiciary Act, the Code of Criminal Procedure, the Rules of Evidence and the Judicial Sources of Law Act. One of the purposes of the mission was to determine the present status of these laws. Most people the mission spoke with questioned the sincerity of the motives behind these enactments, stating that they were introduced out of political opportunism rather than religious conviction. These people included religious leaders and devout Muslims. The majority maintain that these laws are not a correct reflection of the Shari'a, and do a disservice to Islamic law. One of the major causes of the March/April uprisings was the frustration caused by these laws, and one of the prominent demands made by the demonstrators was their repeal.

(10) Despite these and more recent demands for their repeal the laws remain in effect, except for a provision of Judiciary Act 1405 (enacted in 1984) which allowed the President to appoint judges directly to a court.

(11) Since April the National Alliance has continued to call for the repeal of these laws and the National Charter it drafted clearly envisages their repeal. The Charter calls for the restoration of democratic institutions, guarantees for fundamental rights in accordance with the international covenants on human rights, a legal system which guarantees the supremacy of the Rule of Law and the independence of the judiciary. The

Bar Association has also called for repeal of the «September Laws».

- (12) The mission was informed that the government intends to make major amendments to these laws, which will remove the most objectionable features. No time table has been set for the introduction of the amendments.

(13) The changes to the Penal Code saw the addition of certain forms of punishment as possible sentences, including amputations and flogging. The one which has received the most attention is that of amputation. These changes were supposedly in accordance with Islamic law. However, although the punishments are mentioned in the Koran, the crimes they were applied to were essentially Western in definition. There was no attempt to make the Code itself conform to Islamic law.

(14) After 6 April 1985, there were nine outstanding sentences of amputation. All the cases were reviewed by the Supreme Court, and five of the sentences were confirmed. Stays were then ordered by the Attorney-General on the ground that the conditions in the country, notably famine and widespread poverty, were such that the executions could not be carried out under Islamic law. The mission was also given to understand that all sentences of amputation will be reviewed when the criminal code is revised.

(15) In the view of many, including the mission, these punishments are in violation of international human rights norms, particularly the prohibition against cruel, inhuman or degrading treatment. In this regard we note Resolution 1984/22 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which recommends to the Commission on Human Rights that governments be urged to do away with legislation allowing for such punishments, and general comment 7(16) of the Human Rights Committee (adopted in 1982) which states that corporal punishment falls within the prohibition against cruel, inhuman or degrading treatment or punishment. We urge that these punishments be removed from the penal code.

(16) Another factor militating in favour of their repeal is the effect these laws have on the reputation of the judiciary and therefore its independence. They put the judiciary in the invidious position of being obliged to enforce them, while the majority of the population is calling for their repeal, and while knowing that the government intends to review all sentences imposed once the law is amended.

(17) Another aspect of the September 1983 laws was the incorporation of the 1973 Security Act into the criminal code. One of the negative features of this act was that it empowered the government to create special courts for trying those accused of security offences. These courts are

now being used for the trial of former government officials. It appears that thus far the procedures used in these courts mirror those in the ordinary courts.

(18) The creation of special courts often poses difficulties in the field of human rights, as they tend to be used to circumvent the guarantees available in the ordinary courts and to be composed of persons subject to government influence. As a matter of principle the mission would urge that they be abolished in Sudan. The fact that the courts as at present constituted are not functioning differently from the ordinary courts demonstrates that there is no overriding need for them.

(19) The mission was told that their continuance is necessary to demonstrate to the people that former government officials are being brought swiftly to trial. However, this must be counter-balanced by the fact that the new government is being tainted by the use of laws that the April uprising was dedicated to overthrowing.

(20) Another feature of the National Security Act was the provisions permitting the use of administrative detention. The power to issue orders for administrative detention now rests with the Attorney-General. Initially the mission was told that it was only being used against members of the former regime in order to further investigations and make sure that the detainees could not hide, destroy or distort the evidence against them. It was also said to be in the detainees' interest as public feeling against them was quite strong. With due respect these explanations were not considered convincing. The government is using the process of administrative detention to determine whether there is any basis for pressing charges against the detainees, not because it considers them to be a danger to the security of the state, which is the rationale of administrative detention. At the time the mission was in Khartoum there were 92 former officials being held under these provisions. The government should complete the investigations against them, and either institute charges or release them.

(21) While the mission was still in Sudan, a mutiny occurred in the army which led to the declaration of martial law. In the process of investigating these events, numerous orders for administrative detention were issued. It appears that many of the detention orders were made against people who had made previous forthright statements about government policy towards the south, but with no substantive evidence that they had ever advocated violence. This event demonstrates the need to amend these laws. As long as they remain in force, there will always be a potential for their misuse, and the limits of their use will depend on the discretion of Ministers as there is no form of appeal to the courts.



(22) As noted above, the laws enacted in 1983 and 1984 brought about major changes in the organisation of the judiciary, as well as court procedures. Judges were appointed who had no or little legal training. The preliminary hearings stage was combined with the actual trial, and judges were permitted to reformulate the charges during the trial based on the evidence produced thereby depriving defendants of the ability to defend themselves against a particular charge. Also, judges were allowed to formulate charges which did not have a legal basis in the penal code, and were able to rely on their consciences to decide if the defendant was guilty of some offence. These changes remain part of the law and many of the judges appointed during this period are still sitting on the bench.

(23) The Transitional Constitution (see paras 29-33 below) contains a chapter on the judiciary with guarantees for its independence. However, it is urgent that the laws passed during 1983 and 1984 affecting the judiciary be repealed and new laws be enacted.

(24) Two other considerations favouring repeal of these laws are the stumbling block they pose to negotiations with southern representatives who regard these laws as an attack on their culture, religion and beliefs, and their inconsistency with the provisions of the recently adopted Transitional Constitution which calls for repeal of all inconsistent legislation. The mission recommends the repeal of these laws which would leave the way open for negotiations with southern representatives and for a free debate on the nature of the legal system and laws which would best serve a society of such diversity.

(25) A positive development is the creation of a committee within the National Alliance to review these laws with a view to their repeal and the enactment of new laws and codes. The mission commends these efforts and urges the government to give serious consideration to the recommendations of this committee.

### **Freedom of Expression and Association**

(26) Another positive development the mission was able to observe is the increased openness of the political debate within the country. Many of the political parties have started their own newspapers, and are now able to criticise government policy. Even the government newspaper occasionally contains articles and editorials which are critical of the government. The stated policy of the media services is to provide a forum for the free discussion of views and many groups are given access to the government television station. However there were some complaints that more time was being given to representatives of the Islamic Front than

those of other parties. These complaints should be addressed by the government.

(27) There has been some suggestion that a law requiring the registration of political parties be enacted and that restrictions be placed on their affiliation with parties outside Sudan. As no text has yet been proposed, it is difficult to make concrete recommendations. However, the mission urges that such legislation be approached with caution, as it could severely impinge upon the rights to freedom of expression and association.

### **States of Emergency**

(28) Immediately following the revolution of 6 April the Transitional Military Council imposed a state of emergency. Although it was never revoked, its enforcement was relaxed. However, following a demonstration organised by the Islamic Front on 22 September the government issued a statement reminding the population that the state of emergency was still in effect and prohibiting all further demonstrations. The reason given for this was the fear that any counterdemonstrations might lead to violence, as there had been some clashes between demonstrators and counterdemonstrators. Concern was expressed at the time that the government was attempting to limit the expression of other opinions. In view of the mutiny which took place on the night of the 24 and 25 September the mission is unable to recommend that the state of emergency be lifted. However, the government should keep in mind that, at the time of its formation, the intent was that it would be a neutral force in the political arena, and it should be careful that it is not perceived as favouring one political group over another.

### **The Transitional Constitution**

(29) The Transitional Constitution was adopted on 10 October, after the mission had left Khartoum. However, during its stay, the mission did have an opportunity to discuss the provisions of the Transitional Constitution with government officials and others. It sets out the structure of the government for the period prior to the adoption of the permanent constitution. The Transitional Military Council and the Council of Ministers are to remain in office until the election of the Constituent Assembly which is to take place no later than 26 April 1986. The Transitional Military Council is the Supreme Constitutional Authority, is responsible for the armed forces and exercises legislative

powers in consultation with the Council of Ministers. The Council of Ministers is responsible for the administration of the government and is answerable to the Transitional Military Council. After the elections, the government will be composed of a Supreme Commission, a Constituent Assembly and a Council of Ministers. The Constituent Assembly will elect the Prime Minister and the members of the Supreme Commission and will exercise legislative functions with the Supreme Commission in a manner to be determined jointly by them. It will be responsible for the drafting of the permanent Constitution. The Transitional Constitution also provides for the independence of the judiciary, and makes the judiciary the custodian of the constitution. It also contains directive principles of government, which include references to a multi-party system and the Supremacy of the Rule of Law, and it contains protections for fundamental

(30) There are some concerns about the text of the Transitional Constitution. Articles 18 to 24 guarantee fundamental freedoms. However each of the guarantees is limited by a proviso stating either «except as prescribed by law» or «except in accordance with the law». This language deprives the guarantees of all force. It appeared in previous constitutions and was used by the former government to severely curtail the exercise of these rights. Article 33, which states that the rights protected by the constitution shall not be derogated from except by legislation with the objective of protecting public security, public morality, public health or the safety of the national economy, was designed as a savings clause, but is not sufficient for this purpose. Certain provisions such as the right to equality before the law (Article 17), the right to freedom of belief (Article 18), the principle of legality (Article 27) and the prohibition against torture (Article 29) should never be subject to derogation. The mission would suggest that these provisos be deleted or else that they be redrafted in a more restrictive fashion, perhaps using the Covenant on Civil and Political Rights as a model.

(31) Article 133 permits the declaration of a state of emergency. During discussions with government officials concerns were expressed about the scope of this article, as it would on its face permit the government to derogate from all rights, including the right to life. Again Article 33 would not be sufficient to protect against this. The mission has urged the government to review this article in light of Article 4 of the Covenant on Civil and Political Rights, and does so again.

(32) Articles 120 to 127 on the judiciary leave some unanswered questions. The provisions concerning removal only refer to judges of the Supreme Court. No removal procedures are set out for judges of the lower courts. Article 124 does not explicitly state that the courts have the right

to review the constitutionality of executive decisions. We urge the Council of Ministers and the Transitional Military Council to address these problems.

(33) The mission must also note that some of the representatives from the southern region have misgivings about the implementation of the Transitional Constitution as they did not have an opportunity to participate in its formulation. This is a matter of serious concern, and the government should be open to the possibility of amending the Transitional Constitution after consultations have taken place.

### **The Bar Association**

(34) The Sudanese Bar Association has long been respected for its independence and for its commitment to uphold the Rule of Law. It participated as an organisation in the April strikes. Its leaders were arrested on several occasions under the previous regime for taking positions unpopular with the government. A joint committee composed of members of the Bar Council and professors of the University of Khartoum Faculty of Law are at present reviewing Sudanese legislation to ensure that it complies with international human rights norms. It will also seek to ensure that fundamental human rights are protected by the permanent constitution. These efforts are to be commended. The Bar has also proposed that the government ratify the two international covenants on human rights.

### **The Army**

(35) The mission raised numerous questions about the role of the army in the transitional government and whether all segments of the army were committed to restoring democracy in the country. No one either in or out of government ruled out the possibility of a further coup, although several persons suggested that if this were attempted the people would react by again taking to the streets. It would be a great tragedy if some elements of the armed forces to further their own ambitions or those of a particular group in the society, were to stage a coup. As the experience of other African countries shows, coups lead to counter coups. The present government should be as alert to this possibility as they are to actions by regional groups.

### **The State Security Force**

(36) Another positive development was the government's decision

to disband the State Security Force. This body was responsible for enforcing the National Security Act and was frequently accused of torturing detainees. The mission urges the government to ensure that former members of the security force do not receive employment in either the police force or the army.

### **National Retribution Law**

(37) A «National Retribution Law» is under discussion. This law would deprive all those who served in the Nimeiri administration of their political rights unless they could prove they did not actively collaborate with the regime and were not responsible for decisions taken by it. Court cases are envisaged for all persons falling within the scope of the act, but the burden would be on the defendant to prove his lack of culpability. Another part of the legislation would create new crimes covering acts thought to have been committed by officials of the Nimeiri regime, but which it is felt, are not covered by the existing criminal laws. There is a reference to this proposed legislation in the transitional constitution.

(38) This type of retroactive legislation is in clear violation of international human rights norms, and the mission strongly urges the Council of Ministers not to pass it. The Universal Declaration on Human Rights prohibits holding persons guilty of penal offences for acts or omissions which did not constitute offences, under national or international law, at the time they were committed. For existing penal offences, no heavier penalty may be imposed than that applicable at the time they were committed. In addition, all persons have the right to be presumed innocent until proved guilty. The legislation under discussion would do away with these guarantees.

(39) The mission recommends that all references to such legislation be removed from the Transitional Constitution.

(40) The mission suggests that there are other alternatives available, and perhaps thought should be given to studying the approaches taken by the government of Argentina, which is trying former government officials under existing criminal laws. In this regard, use could be made of the UN Advisory Services Programme.

### **Prisons and Treatment of Detainees**

(41) Prison administration in Sudan is separate from police administration and falls under the jurisdiction of the Minister of Interior. There is a Commander of Prisons who oversees the prison system and is answer-

able to the Minister. Prison officials are expected to attend a separate college and the government is correctly proud of this training requirement. The mission was able to meet with both the Minister of Interior and the Commander of Prisons and to visit Kober Prison.

(42) Officials explained that the Standard Minimum Rules for the Treatment of Prisoners were being used as guidelines in the administration of the prisons and the Commander had an admirable knowledge of the rules as well as of other prison systems throughout the world. It is difficult for the mission to assess the extent to which the rules are in fact being applied. The officials the mission spoke with put great emphasis on the rehabilitation and education programmes available. However, others familiar with the system claimed that the rehabilitation programme was not well-coordinated and did not provide opportunities to those most in need of them, and that social workers assigned to the prisons have difficulty in carrying out their tasks.

(43) Unfortunately access to the living quarters of the prisoners was denied, and no explanation provided.

(44) Of concern was the presence of one prisoner shackled by a ball and chain. This type of restraint is clearly prohibited by the Standard Minimum Rules.

(45) There is also some question whether the work programmes provided in the prisons comply with the rules governing work. It does not appear that the prisoners are receiving remuneration for their work (see Rule 76). Also outside firms supply materials to the prisons and they apparently sell some of the products being produced there (see Rules 72 and 73).

(46) The mission is conscious of the difficulties facing prison officials, particularly the scarce resources available given the needs of the country as a whole. However the mission does suggest that conditions be improved and that the prisons be made open to visits by the International Committee of the Red Cross.

### Legal Services

(47) Legal aid in serious criminal cases is paid for by the government, but the programme is administered by the Bar Association. Until recently legal aid in civil cases was available only through the Bar. The University of Khartoum has now established a Legal Aid Centre which handles both civil and criminal cases. In addition, a Committee has been established under the auspices of the Attorney-General and the Chief Justice to establish a more comprehensive legal services programme, fo-

cusing particularly on problems of the poor and of women. The mission commends these efforts, and again, although recognising the scarcity of resources, encourages the government to support these activities to the extent it is able.

### **International and Regional Human Rights Instruments**

(48) To signal clearly to the people of the country and to the international community its commitment to the Rule of Law and the protection of fundamental human rights, the mission urges the government to ratify the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Such a step will also serve to encourage minority groups to have confidence in the institutions of government being created and thereby increase their willingness to participate in the debate on the future structure of the government, its institutions and laws.

### **Support from the International Community**

(49) The mission also encourages the international community to support the efforts of Sudan in its struggle to rebuild the institutions of democracy and to ensure that any internal difficulties are not fueled by outside influences.

## II. Responses of the Government

*The mission was pleased to receive the following responses to its preliminary report from the government and was grateful to learn that steps had been taken to implement certain of its recommendations, in particular the repeal of the National Security Act, the decision not to enact a national Retribution Law nor a law regulating the political parties, and the ratification of the Covenants on Economic, Social and Cultural and on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights. It also welcomed the assurance of the government's commitment to dialogue with all political and other groups within the society, and to a peaceful solution to the southern conflict.*

### **Official Comments of the Government of the Republic of Sudan, submitted by the Permanent Mission to the United Nations in Geneva**

The Government of the Republic of the Sudan having closely examined the initial report of the International Commission of Jurists mission to Sudan, Sept/Oct. 85, has the honour to respond by raising the following points which are requested to be included in the final report.

(1) The Government of the Republic of the Sudan commends the goals of the International Commission of Jurists and its humanitarian activities aiming at protection of the rule of law and the human rights in the whole world. The Government also wishes to express its appreciation for the visit by the ICJ mission to the Sudan to witness the prevailing situation in the country after the successful popular uprising.



(2) The Government wishes to reiterate its firm commitment to establish a genuine democratic rule based on freedom of expression, opinion and speech, freedom of organization, the adherence to verdicts of law, the independence of judiciary, firm commitment to the principles of the Universal Declaration of Human Rights, resolution of problems through dialogue and peaceful means, and good-neighbourliness.

(3) The Government of the Republic of Sudan has duly noted the initial report of the ICJ mission to Sudan and would like to draw its attention to the implementation of some of the recommendations contained in the report as follows:

- a. The Government has taken all necessary steps to continue consultations and dialogue with all the political forces in the Sudan, under the National Alliance and with other political organizations which do not adhere to the National Alliance.
- b. The Government has a genuine commitment to democratic rule and respects the principle of ethnic and cultural diversity. The political forces, which represent these different ethnical and cultural realities have all the freedom to express their views and to form their own organizations.
- c. Concerning the question of Southern Sudan, the government has stated that dialogue and peaceful solution are basic prerequisites for a final settlement to the problem. In this regard the government has fully supported the steps leading to the convening of the constitutional conference to study the future political system of the Sudan, with special consideration to the problem of Southern Sudan.
- d. Regarding the September laws the government has established committees to look into these laws and to work towards making the laws conform with the constitution of the transitional period. The government is always ready to heed the different views of the political forces regarding this issue.
- e. Concerning freedom of organization and freedom of expression of opinion the government affirms that it shall not interfere to limit this freedom which is a legitimate right of the popular uprising. And that any rule to organize the parties' activities will be issued after due consultations with all the political forces in the country.
- f. Regarding the imposition of martial law, the government assures that it is not used to limit any of the freedoms of the people. It has not resulted in preventing people from using their freedom of expression, of opinion by speech, demonstration organization or practicing all their democratic rights. The real purpose of the martial law is to ensure the national security of the country, and it shall be elevated

- immediately when reasons for it no longer exist.
- g. Concerning item 32 of the recommendations in the mission's report, the government would like to draw the mission's attention to articles 121-128 of the constitution of the transitional period which protect the independence of the judiciary. Removal procedures set out for judges of the junior courts will only be under articles 127-2 and under the framework of the jurisdiction of the High Council of the Judiciary (article 126). This Council is headed by the Chief Justice, with membership of his deputies, the Attorney General, the Secretary of the Bar Association and the Dean of the Faculty of Law at the University of Khartoum. The Council is the sole judicial authority in the country. The executive body has no power over the judiciary.
  - h. Concerning item 33 of the recommendations in the mission's report, article 136 of the constitution of the transitional period stated that the procedure for amending the constitution is by the consent of two thirds of the members of the Transitional Military Council and the Council of Ministers in a joint session. It is also up to the Constituent Assembly to endorse or otherwise this transitional constitution.
  - i. Concerning item 35, the military forces are one faction of the other national factions of the society. It has participated in signing the Convention for Protection of Democracy\* which is signed by most of the political forces and trade unions in the country, on Nov. 17, 1985. Copies of this Convention will be deposited at the United Nations Headquarters, the Arab League and the Organization of African Unity. The Convention declares the conviction and commitment of all the parties that signed to protect democracy and the basic rights of the individual and his freedom. Article one of the Convention states «No other than democracy based upon multi-parties, people's sovereignty, independence of the judiciary, the rule of law and adherence to principles of human rights, is acceptable as way of rule». Article two of the Convention states the absolute denial and refusal of any system aiming at establishing a military or civilian dictatorship or seeking to abort the democratic system whatsoever the reasons or excuses may be. Article three states that the military forces are a national institution responsible for protecting the territorial integrity of the country and the democratic system.
  - j. The government has decided to adhere to the International Covenant on Economic, Social and Cultural Rights and the International

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\* Referred to by the mission as the National Charter.

Covenant on Civil and Political Rights. And also to adhere to the African Charter on Human and People's Rights. All necessary steps are now being taken in this direction.

## **Comments submitted by the Solicitor General for Legislation, Office of the Attorney General**

### ***Comments on ICJ Report on Human Rights in Sudan***

We should like to refer here to your «Report on Human Rights in Sudan» dated 14th November 1985.

Indeed your strenuous efforts to highlight and comment on the various problems facing the Sudan are very much appreciated and most welcome. In response to your request that we may make any comments we have on the said Report, our following comments are solely on certain points of law raised in your Report. Other points may be answered by other authorities within which domain they fall.

1. In respect of point 13 in your Report to the effect that though the Shari'a hadd (penalties) mentioned in the Penal Code 1983 were contained in the Koran the offences to which they were applied were essentially Western in definition. We would like to mention here that as the result of this situation our Penal Code is now under study in order to reconsider the penalty of flogging prescribed in it for offences other than the Shari'a hadd (penalties) and to substitute it with the former penalty described in 1974 Penal Code. This will leave only the hadd of flogging and amputation prescribed as penalties for certain offences under the Shari'a Law. However, the said hadd will also be revised so as to reflect the most modern and well revised situations in which these penalties may be applied without miscarriage of justice. This for us is the recognition of the fact that some of these penalties were arbitrarily applied and in haste in the recent past and a meticulous and thorough study of the situations in which they are to be applied in the future is now under way.

2. As to the contravention of the Shari'a hadd of human rights instruments and other Resolutions on the same subject passed by the UN as mentioned in your recommendation no. 15, although it is understandable that corporal punishment and other similar punishment may be in

violation of the said covenants and declarations of the UN, as Muslims (we hope you know this well) we see the laws either as civil or divine. Meanwhile the former are man-made laws, the latter is the law ordained by the Almighty Allah who calls upon His servants in truth to live according and within it. Therefore the Shari'a Law for Muslims is not cruel, inhuman, degrading or segregated as it may look to a non-Muslim. Moreover, the civil laws have failed to satisfy most of the purposes of a society — namely to deter commission of grave offences such as homicide, theft, robbery, adultery and to prevent «riba» (usury) which are all prevented by the Shari'a Law. Muslims for this reason are reporting to the Shari'a Law which deals effectively with these offences because they impinge on the safety and morality of the Muslim social setup. As already mentioned in para. 1 above this does not mean that we have to overlook the defects and miscarriage of justice that may result as the result of our inappropriate application of the Shari'a Law. It is the sound application of this law that warrants the review of the definitions of the offences to which they will apply, to conform with what are in the Koran.

3. Our comment on point no. 16 in your Report is as follows:

It is left to the Sudanese people to decide either by plebiscite or referendum, whether to preserve the Shari'a hadd or leave them altogether. This has been laid down as a matter of policy by the Transitional Government (both the TMC and the Council of Ministers). Needless to stress that this will be the fair way of testing whether the majority of the Sudanese are for or against the maintenance of these Shari'a hadd (penalties). Also the predicament of the Judiciary will depend on the result of the said plebiscite or referendum. With regard to reviewing sentences passed by the courts, we confess here our failure to understand whether you mean the review of such sentences by the executive branch of the Government or you mean the review of the penalties in the Code. If you mean the first point, obviously this raises the issue of the principle of the independence of the judiciary and the doctrine of separation of powers. But if you mean the latter it is submitted that the matter is left to the revision of the Code now underway as well as to the above mentioned point of plebiscite or referendum.

4. As to points nos. 17, 18, 19 and 20, we would like you to know that the State Security Act is going to be repealed and such repeal will entail the abolition of special courts. As for the setup of the special courts contained in the Penal Code, a bill has been drafted in which the Provisions warranting the setup of the said courts are to be abolished.

5. With regard to your recommendations nos. 22 and 23 about the

organization of the Judiciary, we would like to advise that a bill now has been introduced to cater for the appointment and qualifications of judges in conformity with the Transitional Constitution. As for the Procedures, the Criminal Procedures Act, 1983 will be reconsidered in the light of the Previous Criminal Procedure Act, 1974.

6. In relation to the Peoples Retribution law that was proposed, which you mentioned in your recommendation no. 37, a bill to this effect was submitted to the Council of Ministers and was rejected by the said Council.

7. It is true that the provisions of articles 18-24 of the Transitional Constitution may raise the possibility of the law being used to curtail the rights and freedoms guaranteed thereby. But article 33 is a gauge for the specific laws which govern and organise such rights and freedoms. Also based on the past bitter abuse of fundamental rights and freedoms it looks premature to predict that such rights and freedoms will be abused by the use of the laws organising them. A free and democratic parliament with checks on the executive will be an effective organ in addition to an independent judiciary to guard against such abuse, if any, in the future. It is also the policy of this Chamber to ascertain that all legislative enactments conform to the provisions and spirit of the constitution, especially those provisions relating to the fundamental freedoms and rights. Our considerable research reveals that such phrases as «in accordance with law, as prescribed by law, or due process of law» have been used in most constitutions and without deliberate intention to encroach upon such rights and freedoms by subsequent enactments organising such rights or freedoms. The main intention being that of giving much, but in an organised form especially in an underdeveloped country like ours, where illiteracy demands clear spelling of how those rights and freedoms are to be exercised without crossing the line of sensitivity such as the safety of the state in security matters (Note recommendation 30 of the Report).

8. Respecting point 32 in your Report, this is because the Transitional Constitution 1956 amended 1964 was decided to be adopted with minimum amendments to reflect the realities of the changes which took place in the meantime namely, the regional administration and the form of the Transitional Government being composed of the Transitional Military Council and the Council of Ministers. Such articles were already introduced in the said adopted constitution. The check upon the executive decisions is left to the legislative side rather than to the Judiciary, except in cases which are in violation of the provisions of the Constitution.

9. On point no. 38 of your Report, we have the following comment:

That those who participated in the defunct regime are no longer threatened by the people's Retribution Law. Instead a bill has been proposed which provides for the protection of democracy and punishment of economic and administrative corruption and this will replace the National Retribution law.

## **Comments submitted by Lt-General Ahmed Wadi Hassan, Director General of Prisons, Ministry of the Interior**

### *Comments on the Paper*

#### **Recommendation 27**

The prison system in the Sudan is based on the philosophy of achieving goals for rehabilitation and reintegration into society. We are proud of our system, though we are really suffering due to shortage of financial facilities. Social workers are given the chance to carry out their duties but they are also handicapped by financial problems.

#### **Recommendation 28**

It is really a pleasure to declare that Sudan implements 75% of the UN standard minimum rules for the treatment of prisoners. So we are considered to be one of the leading countries in Africa in applying these rules. As for the use of chains to some remands, (those awaiting trial under murder cases) they are mainly used for security purposes as we have no other means in that respect.

#### **Recommendation 29**

Due to lack of facilities we asked for the improvement of the prison condition, and thanks for the support. As for the inspection of the prison by an independent body, it seems that there is no confidence in the prison staff as well as the Minister of Interior himself who visits all prisons in the Sudan by virtue of his post. In addition to that, other civilian officials are allowed to visit prisons such as Magistrates, Doctors, Journalists, etc. Our prisons are open for everybody to visit except in very few circumstances due to security affairs.

Finally we do not assume that what we have is the best, but we are confident that we are doing the best we can to improve our prison system within the local resources of our country.

### III.

## Comments by the Mission

Both the response of the Permanent Mission in Geneva and that of the Attorney-General indicate that the government considered throughout the transitional period the steps to be taken with respect to the «September laws». Both the Transitional Military Council and the Council of Ministers had issued statements in which they recognised that these laws were «obstacles to national unity». However, despite the creation of committees of review within and without the government these laws underwent few changes. The draft penal code submitted by the Attorney-General and referred to in the response of his office met with much opposition within Sudan and did not remove many of the harsher features of the existing code.

The lack of reform in this area continues to be a major source of concern within Sudan, and the new government is now burdened with this issue, in addition to having to resolve the war in the south and tackle the difficult economic situation in the country. It is perhaps unfortunate that the transitional government did not push harder to resolve the question of the «September laws», especially as lack of progress affects the conflict in southern Sudan, and makes it more difficult to resolve.

With regard to paragraph g of the response of the Permanent Mission in Geneva, the mission respectfully notes that paragraph 32 of the Preliminary Report sought to draw the attention of the government to the apparent oversight in the Transitional Constitution with respect to removal procedures for lower court judges. If the intention is to have the same removal procedures applied to them that apply to judges of the Supreme Court, this would be welcome, but it is not stated in the present article. The mission recommends that this anomaly be taken care of.

Concerning paragraph 3 of the Attorney-General's response, para-

graph 16 of the Preliminary Report referred to the planned review of sentences by the executive. The Attorney-General and others had indicated to the mission that, once the penal and criminal codes were amended, sentences passed under the existing codes would be reviewed and any found «unjust» would be revised. This, the mission considered, put the judiciary in the somewhat untenable position of having to enforce unpopular laws while knowing that their decisions might be revised in light of changes made to those laws.

In paragraph 7 of the Attorney-General's response, the point is made that it is unfair to prejudice what restrictions will be placed on the rights guaranteed by the Transitional Constitution. The mission did not intend to suggest that it believed abuses to be likely but rather intended to suggest improvements in the text that would avoid the possibility of abuses of power taking place. The mission was also concerned about the need to ensure that certain rights were non-derogable, that is, they could not be amended or abolished in any circumstances. The Covenant on Civil and Political Rights, to which Sudan is now a party, makes certain rights non-derogable, and the mission's suggestions were aimed at bringing the Transitional Constitution into line with the Covenant. The mission cited particular provisions of the constitution that should fall in this category, and it has renewed this recommendation in its final report.

There is some confusion as to the points being made in paragraph 32 of the mission's Preliminary Report. The mission was concerned by the lack of an explicit provision giving the judiciary the right to review executive decisions in order to determine their constitutionality. The response of the Attorney-General implies that such a right is given, but does not cite a specific article. The mission would be pleased to be informed of the article in the Transitional Constitution guaranteeing such a right.

The mission is also appreciative of the response received from the Director of Prisons, and repeats that it is aware of the difficulties facing Prison administrators given the severe economic difficulties in the country as a whole. It did not intend to imply a lack of confidence in the prison staff or the Minister of Interior by suggesting that the prisons be made open to outside visits. Many countries accept such visits and view them as a form of assistance in the administration of their prisons. The mission wanted to encourage Sudan to consider this option.



## IV. Historical Overview

Sudan declared its independence from Egypt and Great Britain on 1 January 1956. The new government was besieged with economic and social problems, many inherited from the colonial period. It soon became split by factionalism, which was perhaps to have been predicted as little had been done to create representative institutions of government during the colonial period.

From 1899 until 1953 Sudan had been ruled under the terms of the Anglo-Egyptian agreement of 1899 commonly referred to as the Condominium agreement<sup>1</sup>. In theory Sudan was jointly ruled by the British and the Egyptians, but the British were the actual rulers. Egypt acquiesced in this as its interests were served by British protection of its southern border and its access to the Nile waters. British rule over Sudan was characterised by the absolute powers of the Governor-General, the frequent imposition of martial law and the taking of punitive measures against those protesting British rule. Some of the legislation enacted in this regard by the British was to find its way into post-independence penal and criminal codes as well as various national security acts.

Actions were taken during the colonial period which were to have profound consequences for the future unity of the country. In 1922, the

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<sup>1</sup> Northern Sudan had been conquered by the Ottoman ruler of Egypt Mohamed Ali in 1820. His armies took control of southern Sudan in 1838. The Egyptians were forced out of Sudan by a popular uprising which started in 1881 and was spearheaded by Mohammed Ahmed, a devout Muslim who declared himself to be the Mahdi (the Messiah, sent to establish a true Islamic state). Non-Muslim groups in the south participated in this uprising. From 1882 when the last Egyptian troops were removed from the country, until 1898 when the Egyptians and British jointly invaded the country, Sudan was governed by the «Mahdists».

Passports and Permits Ordinance was enacted. It closed the south of the country and the Nuba mountain region to «outsiders». No one could enter either of these regions without British permission. The closed district policy failed in the Nuba Mountain region, probably because of its proximity to Khartoum, but continued in the south until 1946. Northerners were carefully screened before being given permission to enter the south and southerners were discouraged and at times prevented from going north. Only Englishmen and non-Arabs were used in the administration of the south, and English became the lingua-franca. This policy left the south in 1946 with little economic development and with one secondary school.

The two most powerful political parties of present day Sudan have their roots in the pre-independence period. The Umma Party can be traced to the Mahdists which came together as a politico-religious group during the 1920s. Its supporters were members of the Ansar sect, followers of the Mahdi who had driven the Egyptians from Sudan. This group formed around the son of the Mahdi, Sayed Adb el Rahmed el Mahdi. The history of the Democratic Unionist Party goes back to the growth of the Katmiya, another of Sudan's religious sects, as a political force. This group was headed by Sayed Ali el Mirghani and had its power base in eastern Sudan. The DUP is the larger of the successor parties of the National Unionist Party, the original Katmiya-supported party.

Tension existed between the two groups in the years leading to independence, with the Mahdists taking a more pro-British stance and the Katmiya a more pro-Egyptian one. These tensions surfaced during the elections held in 1953 under the self-government statute (agreed to by the two Condominium powers and the northern political groups)<sup>2</sup>. The National Unionist Party won an absolute majority in both houses of Parliament, however, the elections were marred by charges and counter-charges of attempts to influence by the British and the Egyptians. These allegations were echoed by the two major parties, the Umma and the NUP. Riots caused the opening of Parliament to be postponed by 10 days.

Factionalism resurfaced shortly after independence in 1956. Within two weeks of independence the Prime Minister found himself facing defeat in Parliament and was unable to form a national unity government. A coalition government was formed and a new Prime Minister chosen.

In addition to political factionalism, ethnic tensions between the

<sup>2</sup> Southern leaders disassociated themselves from the negotiations taking place with Egypt, and the sole southern leader to participate was deposed on his return for not having adequately protected his tribe's interests.

north and south of the country began to surface during this period. As a result of the poor education system in the south during the colonial period, few southerners held responsible government positions at the time of independence. The process of Sudanisation undertaken in the three years preceeding independence as well as the post-independence era was not used to integrate southerners into the national government. Many southerners feared that the north would attempt to dominate the country, and these fears were not eased when northerners began to replace the British in the southern administration. Another major cause of concern to southerners during the post-independence period was the apparent disregard of an agreement reached between northern and southern legislators immediately prior to independence. The southerners had agreed to vote for independence in return for a promise that their viewpoint, in particular their request for a federated state, would receive serious consideration when discussions began on a permanent constitution. The general feeling of uncertainty among southerners was mirrored in the armed forces where successive mutinees took place among southern troops.

From independence in 1956 until April 1985 Sudan has known approximately 7 years of democracy and 21 years of military rule. The post-independence period of democracy came to an end in 1958 when Major-General Aboud took power in a military coup. This government was marked by continual resort to emergency measures, the banning of political meetings and the use of preventive detention. The harsh policies adopted toward the south led to southern politicians going into exile and the formation of a coordinated armed resistance movement, Anya Nya.

The military remained in power for six years, until massive general strikes brought it down in October 1964. These strikes were occasioned by a police assault on students at the University of Khartoum whose purpose was to prevent a debate on the southern question. One student was killed and several were critically wounded by police fire.

The new civilian government was not long free from factionalism. It was initially composed of representatives from the trade unions as well as the political parties. Manoeuvring between the Prime Minister and some of the political parties led to the formation of a new government which excluded the trade union representatives. The People's Democratic Party, the larger of the successor parties to the NUP, and the Communist Party refused to join this new government. At the next general election in 1965 no political party was able to obtain a clear majority. From 1965 until the military takeover of Colonel Gaafar Mohamed Nimeiri in May 1969 there were several changes of government. The sharp political differences also prevented the adoption of a permanent constitution.

## The Nimeiri Years

Former President Nimeiri's policies changed depending on the international alliances he was seeking to promote, first with the USSR, then the USA and then Saudi Arabia, as well as internal alliances he deemed opportune. Each time severe discontent manifested itself, he would seek a new ally among the political groupings in Sudan and adopt new political and economic policies. His years in power were marked by repeated coup attempts, massive public demonstrations and trade union strikes. Throughout his rule, severe restrictions were placed on political activity.

Immediately upon assuming power, then Colonel later Field Marshall Nimeiri suspended the transitional constitution and appointed a Revolutionary Command Council. Legislative and executive powers were given to a Council of Ministers who were accountable to the Command Council. Emphasis was placed on the security of the state and furthering the goals of the May Revolution.

From the time of this take-over, the organisation and conduct of political parties was made illegal. In 1971 the Sudanese Socialist Union was declared the sole political party in the country. This status was recognised in the permanent Constitution adopted in 1973.

When he took power, President Nimeiri looked to the Communists and some Arab nationalists for support. However, in July 1971, he dismissed the three Communist Party members of the Revolutionary Command Council when the party refused to dissolve itself and join the Sudanese Socialist Union. At the same time the Secretary-General of the party was arrested. The three dismissed members of the Council organised a coup and deposed Nimeiri on 19 July. A counter-coup was launched and the communists were dislodged after three days. The leaders of the coup attempt, the head of the Communist Party and a number of other persons were tried summarily before special courts and executed, several on the same evening as the verdicts were pronounced.

After these events, it was decided to restructure the government and Republican Order no. 5 was issued. The executive powers of government were to be transferred from the Revolutionary Command Council to a President, and legislative powers were to be shared by the President and a People's Assembly. The Revolutionary Command Council was to nominate the first candidate for President who would stand for election by referendum. After the initial election, the Sudanese Socialist Union was to nominate all further candidates. A Council of Ministers was to be established to carry-out the administration of government, and its members were to be ex-officio members of the People's Assembly.

The Revolutionary Command Council nominated Major-General Nimeiri for the post of President, and he was elected in 1971.

In 1972 a significant achievement occurred with respect to southern Sudan. Soon after the «May Revolution», the new government issued a statement declaring that it recognised «the historical and cultural differences between the north and the south and that the unity of (the Sudan) must be built upon these objective realities» and promising regional autonomy to the south. A Ministry for Southern Affairs was established; in 1971 Abel Alier took over the Ministry. He is considered by many to be responsible for the successful negotiations that took place between southerners in Sudan, exiled southern politicians and the government in Khartoum. These negotiations concluded in 1972 with the Addis Ababa agreement and the passage of the Southern Provinces Regional Self-Government Act. It provided for a legislative assembly for the southern region and a local executive authority, the High Executive Council. The President of the Nation was to appoint the president of the High Executive Council on the recommendation of the People's Regional Assembly. This agreement was incorporated into the Permanent Constitution adopted in 1973.

The 1973 Constitution maintained the executive presidency outlined in Republican Order no. 5. The president was made both head of state and head of government. All executive powers were vested in him and he also enjoyed certain legislative powers. He was the Commander of the Armed Forces, Head of the Public Service and he appointed all judges on advice from the Supreme Council of the Judiciary. The Judiciary was made directly responsible to the President for the proper performance of its functions. The Sudanese Socialist Union («the SSU») was recognized as the sole political organisation in the country.

Also adopted in 1973 was the State Security Act which created numerous political offences. The 1970 act establishing the State Security Bureau was replaced in 1974 and the new act gave broad powers of arrest and search to the State Security Services. Also, in 1974 a new criminal code was enacted; it included some of provisions similar to those in the State Security Act.

A number of coup attempts were made in 1973, 1974 and 1975. As a result of the 1975 attempted coup, during which the army headquarters and the government-run radio station were taken over for several hours, amendments were made to the Constitution which sanctioned legislation concerning preventive detention<sup>3</sup>, permitted the establishment of special

<sup>3</sup> A case was then pending before the Supreme Court concerning the constitutionality of existing legislation authorising preventive detention.

courts<sup>4</sup>, and increased the powers of the President by adding amendments to articles 81 and 82 of the Constitution. These articles made the President responsible for maintenance of the Constitution, the protection and independence of the country and the protection of the victories of the «May Revolution». The amendments gave him the power to take any actions and make any decision he deemed necessary for these purposes.

A further attempted coup took place in July 1976, staged by the National Front, a coalition of the more conservative political parties. In August, Sadiq el Mahdi, leader of the Umma Party, announced that he, among others was responsible for the attempted coup and that he had received the support of several Arab governments, including Libya. Numerous arrests were made, and trials held before the state security courts. Ninety-eight people were executed.

Then in July 1977 Nimeiri and el Mahdi initiated discussion on a possible national reconciliation; about this time 900 Sudanese detainees were released. On 12 April 1978 an agreement was signed which granted a general amnesty; in return the Ansar agreed to end their armed opposition. By May 1978 the last political detainees were released (including members of the Communist Party who were not part of the general amnesty agreement reached with el Mahdi). El Mahdi was appointed to the political bureau of the SSU.

The other politico-religious group to gain influence at this time was the Muslim Brotherhood, headed by Hassan al Turabi. He became the SSU secretary of information and adviser on foreign affairs in July 1978. As part of the national reconciliation process, a committee was established to review Sudanese law to bring it into line with Shari'a. Although draft laws were produced, they were not put into effect. Some provisions of the Regional Self-government Act of 1972 were cited as being contrary to Shari'a by the Committee, but no changes were made.

Major strikes occurred in 1979. The first group to come out was the Railway Workers Union. Between May and August 1979 several hundred people were arrested, many of them placed under administrative detention. The unions were dissolved by executive decree and orders issued for the arrest of the leaders. Despite this, negotiations continued between the government and the unions, but no agreement was reached. A presidential decree was issued which amended the security law so that strikes became a security offence; offenders were to be tried before courts martial and were liable to be sentenced to death. A further order was issued after clashes between union members and the police stipulating that unions

<sup>4</sup> The Supreme Court had declared unconstitutional the trying of civilians before courts martial.

could only function under the control of the SSU. Eventually the strikers returned to work.

In 1980 judges went on strike alleging that the executive was interfering with the functioning of the courts and the independence of the judiciary. Among their demands was the abolition of special courts, respect for the principles of separation of powers, ending the use of courts martial for trials of civilians, abolition of the requirement that judges join the SSU, and improvements in the conditions of service. The judges also protested against government policies which prohibited the trial of policemen for criminal offences before ordinary courts, and the refusal of the government to release students arrested during demonstrations in 1980, despite court orders for their release.

When the government did not respond to the judges' demands, a collective notice of resignation was sent on 17 February 1981. The judges were supported by the Bar, which agreed that no lawyer would accept a judicial appointment or appear before the courts. On 18 February 3 judges and 4 lawyers were arrested but were released 7 days later. Eventually the judges returned to work, after receiving assurances that the executive would respect the independence of the judiciary and of plans to improve their conditions of service.

During 1980 further constitutional amendments were made which set up a system of regional self-government for the north. This devolution of power was initially welcomed by groups in the east and west who had felt excluded from power in the national government. However, the plan was later criticised for not giving sufficient powers to the local authorities. The People's Assembly as well as the Southern Regional Assembly were abolished in anticipation of new elections, even though the regional government plan did not, because of the Addis Ababa agreement, include the south. A transitional administration was established for the south which was to explore the possibility of redividing the region. President Nimeiri asserted that this would not violate the Addis Ababa agreement.

Disturbances broke out in the south almost immediately<sup>5</sup>. Southerners were suspicious of President Nimeiri's intentions concerning development of the oil fields discovered outside Bentiu, in the Upper Nile region of southern Sudan. He had tried to change the borders of Kordofan (northern Sudan) and Upper Nile when drafting the regional self-government plan, but this had failed. Subsequently he announced that the oil refineries would be built at Kosti in Kordofan. This caused a

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<sup>5</sup> Mutinies had occurred throughout 1975, 1976 and 1977 among southern troops.

wave of unrest in the south<sup>6</sup>. In June 1983 President Nimeiri announced that the south would be redivided. Fighting broke out almost immediately, and has not abated<sup>7</sup>.

A further judicial strike occurred early in 1983 after President Nimeiri accused the judiciary of being corrupt. Although there was no «resolution» of the conflict, the judges returned to work after three months.

### *The September laws*

As indicated earlier, throughout his stay in power, former President Nimeiri switched internal alliances and changed the direction of his government whenever his existing policies met with mounting disapproval. Towards the late 1970s and early 1980s President Nimeiri began to develop closer relations with the Muslim brotherhood. Initially he did not take up their call for Islamisation of Sudanese law, but, beginning in August 1983, he issued a series of provisional orders<sup>8</sup> which, according to him, would bring Sudanese law into line with Islamic law. The provisional orders issued between August and October 1983<sup>9</sup> either revised or replaced much of the country's existing legislation and were immediately applicable<sup>10</sup>. The People's Assembly was called into session and gave its approval to the legislation in mid-November; this session was boycotted by southern members. Included among the 1983 provisional orders were: The Judiciary Act; The Reorganization of the Attorney General Chambers Act; The Advocacy Act; The Criminal Procedure Act; The Penal Code Act; The Civil Procedure Act; The Evidence Act; Commanding the Proper and Forbidding the Improper Act (Legal Enforcement of Morals Act); and The Judicial Sources of Law Act.

Perhaps recollecting the judicial strikes of 1981 and early 1983, President Nimeiri's remarks when introducing these laws concentrated heavily on the need to improve the judicial process and to quicken the pace of judicial decision-making.

<sup>6</sup> Later, in 1984, Nimeiri was to decree the establishment of a new province, Wahdah (Unity), with its capital at Bentiu. It was to be included within the northern administrative region.

<sup>7</sup> See Chapter VI for a fuller discussion on the southern conflict.

<sup>8</sup> Presidential decrees with the force of law which are issued when the parliament is not in session.

<sup>9</sup> Further legislation was introduced in 1984.

<sup>10</sup> These pieces of legislation were not those drafted in 1978 following the national reconciliation. Many observers say they were drafted in great haste.



Although there was some support for these laws, in particular among members of the Muslim Brotherhood, a wider spectrum of society was opposed to them, fearing the consequences for Sudanese society. Among Muslims and non-Muslims apprehension existed that the society, which had developed a reputation for tolerance, would be split apart and the delicate balance achieved in the 1973 Constitution, which recognised the majority's belief in Islam as well as the need to respect and take account of the beliefs and customs of the minority,<sup>11</sup> would be destroyed.

Political leaders such as Sadiq el Mahdi, leader of the Umma Party and member of the Ansar sect, condemned the laws, arguing that implementation of Shari'a, particularly the criminal penalties, envisaged the creation of a reasonably prosperous and just society, and stating that the criminal penalties could not be applied in a country affected by famine and with significant levels of unemployment. He was imprisoned by President Nimeiri with several of his supporters on 25 September and remained in prison until December 1984.<sup>12</sup>

The Sudan Council of Churches and the Archbishop of the Roman Catholic Church also protested against the legislation. Demonstrations organised by southerners took place in the north as well as the south. Abel Alier, one of the architects of the Addis Ababa agreement and Joseph Lagu, the second Vice-President and a southerner, sent a memorandum to President Nimeiri setting forth their opposition to the laws. They warned of the consequences of abrogating the constitution, which protected freedom of religion, gave recognition to traditional beliefs and proscribed religious discrimination. Apparently some factions within the army were also against the imposition of these laws, as they believed it could lead to renewed fighting in the south.

This, unfortunately, was to be the case. After a mutiny in June 1983 at Bor in Southern Sudan, the Sudan People's Liberation Movement (SPLM), was formed along with an armed wing, the SPLA. This group, composed primarily of southerners, called for the «liberation» of Sudan from President Nimeiri's rule. After the passage of the «September laws», the SPLA began to step up its operations, and kidnapped employees of some of the foreign corporations conducting business in the south. Their «ransom» demand was the repeal of the «September laws».

Opposition to the laws continued. In early 1984, members of the

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<sup>11</sup> Southerners comprise about 30% of the country's population.

<sup>12</sup> During December 1984 President Nimeiri referring to the adoption of Shari'a released 13,000 prisoners on the basis that they had been convicted under laws which were no longer valid.

judiciary who were also members of the Republican Brothers Movement<sup>13</sup> filed a constitutional challenge to the laws. They asserted that the new Judiciary and Judicial Sources of Law Acts prevented them from carrying out their constitutionally mandated duties as judges. Then in April 1984 the Bar Association held a symposium on the laws, and concluded that they were unconstitutional and were not a true reflection of Islamic law.

During this period there were student demonstrations and strikes by doctors and by lecturers at the University of Khartoum. The war in the south intensified with attacks taking place against military installations, transport facilities and foreign businesses.<sup>14</sup>

On 29 April, President Nimeiri declared a state of emergency. In his announcement he stated that the emergency was being imposed in order to thwart a conspiracy against the application of Shari'a.<sup>15</sup> Emergency courts were created for the purpose of trying breaches of, inter alia, the emergency decree, violations of the Defence of the Sudan Ordinance of 1939, the Security Act, sections of Penal Code of 1983, and for commission of acts hindering the application of Islamic law. The procedures of these courts were truncated and appeals were abolished. Lawyers were permitted to attend hearings only as a «friend» of the defendant. Sentences were to be carried out immediately, except for death sentences which had to be confirmed by the President. The Courts were to be chaired by a civilian judge (not necessarily with legal training) who was to be assisted by two members of the armed forces.

Also pursuant to the emergency decree, the powers of the police were expanded significantly. Searches without warrant were permitted as was censorship of personal mail. The police could arrest and detain people for 2 weeks without a warrant. All meetings and demonstrations were banned.<sup>16</sup>

There was immediate and widespread criticism of the emergency

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<sup>13</sup> A small, intellectual movement headed by Mahmoud Mohamed Taha which aspires to the creation of a modern Islamic state.

<sup>14</sup> On 14 March a single plane attacked the city of Omdurman; 5 people were killed. Although Libya was blamed, most observers discount this theory. Egyptian troops were sent to Khartoum under the 1976 Defence Pact.

<sup>15</sup> During May 1984 the President began a drive to amend the Constitution to have it reflect the new Islamic orientation. Proposals were forwarded to the People's Assembly for discussion. There was much dissension over the proposals and a petition, signed by the majority of the members, was presented to the President asking him to postpone debate on the amendments. President Nimeiri after discussions with the Speaker of the Assembly agreed to a postponement.

<sup>16</sup> In addition, several articles of the constitution were suspended, including that involved in the suit brought by the two judges.

decree, and in particular, of the emergency courts<sup>17</sup>; this criticism did not abate. As a result, emergency courts were replaced on 8 July by Prompt (or Decisive) Justice Courts, and a Decisive Court of Appeal established. The procedures used by these courts remained summary. Then on 29 September 1984 the emergency was lifted. However, it was announced that major changes would be made in the organisation of the judiciary. In October, Judiciary Act 1405, A.H., was passed; many of the emergency provisions affecting judicial procedures were incorporated into the act and the head of one of the Decisive Justice Courts was made Chief Justice.

At the same time President Nimeiri announced the lifting of the state of emergency, he stated his willingness to rescind the June 1983 decree dividing the southern region if this were the wish of southerners.

Shortly after the Judiciary Act of 1984 was put into effect, the Bar Association submitted a memorandum to the President criticising it. The Bar noted that the Act violated the Sudanese Constitution, in particular those provisions concerning the Rule of Law and the independence of the judiciary, and called for repeal of the Act.

Throughout this period many of those expressing opposition to the new laws were detained, including a number of lawyers. During 1984 the International Commission of Jurists received reports of hundreds of people being detained in Sudanese prisons, many without charges being filed against them.

Then in early March 1985 President Nimeiri made another of his sudden about turns and began criticising the Muslim Brotherhood, claiming that they were interfering in the affairs of the government and were attempting to take control of it. He branded them subversives and accused them of using religion as a political tool. The leader of the Muslim Brotherhood, Dr. Hassan al Turabi was dismissed from his position as adviser on foreign affairs and was imprisoned. All other members of the group holding government positions were dismissed. During the following weeks over 200 members of the Muslim Brotherhood were arrested. Nimeiri announced that all orders and sentences of the Decisive Justice Courts would be revised.

The SPLA, determined to keep up the pressure on President Nimeiri, stepped up its activities, capturing several areas in the south.

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<sup>17</sup> There was also a great deal of international criticism; the ICJ condemned their operation before the UN Subcommission on Prevention of Discrimination and Protection of Minorities.

## *President Nimeiri's Overthrow*

When demonstrations began on 27 March 1985, neither those inside or outside the government believed that they would result in President Nimeiri's downfall. Protests and strikes had occurred previously without seriously jeopardizing the regime. Most had subsided after a day or two. This time, they did not, perhaps because of the convergence of several events which had served to harden the population's attitude towards President Nimeiri and made it more determined to put an end to his government. As the demonstrations continued in Khartoum the number of participants grew and then protests spread to other cities and regions.

One of the factors leading to his downfall was the harshness with which the new «Islamic» codes were applied. Homes and businesses were searched without warrant; people found themselves living in a climate of fear both at home and when out on the streets; cars were stopped randomly and identity papers demanded. Men and women found together on the streets or in cars were asked to produce proof of their marriage and if they could not, were charged with attempted adultery. The number of amputations also left deep impressions. Although some segments of the population had supported the imposition of harsher penalties in the hope that it would reduce crime, few had expected the application to be so severe. Anger mounted in the south, as the number of amputations performed on southerners increased.

Another event which appeared to cause great anger in the population was the trial and execution of 76-year-old Mahmoud Mohamed Taha, the leader of the Republican Brothers Movement. Although the movement was small, Mohamed Taha had earned the respect of his fellow citizens for his courage, his intelligence and for his battles to preserve freedom in the country. He was arrested by President Nimeiri in June 1983 after criticising the government for encouraging religious conflict through its policies of Islamisation. He was detained until December 1984, and then rearrested in early January 1985 along with four of his followers for having distributed leaflets which called for the abolition of the 1983 laws, a political solution to the question of southern Sudan and the teaching of the Sunnah Codes of Islam.

He and his co-defendants were convicted on 8 January of having violated section 96 of the Penal Code prohibiting the commission of or the incitement of others to commit offences undermining the constitution or inciting people to wage war against the state. They were sentenced to death but told that if they repented before their case was heard by the appeal court, they would be spared. When the appeal was heard, the

convictions were affirmed, and they were also declared guilty of the «crime» of apostasy<sup>18</sup>, without any further proceedings taking place. Mohamed Taha's co-defendants were given one month to repent. On 17 January, President Nimeiri confirmed the death sentences but limited the time for «repentance» to 3 days. Mohamed Taha was executed on 18 January while his co-defendants were forced to watch. On 19 January it was announced that they had repented of their opposition to Islam as it was being applied in Sudan.

Mohamed Taha's execution and the treatment of his co-defendants caused outrage among the Sudanese<sup>19</sup>, and in particular, among the intellectual community who wondered if this presaged a more generalised attack on them. He had never advocated violence, and it was clear that he and his followers had been persecuted for their beliefs. His death served as the impetus for the formation of the Alliance for the Defence of Democratic Rights which was composed of representatives of the professional unions, and the staff and students at the University of Khartoum.

This group presented a letter to U.S. Vice-President George Bush on 4 March 1985 during his visit to Khartoum. The letter protested against the harsh conditions and repression of the Nimeiri regime. Its contents were leaked to the international press, and the publicity encouraged the group to continue its efforts.

Another factor contributing to the increased hostility against President Nimeiri was the imposition of harsh economic measures during a time of severe food shortages<sup>20</sup>. Fuel prices went up between 60% and 75% on 12 March and then on 24 March bread prices went up 33%. These increases were followed by rises in the price of sugar on 27 March.

Popular demonstrations started in Khartoum on 27 March<sup>21</sup>, and quickly spread to the outskirts of the city, and then to other major cities. Also on 27 March the doctors union issued a call for a general strike, and began to contact other professional unions seeking their participation. The

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<sup>18</sup> The «crime» did not exist in the Penal Code, but was added by the appeal court judge using the Judicial Sources of Law Act which gave considerable discretion to judges to extend the formulation of criminal charges based on their interpretation of the Shari'a.

<sup>19</sup> There were numerous international efforts to prevent the execution, and widespread condemnation followed the announcement that it had been carried out. The ICJ was among those organisations who appealed for a stay and who condemned the execution.

<sup>20</sup> Nimeiri inflamed this by making statements which suggested that the food crisis could be solved if people stopped insisting on three meals per day. He also opined that good Muslims could survive on a few dates per day.

<sup>21</sup> There had been student demonstrations on 26 March.

doctors were particularly angered by the treatment that had been meted out to the demonstrators by the security forces. They published leaflets which established that the demonstrators had been shot at close-range<sup>22</sup> and had been beaten with electrified truncheons.

Serious efforts were undertaken to form an alliance of the various professional unions. The security police attempted to stifle these efforts by arresting the leadership of the more active unions. Despite these arrests, a call went out from the emerging alliance on 1 April for a general strike to be held on 3 April. This call was widely heeded.

By this time steps were being taken to form a coalition between the unions and the political parties, in particular the Umma, the Democratic Unionist, the Communist and the Ba'thist parties. This coalition eventually became the National Alliance for the Salvation of the Country (the «National Alliance»).

As the demonstrations continued it became clear that the police could not control the crowds, and in time they seemed to lose interest in doing so. Members of the National Alliance became worried about the possible reactions of the security forces to a general strike planned for 6 April. The judges' union suggested that the call for participation in the general strike be issued in conjunction with an announcement that the National Alliance would on the same day present a demand for a new government to the military. The other members of the National Alliance agreed to this and an appeal was made to have all Sudanese people join the demonstration on 6 April.

The differing views of the army and the security forces towards the demonstrations became apparent during the 4th and 5th of April. President Nimeiri, through his Vice-President, had asked the army to maintain control over the situation. The army refused, saying that this was the job of the security forces. It then announced publicly its belief that the Vice-President should receive the statement to be made by the judges. The security forces then issued a statement saying that they would not allow the demonstrations to take place. Members of the police and army began to contact members of the Alliance to discuss a possible change of government.

During the night of 5 April the army leaders sent a message to the National Alliance stating that it was their intention to announce the overthrow of Nimeiri the following day and to form a new government with both a civilian and military component. It was proposed that the

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<sup>22</sup> Three people were killed during the first day of demonstrations and several were wounded.

unions and the political parties choose the civilian members of government. A transition period of three years was suggested.

Many members of the National Alliance were unhappy about the military leaders' decision to retain power. The National Alliance had been preparing a Charter<sup>23</sup> setting out the aims of the new government. This document was to have been signed on 4 April and presented to the nation. However, the signing did not take place until the early hours of 6 April.<sup>24</sup> The Charter called, *inter alia*, for a return to the 1956 transitional constitution as amended in 1964, the protection of fundamental rights and freedoms, a negotiated solution to the southern conflict, the creation of new economic structures, and a non-aligned foreign policy. It was presented to the army around 11 a.m. on 6 April, by which time the army had announced the overthrow of President Nimeiri.<sup>25</sup>

The announcement of the change in government was made by the Minister of Defence and Commander-in-Chief of the armed forces, General Abdul-Rahman Swareddahab. He stated that the armed forces «had decided to take the side of the people» and to rule for «an interim period». A state of emergency was declared, and the Constitution suspended. An order for the arrest of all former vice-presidents, ministers, regional ministers and governors was ordered and the regional military commanders were told to take control of the provincial governments.<sup>26</sup>

Strikes continued on 7 and 8 April, with many of the strikers demanding a complete return to civilian rule. On 8 April three further communiques were issued. The government ordered an end to the strikes saying their continuation would be an act of treason. However, in a more

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<sup>23</sup> Reports since the downfall of Nimeiri have confused this document with a plan presented to the army on 10 April by the Alliance which outlined the structures, functions and aims of the transitional government. This latter document is referred to as the National Charter.

<sup>24</sup> The original signatories were the Trade Union Alliance, the medical doctors' union, the Bar Association, the engineers' union, the bank employees' union, the staff union of the University of Khartoum and the insurance employees' union as well as the Umma, the Democratic Unionist and the Sudan Communist Parties.

<sup>25</sup> From all accounts General Swareddahab was a reluctant leader in the events, but had been convinced by other army officers that the situation had become unstable and they must act. Apparently only 3 hours before the announcement of Nimeiri's overthrow he had announced that the army was still supporting Nimeiri.

The announcement of the army takeover noted the worsening political crisis in the country and then stated:

«The Sudanese Peoples Forces have decided unanimously — in order to save the country and its independence, to avoid bloodshed and support the people and its choice — to yield to the wishes of the people and assume power».

<sup>26</sup> At the time of the mission, these military officers were still holding regional governments posts.

conciliatory tone, it also stated that a number of the strikers' demands had been met, and referred to the disbanding of the secret police and the release of all political prisoners. By 9 April the population in Khartoum had returned to work, and within a couple of days workers in the other major cities followed.

Negotiations between the unions, the political parties and the military proceeded slowly. On 10 April the military commanders announced that they were forming a Transitional Military Council («TMC») to govern the country so as to avoid chaos. They reiterated that it was their intention to have a civilian component in the government which would take office when an agreement had been reached. The TMC assumed its duties on 11 April, with the promise that elections would be held within a year.

Apparently on the same day the National Alliance put forward a proposal that a Supreme Commission be established and recognised as the high constitutional authority.<sup>27</sup> This proposal was rejected by the TMC. An agreement was finally reached in mid-April as to structure of the new government. A Council of Ministers was sworn in on 25 April, except for the Attorney-General who was appointed shortly afterwards.

## The Transitional Year

Tensions arose between the TMC and the Council of Ministers on a number of occasions, but the differences appear to have been solved through compromises. Although the National Alliance had expected that the TMC would assume the role given in the 1956 and 1964 transitional constitutions to the Supreme Commission, the TMC went beyond those powers by involving itself in day to day legislative matters. This was objected to by members of the Council of Ministers. Strenuous debates took place during the drafting of the Transitional Constitution. Many of those interviewed by the mission were opposed to the «activist» role the TMC assumed. Doubts had also been expressed about the TMC's

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<sup>27</sup> The document is dated 10 April, but the date it was presented to the military leaders is not clear. The signatories to the document are, the general secretariat of the trade union alliance, the medical doctors' union, the engineers' union, the bar association, the staff union of the University of Khartoum, and the following political parties: the Umma, Democratic Unionists, Arab Ba'athist Socialist, Arab Nasserite Socialist, Islamic Socialist, and a branch of the Muslim Brothers. Other groups have since joined the National Alliance, and the Muslim Brothers have left.



commitment to holding elections, but this promise has now been fulfilled and it is hoped that the return to the barracks will be peaceful.

The National Alliance continued to function after the government took power, and took an active role in the efforts to obtain a political and peaceful solution to the question of southern Sudan. It criticised the government for not moving ahead with repeal of the September laws, and its views were solicited on the Transitional Constitution as well as on various pieces of legislation to be introduced by the government. Government representatives both from the TMC and the Council of Ministers went to meetings of the National Alliance to keep it informed of developments. However, there were some divisions within the Alliance, and complaints were voiced concerning its lack of a formal structure. There was and is no agreement as to whether its proper role is as a «watchdog» over the government or a forum for the exchange of views or some amalgamation of the two. The latter seems to be the de facto situation. The union members have on occasion stated their dissatisfaction with their weight within the National Alliance.

At times the National Alliance was attacked by the military for being too «soft» on John Garang, and the SPLA. As a result the Alliance felt it necessary to clarify its position and stated that it supports the army but cannot accept a military solution in southern Sudan; it also criticised the SPLM for not accepting a cease fire offered by the army. It is to the credit of the constituent members of the National Alliance that they have, despite the difficulties, continued the Alliance and continued working through it to achieve mutual aims.

Soon after the government was formed, statements were made promising a review of all laws passed in 1983 and 1984, commonly referred as the «September laws». The Attorney-General indicated that committees would be established to review these laws and to remove the «negative elements». This has not been done. Except for repeal of section 16 of the Judiciary Act of 1984, few amendments or modifications have been made to the laws.

Recently, reports were received by the ICJ that a new draft penal code was in circulation, which, although making some modifications in the crimes for which flogging and amputation could be inflicted, still retained these punishments. It also added apostasy as a punishable offence, which had not been the case previously. On a number of occasions the Attorney-General had indicated that the power of administrative detention would be abolished when the State Security Act was repealed; despite its repeal the power remains in the draft code of criminal procedure. The draft code has not been approved by the government and it

is assumed that it will now be left to the new government to decide whether to put it into effect.

The mission's preliminary report observed that the continuing conflict in southern Sudan was the country's most urgent problem. This remains the case. Throughout the year, various groups as well as the government have had contact with the SPLM. The National Alliance undertook a number of initiatives in this regard, the most recent a conference during March 1986 in Addis Ababa. Contacts have also been maintained with southern groups based in Khartoum, some of which are members of the National Alliance. Thus far no progress has been made and the war has intensified.

The possibility that the conflict would not have been resolved by the time of elections was a cause of great concern to many the mission spoke with. Its continuation will be a destabilising factor for the newly elected government and many are worried about the military's willingness to relinquish power completely with the war still going on. The cost of the war is enormous, and the money used to continue it is expended to the disadvantage of badly needed economic development programmes.

Despite the objections of southerners, the government has gone ahead with elections. Both northerners and southerners the mission spoke with expressed reservations about the wisdom of holding elections before some agreement was reached on the southern conflict, pointing to the 1965 elections. Then, as now, the election had to be postponed in many regions of the south, and some suggest that this hurt the cause of national unity.

On the other hand, many in the government were worried that if elections were not held, there would be disturbances in the north, as the intentions of the military would be brought into question. They also noted that an elected government could take decisions in areas where the interim government felt politically unable to act.

Active campaigning for the elections took place. There was a proliferation of political parties immediately after the change in government, and estimates are that 30 out of 50 parties have fielded candidates for the elections. Open political debates were taking place while the mission was in Khartoum, and these apparently continued throughout the period leading up to the election. At one point there was a suggestion that a law might be passed regulating political parties. This was objected to by most of the parties, and the idea was dropped.<sup>28</sup>

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<sup>28</sup> The mission referred to this suggestion in its preliminary report and urged that such legislation be approached with caution as it could severely impinge upon the right to freedom of expression and association.

The transition year has been spent in trying to restructure the institutions of government and creating a basis for a more democratic society. The transitional constitution adopted on 10 October 1985 created the framework for the governments which were to operate prior to the adoption of a permanent constitution, that is, both the interim government consisting of the TMC and the Council of Ministers as well as the government elected in April 1986. The Transitional Constitution provides that the new government will be composed of a Supreme Commission, a Constituent Assembly electing both the Supreme Commission and the Prime Minister. It also provides for the protection of fundamental human rights,<sup>29</sup> the supremacy of the Rule of law, and the independence of the judiciary.

This transitional year has been a difficult one for the country, although also one of great excitement and enthusiasm. It is to be hoped that the creative energies unleashed with the change of government can be harnessed to construct a more democratic and unified society.

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<sup>29</sup> The mission's preliminary report noted some areas of concern. See Section VIII below for a discussion of these points.

## V. Problems Facing the New Government

As noted in the preliminary report, Sudan is a country facing enormous economic difficulties. It is one of the world's 25 poorest countries, with a per capita income of approximately US\$ 440. It has an external debt of 9 to 10 billion dollars, with a yearly debt servicing obligation of 1.2 billion dollars which is greater than the country's yearly export earnings of 800 million dollars.

In a country of nearly one million square miles only 2% of the roads are tarmacked. It is estimated that 80% of the population is illiterate. The mission and individual members of it were given information about specific acts of corruption participated in by the former President and the ways in which the government was used for his personal advantage and that of his friends. There was also considerable mismanagement of the economy; in the later years of his regime the President made many decisions against the advice of his economists.<sup>30</sup> A number of observers have remarked that some of these decisions exacerbated the process of desertification. There is also little disagreement that what development has taken place has for the most part been in the central region of the country, and that the south and west have been largely ignored.

Sudan has also faced a disastrous drought as well as widespread

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<sup>30</sup> One student of the Sudan has described the situation this way: «The dominance of the executive... resulted in a restriction of political freedom, while the development drive has produced a massive public debt, rampant inflation, acute shortages in basic commodities and white elephant projects.» El Tahir, quoted in *Some Issues of Freedom Under the Penal and Criminal Procedure Codes of Sudan*, Ph. D. Thesis, Ali Suleiman Fadlalla, University College, London, July 1984, at 736.

famine; it is estimated that 6 million people out of a population of 22 million were affected by the famine. The March 1986 edition of the UNHCR magazine estimated that 4 million people are still threatened by famine. Because of the economic conditions in the country between 500,000 and 1,500,000 Sudanese are working abroad, mostly in the Gulf States. Despite its economic difficulties, Sudan has accepted 1 million refugees. At present, it has 1.16 million dependent people; the government has pledged to continue its open door policy.<sup>31</sup>

Those interviewed by the mission, particularly members of the political parties, continually referred to the difficulties being faced by the country in restoring democratic rule after 16 years of a repressive and harsh dictatorship and of restoring a sense of national cohesiveness after years of being divided by the tactics of former President Nimeiri. Many expressed the hope that the parties would be able to overcome their traditional tribal and family loyalties in order to restore unity and democratic rule. Many observers both in and out of the country have suggested that the lack of political unity and purpose at times prevented the transitional government from taking decisions on some of the more difficult issues, such as the repeal of the «September laws», leaving these controversial matters for the newly elected transitional government to grapple with.

It is to the government's credit that it passed the transitional constitution, resisted calls for a national retribution law,<sup>32</sup> and that it ratified the covenants on Economic, Social and Cultural Rights and Civil and Political Rights, as well as the African Charter on Human and Peoples' Rights.

One of the issues of universal concern while the mission was in Sudan, and which remains a pressing problem, is the conflict with the Sudan People's Liberation Movement (SPLM), headed by John Garang and its army the SPLA.<sup>33</sup> The negotiations appear to be going round in an endless circle. The most recent effort, undertaken at the behest of the National Alliance, again ended in failure. The statements made by the SPLM and by the military leaders demonstrate that both are afraid or unwilling to make compromises, perhaps out of fear of finding themselves outflanked by the other. The war is costing the government an estimated £

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<sup>31</sup> Refugees, March 1986.

<sup>32</sup> See preliminary report paragraphs 37 to 40, and section VIII below.

<sup>33</sup> See Chapter VI *infra* for a fuller discussion.

Sud. 1 million per day, a financial burden which the country cannot continue to sustain.

It is also clear that any settlement which does take place will have to take account of all legitimate grievances, and give the south a real voice in national politics, otherwise the settlement will not endure. Although everyone the mission spoke with expressed the view that a military solution was not possible and that a just political solution needed to be reached, it was not clear that everyone appreciated the depth of the southerners' grievances, nor their sense of having been alienated from power at the national level, nor fully understood that there were profound cultural differences between the regions which had to be respected. The resolution of this conflict will be the most serious and urgent challenge awaiting the new government.

## Ethnic Diversity

The last official census taken in Sudan was in 1956. It revealed that there were 56 separate ethnic groups, 597 subgroups and 115 spoken dialects.<sup>34</sup> At times some of these groups have felt that their interests were not being sufficiently protected by the central government, nor that enough attention was being paid to their economic development. They have formed political parties based on ethnic or tribal lines. The more vocal groups have been the Nuba Mountains Union, the Beja Congress (eastern Sudan) and the Darfur Development Front (western Sudan). For many years these groups called for a form of regional government. It was the Darfur Development Front that pushed the government to adopt the regional self-government plan in 1980.<sup>35</sup>

The leader of the Nuba Mountains Union, Philip Abbas Gabboush, has at various times been accused of causing unrest within the armed forces<sup>36</sup> and of being behind several coup attempts. While the mission was in Khartoum a mutiny occurred in the army, which at first was characterised as an attempted coup. The government accused Gabboush of being responsible, and arrested him. However he was released on 8 January 1986

<sup>34</sup> M. Omer Beshir, *Ethnicity, Regionalism and National Cohesion in Sudan*, The Bayreuth African Studies Series, 1984 at p. 9.

<sup>35</sup> Other groups were in favour of regional self-government, but felt that the lack of human and economic resources in the country did not permit its establishment at that time.

<sup>36</sup> It is estimated that 70% of the armed forces are from the Nuba Mountains or southern Sudan.

without having been charged or brought to trial.

Recent reports have been received of tribal clashes in western Sudan and southern Kordofan. This situation was exacerbated in Kordofan by the army's having distributed weapons to the local population.

Too often in Sudan, central government policies have focused on assimilation and cultural domination as the means of achieving national unity. However, it must now be recognised that «mutual respect for other groups (in society) are essential prerequisites for peaceful accommodation and cohesion».<sup>37</sup> As the mission noted in its preliminary report:

«If the unity of Sudan is to be preserved... no one group can hope or expect to regulate the country in accordance with its own exclusive concept of society and suppress the legitimate aspirations and expectations of others to express their beliefs, customs and way of life.»

### *Recommendations*

1. The mission therefore recommends to the newly elected government that full genuine and open recognition be given to the fundamental diversity of Sudanese society, and that a commitment to tolerance and to the harmonious preservation of that diversity in the institutions of government, the constitution and the fundamental laws be made. This will help to insure that ethnic diversity is not manipulated for purposes of political gain.

2. It renews its recommendations in the preliminary report that weapons distributed by the army to civilians should be retrieved and steps taken to ensure that no further such actions occur, and that a major effort towards education in ethnic/racial understanding should be made at all levels of education and among the adult population. This would serve to counter those who might try to use ethnic differences as a means of causing political upheaval with a view to attaining power. Effective use could be made of the media, particularly television, in this regard.

3. In addition more needs to be done to ensure fair access to the country's scarce resources and full participation in the country's political system by all groups.

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<sup>37</sup> Beshir, at 31.

## VI. The Southern Conflict

The war in southern Sudan is the most serious problem facing the country. Its cost is staggering in both human and monetary terms, and the longer it continues the more difficult it will be to compromise and to overcome the resentment and bitterness on both sides.

The war is a manifestation of the problems posed in the previous section, i.e., how can the country accommodate the interests of the various groups, cultures, religions and beliefs that make up Sudan and at the same time preserve national unity.

There is a strong feeling among southerners that their interests have not been accommodated. Because of this, although many are opposed to the continued fighting, many have sympathy for the SPLM. This can not be overlooked by the central government.

When considering this conflict it must be recalled that the vast majority of southerners consider themselves to be Sudanese; only a few have called for independence. However if the war continues and the SPLA establishes control over more territory there will be a de facto separation of the two parts of the country, and this will not augur well for the future.

The tensions between the central government and the south are not new. Since the time of independence there has been some doubt in the minds of southerners as to whether their interests were being adequately considered or protected.<sup>38</sup> Of the 800 posts available in government ad-

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<sup>38</sup> This is not to suggest that problems did not exist prior to independence or that the policies of the Condominium did not create a basis for later conflict. However, as noted by the Council of Ministers, questions concerning power-sharing and access to resources are now a part of the post-independence national problems.



ministration at independence, only 6 were given to southern Sudanese. As noted earlier, the proposal by southern parliamentarians that consideration be given to the formation of a federated state was not given serious attention during the post-independence discussions on the drafting of a national constitution. Mutinees among southern troops began even while the British Governor General was still in Sudan and were a reflection of the insecurity about the future.

The policies of the Abboud government only served to ensure that northern culture was imparted to southerners. He did little to include the south in the national decision-making process. It was during his regime that opposition to the central government began to solidify among southerners. Many southern politicians fled the country, and established the Sudan African National Union (1962). In 1963 the military arm of the opposition, Anya Nya was formed. The armed conflict that resulted no doubt served to destabilise the country and the Abboud government. The demonstrations that preceded his downfall were in response to military troops having stormed the University of Khartoum to prevent a debate on the «southern question».

Although the new civilian government made some effort to resolve the conflict, notably the Round Table Conference of 1965 which included not only representatives from the south and north, but also delegations from Uganda, Kenya, Tanzania, Ghana, Niger, Algeria and Egypt, no substantial progress was made until 1972 when an agreement was reached at Addis Ababa. Among the issues agreed upon were:

- (1) the existence of a southern territory consisting of the three provinces of Bahr al Ghazal, Equatoria and Upper Nile;
- (2) the recognition of Arabic as the official language of Sudan and English as principal language for the southern regions;
- (3) the need to guarantee freedom of religion and of conscience, and to prohibit all forms of discrimination;
- (4) the creation of a regional government, consisting of a Regional Assembly and a High Executive Council, although with limited powers, i.e., maintenance of public order, internal security, efficient administration of the region, and development of the region in cultural, economic and social spheres;
- (5) the incorporation of the Anya Nya forces into the national army, police, prison forces and regional civil service.<sup>39</sup>

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<sup>39</sup> Beshir, at pp. 17 and 18.

The Addis Ababa agreement was incorporated into the 1973 Constitution; elections took place that same year for the regional government.

However, discontent continued, and although there were no massive armed confrontations, mutinees did occur among southern troops; in 1976 a group of soldiers formed Anya Nya II (it was later to join forces with the SPLA).<sup>40</sup>

As noted earlier the southern regional government was dissolved in 1981 in anticipation of elections to be held in 1982 under the new Regional Government Act. The dissolution led to a series of written protests being sent to the President, many of them were forwarded by the Council for the Unity of Southern Sudan which was formed by those opposing the dissolution of the southern regional government and the proposal to redivide the south. Twenty-one members of the Council were arrested on 4 January 1982 after having sent a memorandum to President Nimeiri stating their opposition to his plans to hold a referendum on the question of southern Sudan in the province of Equatoria alone. They were charged with having formed an illegal party. Most of them were released by 6 January.

The unity of the south was the major issue in the 1982 election for the Southern Regional Assembly. Three groups fielded candidates; one supported unity, one opposed and one urged a compromise. Although at both the regional and national levels the majority of those elected were supporters of unity, politicking at the regional level led to the election of a High Executive Council President who supported redivision. At the national level Abel Alier, a supporter of unity who correctly predicted that redivision would lead to civil war, was dismissed from the government and replaced by Joseph Lagu (former leader of the Anya Nya), a supporter of division.<sup>41</sup>

On 5 June 1983, President Nimeiri announced that the south would be redivided. A committee was formed to carry out the decentralisation process and Joseph Lagu was made a member. Anya Nya II stepped up its activities, and clashes with the army took place.

The day before Nimeiri announced the redivision of the south, a major battle occurred between southerners and northerners stationed at Bor, southern Sudan. It was caused by news that the battalion of southern

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<sup>40</sup> Recently, members of Anya Nya II have become disenchanted with the SPLA and have reformed a separate armed movement. Clashes have taken place between Anya Nya II and the SPLA.

<sup>41</sup> Abel Alier was later appointed by President Nimeiri as Minister of Construction and Public Works.

soldiers was to be transferred north. Many of the southerners deserted, among them, John Garang who then formed, along with several others, the Sudan Peoples Liberation Movement, a coalition of a number of southern opposition groups, and its armed wing the SPLA.

Despite the protests and the armed clashes, SUNA, the government news agency, announced on 7 August 1983 that Joseph Lagu would be sent to neighbouring countries to explain the popularity of the decision to redivide the south.

The decision in September 1983 to change the legal system of Sudan and to use Shari'a as the basis of the new laws led to further protests and renewed fighting. As noted above there was widespread opposition to the new laws among Muslims and non-Muslims, southerners and northerners. Demonstrations, particularly student demonstrations, took place in both the north and the south. Southerners through their political groups in both regions sent letters of protest to Nimeiri making clear their view that they perceived the enactment as an attack on their culture, and noting that the imposition of the laws could only lead to national disunity. In July 1984 the three regional assemblies of the south called on President Nimeiri to discontinue the application of Shari'a in the south.

The SPLM continued its armed struggle against the government of President Nimeiri. In official statements the group declared its purpose to be the overthrow of the Nimeiri government and the liberation of Sudan. Faced with an escalating civil war, as well as general discontent over his southern policies, President Nimeiri announced in September 1984 that he would rescind the decree redividing the south if southerners so wished. Then on 5 March he declared a unilateral ceasefire, stating that the army would only engage in self-defence operations.

He repeated an earlier offer of amnesty. The SPLM radio alleged that the government was not carrying out its ceasefire pledge. The formation of a Committee to establish a dialogue with the SPLA was announced on 15 March. Soon thereafter President Nimeiri was overthrown.

Despite his overthrow the war continues. When the military announced its decision to assume power the SPLM leader John Garang made a broadcast denouncing the military, accusing them of having stolen the victory from the people. He declared a unilateral seven-day ceasefire and demanded that the «Generals» turn over the government to civilians. The new head of government, General Swareddahab made his response on 10 April during a press conference. He stated that he did not take this ultimatum seriously, and announced that overtures had been made to the SPLM to settle the conflict. He stated that the new government was ready to speak with John Garang; there was even a suggestion that Garang

would be given a portfolio in the still to be formed Council of Ministers.

The general public recognised that the SPLM had greatly assisted in weakening former President Nimeiri's government and that its interests had to be considered and accommodated in the new government. In approaches to the SPLM the government offered to reinstate the Addis Ababa agreement and to convene a national conference. However, there was no promise to repeal the new «Islamic» laws nor were guarantees given of protection for the rights of southerners as a minority group.

John Garang continued to refuse to negotiate, although for a brief time towards the end of April his position seemed to soften. On 26 April General Swareddahab announced a ceasefire and the reinstatement of the Addis Ababa agreement. However, by the end of May it was clear from John Garang's statements that he would not negotiate. The government announced ceasefire was rescinded.

The Council of Ministers established a committee headed by the Minister for Housing and Construction to work on a peaceful and permanent solution to the southern conflict. A preliminary declaration on the «Southern Question» was issued by the Council of Ministers in August 1985. It pointed to the need for open and constructive dialogue, the necessity of viewing the southern question in light of the broader questions of diversity and national unity, and the importance of a comprehensive solution that looked to power-sharing at the national level. However, the document did not explicitly state that the Shari'a based laws would be repealed; it merely noted that the legislation passed in September 1983 had resulted in obstacles on the path to national unity and had to be revised so as to remove those provisions which discriminated against minority groups.

In addition, the National Alliance has continued to maintain contacts with members of the SPLM and has held limited discussions with them. Unfortunately the conference which recently took place in Addis Ababa between John Garang and other members of the SPLM, the National Alliance and the government ended without any visible progress being made. The SPLA has stepped up its activities in the south, and recent press reports indicate that the SPLA may be in control of a significant portion of the south.

It is the view of many, both inside and outside Sudan that the government of Ethiopia is pushing the SPLM to continue the war. Government officials indicated to the mission that Ethiopia had tried to obtain permission to establish consulates near the main refugee camps housing Eritreans and Tigreans and had also been insisting that refugees be sent back to Ethiopia. These requests have been consistently refused by the

Sudanese government. It was also apparent that those politicians and union leaders who were sympathetic to the SPLM and to the issues being raised by southerners were becoming frustrated, and that they increasingly perceive the SPLM as being intransigent. The Minister of Interior stated that it was his view that the SPLM was not yet ready to negotiate, either because it hoped to win an outright victory or because it hoped to gain a tactical advantage and thereby increase its bargaining position.

On the other hand, some statements made by the army high command have served to rouse the suspicions of both southerners and northerners about the intentions of the military. Some wonder whether their intention is to attempt to obtain a military victory over the SPLA.

While the mission was in Khartoum, the head of the army high command made a statement in which he referred to the Minister of Housing and Construction as naive and as meddling in matters that did not concern him. The statement also suggested that a military solution was necessary. These comments were later disavowed by the Minister of Defence. Also inflaming the war of words is the frequent reference to John Garang as a traitor by the army high command.

The mission met with members of the Sudan African Congress (SAC) and with the legal advisor of the High Executive Council for southern Sudan. The representatives of SAC stated that the 1983 laws were a major stumbling block to a resolution of the conflict, as southerners could not accept national laws based on the religion of one group. They also felt that many of the political parties failed to grasp the southern position and did not understand the issue went beyond regional autonomy, and was rather a question of power-sharing at the national level and of having a voice in decisions concerning economic development. Their «conditions» for a negotiated solution are repeal of the 1983 laws, a return to the Addis Ababa agreement and a halt to military actions designed to gain a tactical advantage.<sup>42</sup>

The Legal Advisor indicated his disappointment over the unwillingness of the government to allow the High Executive Council to resume

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<sup>42</sup> This group also argued that the elections should not take place as it was impossible for fair elections to be held in the south, and they doubted even that voting could take place. If this were to be the case, then any Parliament elected could not claim to be speaking for the nation as a whole. As it turned out, voting was postponed in 37 of the 48 southern districts. A number of those interviewed wondered whether a national unity government would not be preferable in the circumstances. The transitional government repeatedly stated that the elections were essential because the government had to be seen as keeping to its promise to restore democracy.

its work in the south and re-open its offices there. He stated his belief that insufficient recognition had been given to the role of southerners in overthrowing Nimeiri, noting that southern groups based in Khartoum had participated in the formation of the National Alliance and had taken part in the strikes against former President Nimeiri. In his opinion one of the major stumbling blocks to achieving a lasting peace was the «September laws», which he characterised as the imposition by the majority of its religion on the minority. As had the SAC representatives, he stated that the crucial issues were southern participation in the national government, including southern representation in all Ministries and in decisions concerning the utilisation of national resources and economic development. Once these issues were addressed the agreements reached would have to be incorporated into the Constitution.

Also discussed was the need for a sustained dialogue, among all interested parties; among the various southern organisations, as well as between them and the government. The Legal Advisor noted that the year preceeding the conclusion of the Addis Ababa agreement had been one of intense negotiations between all the parties. He further expressed the belief that the majority of southerners supported reunification of the south. It was also his opinion that the Arab countries had been misinformed about the position of the southern Sudanese. They had been led to believe that southerners were anti-Arab, which he stated was not true. The primary interest of the southerners was to find a lasting means of protecting their interests as a significant minority population.

The mission did not have an opportunity to interview any representatives from the SPLM, but their position as gleaned from their statements and reported interviews appears to be that the government's efforts at negotiation are not serious, that its statements are directed at the media, and more importantly, that it does not understand that the conflict is not one over regional autonomy. According to them, a return to the Addis Ababa agreement is not sufficient because the agreement touches only the question of autonomy. They point to groups formed in the Nuba Mountains and Darfur, and to the Beja Congress as evidence that there is general dissatisfaction with government policies, and note that support for the SPLM is not limited to southerners. It is their position that a more coherent national policy needs to be developed with respect to economic development and that more attention must be given to the rural areas. They also assert that the present government is simply a continuation of the Nimeiri regime and that it has not recognised sufficiently the contribution of the SPLM and the SPLA to Nimeiri's downfall.

The insistence of southerners, among others, that the September

laws be repealed has not affected government policy.<sup>43</sup> The September laws, with a few amendments, remain on the statute books. Both General Swareddahab and Prime Minister Gizouli made statements soon after their assumption of office that the laws would remain, but that they would be revised to eliminate the «negative elements». The memorandum issued by the Council of Ministers on the «Southern Question» implies the same.

Whether the leaders of the elected government will repeal these laws remains to be seen. Perhaps the answer as to why they were not repealed during this transitional year is contained in a response to this question the mission received from one government official. Having expressed his personal view that the laws were unconstitutional, he then stated that the issue was political, not legal, and that a decision on the laws needed to be made by an elected government, not by one whose members were appointed because of their lack of political affiliation.

### *Recommendations*

4. The mission cannot pretend to have solutions to the complex problem in the South. As stated by the majority of those interviewed, there is no military solution. Gaining a military advantage would be that and no more; it would not achieve a lasting solution to the problem. Political accommodation is the only feasible response.

5. Nor can a purely regional arrangement resolve the underlying tensions. There are half a million southerners in Khartoum alone, and their interests need protecting as much as the interests of those still living in the south. National legislation cannot be used to impose the will of the majority in the areas of religion, morals and social organisation on a distinct ethnic group that comprises at least 30% of the country's population. Nor can the country afford to ignore the development needs of such a significant portion of its population. The central government must reflect in its composition and outlook the diversity of the nation.

6. Those working to protect and preserve minority interests do not serve those interests by adopting intransigent positions. Serious attempts at negotiation are needed on both sides, and new ideas and approaches must be considered. There are many countries with significant Muslim populations, and the interests of both Muslims and non-Muslims have been

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<sup>43</sup> See Section VII below for a discussion of the efforts made since March 1985 to have these laws repealed.

catered for elsewhere. More study needs to be made of approaches taken by other countries to this sensitive question.

7. There has already been talk of a new regional government bill. If this occurs, a unified southern region will, no doubt, be created. Although many of those interviewed stated their belief that the majority of southerners were in favour of reunification, it is evident in the speeches and memoranda of some southerners that they are opposed to reunification of the south. The reasons for this need to be identified and the conflict resolved so that the events of 1981 and 1982 are not repeated.

8. The mission hopes that the SPLM and the new government will open a serious dialogue for the purpose of resolving this conflict.



## VII.

# Legislation Affecting Human Rights

For the first few months following the overthrow of the Nimeiri government there was much confusion about the status of the laws that had been passed by the previous government. Conflicting reports were emerging from the country as to the use and enforcement of such laws as the State Security Act (1973) and the various «September Laws», such as the Penal Code of 1983, the Criminal Code of 1983, the Judicial Sources of Law Act (1983) and the Judiciary Act of 1984.

One of the primary purposes of the mission was to determine the status of this legislation in the country's legal system. The mission's inquiries led it to conclude that each of these laws was still being applied or enforced to some extent, and that each of them had affected or had the potential to affect adversely the enjoyment and protection of human rights. Early in 1986 the mission received word that the State Security Act had been repealed. However, the mission has retained reference to the Act in its final report, as it was in effect at the time of the mission's visit to Sudan.

### The State Security Act and Related Legislation

This act became effective in 1973, and was amended in 1975, 1976 and 1979. It created a series of offences which were to be considered crimes against state security or against the political system or national economy of the state. Certain offences such as undermining the constitution, attempting to overthrow the May regime, acts prejudicial to the independence or safety of the country, conspiring to commit acts prejudicial to the military, political, diplomatic or economic position of the country, orga-

nising, continuing or abetting the joining of any strike or similar activity, even in the form of a collective resignation, or closing deliberately a place of work, carried mandatory sentences of life imprisonment or death.

Other offences included in the act were: (1) delivering to a foreign state, without permission or lawful excuse, news, information, things, correspondence, documents, plans... relating to government departments or institutions with the intention of prejudicing the interests of the country; (2) committing or aiding acts which are intended or are likely to prejudice the national economy or shake confidence in its integrity, or circulating rumours prejudicial to the national economy; (3) joining in a strike or similar activity; (4) establishing, constituting or administering any society, body, party or organisation which aims to split the national unity or has the intent of opposing «the authority»; and (5) forming a political organisation.

In addition, the right to bail which had been added to the 1973 Criminal Code was denied to those accused of violating the State Security Act.

The 1975 amendments to the act gave the Minister of the Interior and the President of the National Security Bureau the right to issue orders of detention or restriction of residence against persons they believed were about to commit offences under the Act,<sup>44</sup> and also gave to the President of the nation the right to issue orders concerning the conduct of trials under the act. The detention or restricting of residence orders were subject to review by the National Security Council within 15 days and were renewable for three month periods upon application of the Council, with no limit to the number of renewals. The grounds for renewal were to be set out in the application. The detained or restricted person was to be told «as soon as possible» of the reason for the order and had the right to apply to the Council for a review of the order and could seek legal advice to assist in the preparations of the application. There was no right to appear personally or through a legal representative before the Council. In reaching its decision the National Security Council could seek the advice of the Attorney-General. Orders for the search of the person, home or office could be issued against anyone detained or restricted under the Act.

With respect to the trial of persons accused of state security offences, they were not to commence without an order of the President. It was for

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<sup>44</sup> This power was eventually transferred to the Attorney-General. See appendix A for a sample detention order. Despite the repeal of the Act the power of preventive detention is still available to the government under the provisions of the 1983 Criminal Code.

him to determine whether a State Security Court would be established,<sup>45</sup> and if one were, the procedures to be employed by the court and the appellate or confirming authority for review of the court's decisions.<sup>46</sup> Each court was to have a panel of three to five members (there was no requirement that any of the members have legal qualifications).

The 1976 amendments dealt with the attachment of the accused's property, and the 1979 amendments enlarged the scope of offences that could be tried before the state security courts.

During 1974 the State Security Central Bureaux Act, 1974, was passed. It repealed the Protection of the National Security Act, 1971, and created the National Security Council to formulate policy on matters of public security, the National Security Bureau «for the purposes of security», and a Public Security Bureau, a disciplinary body «for the purposes of public security». Each of these bodies was made directly responsible to the President of the country. The National Security Bureau was to make any necessary inquiries and investigations in order to expose internal or external activities directed against the state. The Public Security Bureau was to counter activities within Sudan directed against the state and observe acts or dealings which might affect the security of the state. In addition to normal police powers, the members of these bodies had the power to summon any person when they deemed it necessary in order to take a statement, and if the person refused they could order his or her arrest. They also had the power to order any person or body to submit documents, files or statements for perusal or custody even if the material was confidential.

Amendments were made to the constitution in 1975 in order to avoid constitutional challenges to the State Security Act. One such challenge had been successful. Although the 1973 Act had not included provisions concerning the trial of persons charged with security offences, many civilians charged with such offences had been brought before courts martial. This practice was declared unconstitutional by the Supreme Court in *Nasr Abdel Rahman vs. The Legislature Authority*, SC/Const. Suit/1/74 (unreported) which held that trying civilians before courts martial derogated from the power of the judiciary without any constitutional or legal basis. The court went on to state that ordinary courts were better suited to discharge the judicial functions under the constitution in a manner that would firmly establish the principles of justice in conformity

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<sup>45</sup> The State Security Act also gave him this power with respect to certain provisions of the Penal Code and the Armed Forces Act.

<sup>46</sup> See appendix B for a sample order convening a State Security Court.

with the Rule of Law.<sup>47</sup> One of the 1975 amendments changed the title of article 196 from Courts Martial to Special Courts and stated that the law was to regulate the establishment and constitution of courts martial, state security courts and any other courts and shall determine their jurisdiction. The state security courts were given jurisdiction over the constitutional offence of high treason.

Other amendments gave constitutional legitimacy to the power of preventive detention. Article 41 (guaranteeing freedom of movement and residence) was amended to include provisions which specifically authorised preventive detention. Article 66 (which guaranteed the right of every person arrested or detained to be informed immediately of the reasons for such arrest or detention, prohibited arrests without warrant and protected the rights of persons awaiting trial, including the right to be brought before a competent court within a legally prescribed period) was amended so that its guarantee no longer applied to persons preventively detained.

## Problems and Abuses

### *The Nimeiri Years*

The broad language of the State Security Act coupled with the extensive powers given to the security forces led to many abuses and human rights violations. The Security Act criminalised behaviour which was protected by international human rights instruments, such as the right to freedom of association, freedom of opinion and expression, freedom of peaceful assembly, the right to take part in the government of one's own country, and the right to form and join trade unions, as well as behaviour protected by the Sudanese constitution, such as freedom of opinion, freedom of the press, the right to hold peaceful meetings and processions, and the right to form trade unions.<sup>48</sup> The provisions relating to preventive detention and to the conduct of security trials also violated a number of constitutionally and universally protected rights, in particular the right to a fair trial and to have the conditions of detention reviewed by an impartial tribunal.

<sup>47</sup> Op. Cit., Ph.D. Thesis, Suleiman Fadlalla at 215-16.

<sup>48</sup> One weakness of the Constitutional protection of these rights was the inclusion of the phrases «in accordance with the law» or «within the limits of the law» which made it possible to restrict the exercise of the rights through the passage of legislation.

Thousands of people were arrested in the years between 1969 and 1985. A number were held incommunicado, as there was no provision in the Security Act for publication of the names of those detained or for notification to family members or legal representatives. However, notification was often given to family members. Periods of detention ranged from days to years. The requirement that the National Security Council review detention orders was often ignored, and in many cases this power was given to the Head of the National Security Bureau. When extensions of these orders were being sought, the applications did not always set out the grounds for a continuation of the detention or restriction of residence. Nor was the detainee told of the reasons for his continued detention or restriction of residence.

People were detained and accused of security offences for acts which either had no basis in the ordinary penal law or else for acts which should have been treated under the ordinary criminal law. The majority of those detained were alleged to be political opponents of the government. There was no right to have the detentions reviewed by a court.<sup>49</sup>

During the government of former President Nimeiri the ICJ received reports of torture being committed by the state security forces. Those interviewed by the mission stated that torture was more likely to occur when the detainee was being held by the security forces than by the police or prison officers.

The procedures employed by the state security courts varied greatly, as each one was separately constituted by the President and it was he who determined the number of judges, the rules of evidence, the ability of the defendant to be represented by legal counsel and the right to appeal. In many cases the judges assigned to the courts were civilian magistrates, but in a number of cases military personnel were assigned to the panels. Sometimes the procedures mirrored those of the ordinary courts, at other times the procedures would be radically changed, with limited access to defence counsel, relaxed rules of evidence and *in camera* proceedings. Often the decisions of these courts would be forwarded to the President as the confirming authority before they had been announced to the defendant. The President had the right to modify the verdict to the defendant's detriment without considering any submission from him. The President also had the power to order both retrials and new hearings.

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<sup>49</sup> The Chief Justice, in responding to written questions put to him by the mission, stated that detentions under the Act could not be challenged in court. This was also the view of the majority of lawyers the mission interviewed. However, some felt that there were possible constitutional arguments supporting the right to court review, but noted they had never been tested.

Opposition to the State Security Act and to the procedures under it were widespread during the Nimeiri years, and one of the demands of those who went out on strike on the days following 27 March 1985 was the repeal of this Act. The National Alliance has continued to call for its repeal citing its potential for abuse. Several government officials interviewed by the mission, including the Attorney-General, the Minister of Interior and the Legal Advisor to the Transitional Military Council, indicated that the law would be repealed during the transitional year.<sup>50</sup>

### *The Transitional Period*

After the overthrow of President Nimeiri many former government officials including those involved in the regional governments were detained. It is estimated that the number is between 200 and 300. Many were detained under the provisions of the State Security Act or the State of Emergency declared on 6 April 1985. By the time the mission arrived in Khartoum 92 people were still detained in Kober Prison, Khartoum North, and others were in provincial detention facilities. Since then there have been additional releases.<sup>51</sup>

Only two of those detained have been charged and brought to trial.<sup>52</sup> Both trials have taken place before State Security Courts, but these courts are composed of judges from the ordinary courts and follow the established criminal procedures. In addition there is an automatic review of decisions by the Supreme Court; both the defendant and the prosecution may make submissions to the court.

Many questions were put to the Attorney-General about the use of the State Security Act and the use of security courts. The retention of the powers of preventive detention and the use of security courts were justified on the basis that public sentiment against the former government was quite strong and that the transitional government had to be seen to be moving swiftly against former officials. It was also stated that it was necessary to ensure that the detainees could not hide, destroy or distort

<sup>50</sup> The Chief Justice indicated in his response to the mission's questions that he understood that the Transitional Constitution would not recognise the practice of preventive detention, which would therefore render it unconstitutional as a violation of the freedom of the individual.

<sup>51</sup> The mission was informed by the Attorney-General that the Committee reviewing the detention orders was composed of the Minister of Defence, the Minister of Interior, the Minister of Foreign Affairs and the Attorney-General.

<sup>52</sup> One of these was former First Vice-President Omar El Tayeb, who was tried for his participation in the Falasha airlift and who was recently convicted.

the evidence against them. There was, in addition, the suggestion that it was in the detainees' interests, as they might suffer physical harm if they were released. The mission was also told that the Security Act would only be used against former government officials. However, this has not proved to be the case.

While the mission was still in Sudan, a mutiny occurred in the army which led to a declaration of martial law. Some members of the government suggested that it was in fact an attempted coup, and accused Father Philip Abbas Gabbosh, the leader of the Nuba Mountains Union, of being one of the organisers. During the investigation numerous orders for preventive detention were issued. Nine of those detained were freed in late October and 34 others were freed in early December without having been charged or tried. It appears that many of those detained had previously made forthright statements critical of the government's policy towards southern Sudan.

One of those released in October was Lam Akol, a lecturer at the University of Khartoum, a member of the executive committee of the Sudan African Congress, and a member of the National Alliance. Many members of the Alliance were outraged at his detention and demanded his release. In early January, 7 additional detainees were released, among them Father Philip Abbas Gabbosh.

Other arrests under the State Security Act took place in December 1985. Twenty-four people were arrested as a result of their membership in the National Socialist Alliance for the Salvation of Sudan, a newly formed political party which the government suspected of having links with the disbanded Sudan Socialist Union. The organisation was declared to be an illegal organisation and in January those arrested were accused under section 96 of the 1983 Penal Code of undermining the Constitution, initiating war against the State and inciting hatred against the government. The charge carries the penalty of life imprisonment or death. By March 1986 all 24 had been released on bail. The charges under section 96 of the Penal Code were dropped, but a new charge of breaking the peace was lodged against them.

### *Recommendations*

9. The mission had recommended in its preliminary report that the national security legislation be repealed. It welcomes the decision of the interim government to do so. The broadness of the language and the extraordinary powers it gave to the executive and the security forces led

to its misuse and to human rights violations.

If new security legislation is to be enacted, the offences should relate to specific acts and behaviour posing actual threats to the security of the state. They should not criminalise, as did the prior legislation, mere opposition to or criticism of government policies, or the exercise of trade union rights, and should conform with constitutionally or internationally protected rights.

10. In its preliminary report the mission recommended that the practice of trying security offences before special courts be abolished, noting that such courts pose an inherent threat to the protection of human rights as well as undermining the independence of the judiciary. Security offences, like other criminal offences should be tried before the ordinary courts.

11. Another recommendation contained in the preliminary report was the abolition of the powers of preventive detention. The mission noted that these powers were easily abused, and that as long as the power existed there was a potential for its abuse. This recommendation is renewed.

12. In its preliminary report the mission welcomed the disbanding of the state security forces. It understands that a new National Security Force has been established under the jurisdiction of the police. The mission has not had an opportunity to review the legislation governing this organisation, but given the difficulties that arose with the previous security forces, the new government is urged to review the legislation to ensure that the powers of the security police are well-defined and comply with all constitutional safeguards and with international protections for human rights.

13. All those at present detained under the State Security Act or the state of emergency be released or immediately charged and brought to trial.

## The «September Laws»

As noted earlier, beginning in August 1983 President Nimeiri issued a series of provisional orders, which changed much of the country's existing legislation ostensibly to bring it in line with Shari'a law. The mission was particularly concerned with the Penal Code of 1983, the Code of Criminal Procedure of 1983, the Judiciary Acts of 1983 and 1984, the Evidence Act of 1983 and the Judicial Sources of Law Act of 1983.



## *The Penal Code of 1983*

As with the 1974 penal code, many of the offences listed in the State Security Act were brought within the ambit of the ordinary penal law by the 1983 act. These included subverting the Constitution and initiating war against the state, which could include such acts as publishing false or biased information about national affairs with the intention of misleading public opinion or arousing it against the state; writing or publishing false or biased information outside the country with the aim of weakening financial confidence in the country; treason and espionage, which included the delivery to a foreign state without permission or legal justification of information or data,... relating to the interest of the government with the intention of harming the interests of the state or a foreign state; subversion of the national economy, which included organising or inciting illegal strikes, abstention or collective departure from work; and initiating or attempting to initiate acts leading to the fomenting of illegal opposition to the government, or establishing a prohibited political organisation with the aim of destroying the national unity or opposing authority.

Among other changes were the introduction of a series of alcohol related offences, some of which were applied to non-Muslims even though under Islamic law non-Muslims are exempt from most of the alcohol prohibitions, and changes in the burden of proof for the crime of adultery.

The President was given the power to create special courts for the trial of those accused of certain crimes under the Act and to determine the procedures of such courts.

Additional penalties were introduced into the penal code: amputation; flogging; retribution (qisas), crucifixion and stoning. Amputation of the right hand was the prescribed sentence for robbery and theft of more than S. £ 100. Cross-limb amputations (right hand/left foot) were imposed for robbery with violence, habitual theft and organising a criminal conspiracy. Flogging became applicable to a majority of offences, and usually was imposed in conjunction with other sentences such as fines or imprisonment. The right to retribution was given in cases where the injury had been intentional. Crucifixion (after execution) was a possible penalty for repeated brothel-keeping, habitual theft, robbery with violence and organising a criminal conspiracy. Stoning was to be imposed against married persons committing the crime of adultery; an unmarried person was subject to floggings as was someone who falsely accused another person of adultery.

According to the figures received by the mission from the govern-

ment, 106 amputations including 17 cross-limb amputations were carried out during the period 19 August 1983 to 27 March 1985. Amnesty International has reported that thousands of men and women were flogged, often severely. Floggings were carried out immediately after the pronouncement of the sentence, sometimes even when the defendant had stated his or her intention to appeal. They were administered in the court room by a policeman. The reported instances of qisas (retribution) being given to the victim are few. There are reports of one crucifixion being performed on an «habitual robber», Al Waltig Sabah El Kheir. No reports of stoning being carried out have been received.

From 29 April to 8 July 1984 criminal cases were tried by emergency courts, using summary procedures. Defendants did not have the right to legal counsel or to appeal. Then from 8 July to 29 September criminal cases were tried by the Decisive Justice Courts, which continued to use summary procedures, although allowing defence counsel to be present and allowing an appeal to the Decisive Justice Court of Appeal. A report prepared on this period by a Sudanese lawyer notes that from 7 May to 7 June 1984, when the emergency courts were functioning, the 9 courts in the capital area decided 1,510 cases and ordered 617 people flogged.

As noted above, the transitional government made clear during its early days in power that the «September Laws» were still in effect. However, no sentences of amputation have been carried out. The mission was told by the Attorney-General that at the time of the change in government there were nine outstanding sentences of amputation. All these cases were reviewed by the Supreme Court, and five of the sentences were confirmed. Stays were then ordered by the Attorney-General on the ground that the conditions in the country, notably famine and widespread poverty, were such that the executions could not be carried out under Islamic law. The mission was also told that all these sentences would be reviewed when a new criminal code was enacted. Flogging has continued to be imposed as a punishment, but not with the frequency it was given earlier.

A draft penal code has recently been circulated by the Attorney-General. It too has met with criticism, as it retains many of the punishments introduced in 1983 and has added the crime of apostasy which did not previously exist under the code.

### *The Code of Criminal Procedure (1983)*

The Code of Criminal Procedure was amended to include provisions

similar to those in the State Security Act, concerning preventive detention. The head of the state security apparatus as well as the chief of police, or persons designated by either of them, were empowered to order the arrest or restriction of residence of a person if they were satisfied that the person was about to commit an act harmful to state security or public order. The initial detention period was to be for a maximum of 10 days which could be extended to three months with the agreement of the National Security Council. The National Security Council had the power to renew the orders for further periods of three months, but after the second renewal the matter was to be placed before the Attorney-General and his consent obtained to further renewals. The detained or restricted person was to be informed immediately of the reasons for his arrest or restriction. If the authority issuing the order became satisfied that the reasons for the arrest no longer existed or were insufficient, it was bound to terminate the order. The President of the Republic could at any time and without a statement of reasons order the termination of a detention or restriction.

The new code also included a provision which treated the commission of certain offences under the Penal Code outside Sudan as being committed in Sudan. A provision was added which forbid the carrying out of the death penalty on anyone over the age of 70<sup>53</sup> or on women who were pregnant or breast feeding.

Under the new code the President was given the power to appoint criminal court judges directly to a specific court. Jurisdiction over offences committed after enactment of the 1983 Penal Code was given to newly established criminal courts, which were to sit with only one judge, instead of three, as had been required previously in serious criminal cases. The investigation phase of the trial was joined with the trial itself, so the same judge determined the charges against the defendant and then determined his or her guilt or innocence. Judges were given authority to limit the number of adjournments in any case to three, to fine lawyers for procrastination or delays and to prohibit lawyers who they felt were delaying or neglecting the proceedings from continuing to appear in a case.

In announcing the new code, President Nimeiri stated that the changes were being made to facilitate the application of the law, to achieve justice and to avoid harm caused by criminal acts. He urged all jurists and citizens to lend a hand in the implementation of the new codes and further indicated that dissent would not be tolerated.<sup>54</sup>

<sup>53</sup> The Director of prisons was to stay the execution of the sentence and inform the President of the Supreme Court. This provision was not followed in the case of Mohamed Taha.

<sup>54</sup> SUNA, 19 August 1983.

This code remains in effect, save that the provisions concerning the direct appointment of judges have been repealed.

***«September Laws» Affecting the Judiciary: The Judiciary Act 1983, the Judicial Sources of Law Act (Sources of Decisions Act) 1983, Declaration of Emergency, April 1984, Judiciary Act 1405, A.H.***

Prior to the enactment of the «September laws» the criminal courts were organised in several tiers; from lowest to highest these were benches of magistrates (petty cases), district courts (cases not exceeding S. £ 25,000), and provincial courts (cases exceeding S. £ 25,000). Appeals were taken first to the Court of Appeals and then to the Supreme Court which consisted of 23 judges who sat in panels of three (seven for constitutional cases).

On 11 August 1983 a law on the judiciary was enacted, which repealed acts of 1976 and 1982 concerning the number of judges and their salaries and the 1977 Act on People's Local Courts. The organisation of the High Court, the Court of Appeals and the Supreme Court was changed, with the number of judges being reduced. A new set of qualifications was established, and vacancies were to be filled with those sympathetic to the 1983 laws. A committee was established to review further the organisation and functioning of the judiciary, and to make recommendations on new appointments.

In announcing these changes Nimeiri referred to the courts as «deformed beings», alleging that there were great delays in the rendering of decisions. He suggested that those who opposed his reforms were doing so for political reasons, and noted that the judiciary had to be responsible for carrying out the goals of the May revolution.

Also in 1983 a Judicial Sources of Law Act was passed. It dealt with the interpretation of legislative texts and the determination of matters where there was no legislation. A judge when interpreting legislative texts which had not been previously interpreted, was to be guided by the rule that the legislative authority did not intend to contravene Shari'a. General concepts were to be interpreted in such a manner as to meet the requirements of Shari'a, its rules, principles and general spirit, and words and terms of jurisprudence were to be interpreted in light of the principles of Islamic jurisprudence. In cases where no legislative text existed, judges were to reach their decisions on the basis of Shari'a or Sunna Rules in the Quran, if they exist, and if not, then they were to make a decision on the

basis of the following seven principles, to be applied in a priority order: (1) generally accepted understandings of the concepts of Shari'a; (2) use of analogy; (3) consideration of that which brings good and averts incorrectness in the accomplishment of the aims of Shari'a; (4) presumption of innocence; (5) Sudanese jurisprudence to the extent it does not contradict Shari'a or Islamic jurisprudence; (6) custom and thought to the extent they do not contradict Shari'a and (7) notions of justice as established by noble laws of humanity and by the rules of equity.

Judges were given wide discretion to determine what was or was not covered by Shari'a law, and a number of judges used this act to create charges against a defendant or to find defendants guilty of crimes for which they had not been charged, as in the Taha case. Decisions appeared to be based on whether the judge found the defendant's beliefs or political opinions personally unacceptable, or whether the judge perceived the defendant to be a «bad person», rather than being based on actual guilt or innocence. Few of the judges were schooled in Islamic jurisprudence, or had training or a background in its application, or knowledge of the various schools of thought. According to information given to the mission, this law also went against Sudanese Islamic tradition, as the Islamic courts already in existence for adjudicating matters of «personal law» had relied on one particular school of thought. Under the Judicial Sources of Law Act this tradition could be ignored. It was also noted that the various schools of thought differed from country to country and with respect to some subjects there was a convergence of opinion between several but not all of them, yet under the Act a judge could select a school which had taken a «minority» point of view.

No further changes were made until April 1984 when the state of emergency was declared. It was at this point that for the trial of cases coming within the ambit of the 1983 laws the district and provincial courts were supplanted by 12 emergency courts. These courts were presided over by three judges, one member of the judiciary and two lay members, often the armed forces or the police. Procedures were changed drastically, and all trials were conducted «summarily». The right to legal counsel was abolished, but defendants could have lawyers present as «friends» of the defendant. Appeals were abolished. Defendants who were not Arabic speaking did not always receive the assistance of translators.

Several articles of the Constitution were suspended, among them those protecting the right to freedom of opinion, the right to petition the Supreme Court to declare a law unconstitutional, and the right of an arrested person to be informed of the reason for the arrest and to be brought before a competent court.

During the period of the emergency the ordinary criminal courts continued to function, but the respective jurisdictions of the two court systems was not clear. However, most of the cases brought after the declaration of the emergency were heard before the emergency courts, whereas the ordinary courts completed those cases they were already seized with. As time went on and the number of cases became fewer, some of these judges were given posts as police magistrates (issuing warrants, etc.) or were assigned to civil courts.

Then on 8 July it was announced that the emergency courts would be replaced by Prompt (or Decisive) Justice Courts and that a Decisive Court of Appeal would be created.<sup>55</sup> The right to a lawyer was re-established, but the procedures remained summary. The appeals panel was to be made up of judges from the courts of first instance, and in a number of cases judges sat on panels hearing cases they had tried. Many of those appointed to the emergency courts had no prior judicial experience and questions were raised about the qualification of some to be sitting as judges.

Continued public pressure led to the lifting of the emergency decree and the enactment of a new act concerning the judiciary, Judiciary Act 1405 A.H. This Act remained in force until 15 April 1986,<sup>56</sup> although certain sections concerning the appointment of judges and creation of courts in the capital area were not applied.

In addition to giving the President the right to appoint, dismiss and promote judges, and to form criminal courts in the capital area,<sup>57</sup> the law gave him the right to ignore the criteria laid down in the Constitution for the selection of judges, and to issue orders to judges for the purpose of «securing justice». This provision was used to intervene in court proceedings and to influence the verdict. As with the emergency courts, the procedures to be employed were summary and judges from first instance courts sat on appeal panels. The judiciary was denied jurisdiction to hear cases challenging executive acts. New administrative tribunals were created and given jurisdiction over certain criminal matters; a new Minister of State for criminal matters was created, and given the authority to decide which cases were to be assigned to which courts.

Twelve courts were established in the capital area. Each was headed by a member of the judiciary, but these persons were often chosen from the ranks of those who had sat on the emergency courts. Judges were

<sup>55</sup> This was done in response to widespread criticism of the Emergency courts both within Sudan and internationally.

<sup>56</sup> The mission has not been able to obtain a copy of the April 1986 act, and, therefore is not in a position to comment on it.

<sup>57</sup> The Chief Justice appointed judges to courts in the provinces.

able to modify the rules of evidence in any particular case, and evidence secured illegally, such as by the use of torture, could be admitted. Transcripts of trial proceedings were not made. The judge was charged with making a summary of the case, and often this was no more than one sheet of paper containing both the summary and the judgement. These summaries were the only record of the case before the appellate court. In addition, the small number of courts authorised to hear criminal cases caused a tremendous backlog to build up.

Since March 1985 some changes have been made in the Judiciary Act. The provisions that allowed for direct executive appointment to a particular court have been repealed. Although the Code of Criminal Procedure (1983) remains in force, the courts are no longer using the abbreviated procedures. However, there does not seem to be any specific law or regulation setting out the procedures to be used.

Immediately following President Nimeiri's overthrow the sitting Chief Justice, a former chairman of one of the Prompt Justice Courts, was dismissed. The judges then elected a new Chief Justice. However a number of the judges appointed during the emergency and who were kept on by former President Nimeiri continue to sit, even though they have not had proper training or experience. Many of those judges who were transferred to positions of lesser authority or removed from the judiciary by former President Nimeiri have not yet been able to resume their posts. The mission was told by the Chief Justice that a committee had been established to review the situation of those judges upon their application. It will submit its findings and recommendations to the Supreme Council of the Judiciary; no information has been forthcoming as to results of this committee's work.

Another committee was established to make recommendations concerning protection of judicial independence for inclusion in the Transitional Constitution.<sup>58</sup> The Chief Justice indicated to the mission his satisfaction with the articles that had been adopted in this document. He also indicated that changes would be made in the organisation of the judiciary through the passage of a new judiciary act. One of the changes would make the Chief Justice head of the Supreme Council on the Judiciary (it is this body that recommends persons for appointment to the bench).<sup>59</sup> He further indicated that several committees have been established to review the problems and obstacles obstructing the performance of the judiciary, and that these committees would be making concrete

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<sup>58</sup> See section VIII below for a discussion of these provisions.

<sup>59</sup> Reports received by the mission indicate that this is included in a new Act.

recommendations that would be forwarded to the government. The committees were considering the formation and jurisdiction of courts in civil matters, in criminal matters and the provisions of the Judiciary Act. No information has been received since the time of the mission as to the status of these recommendations.

With respect to those sentenced by the emergency courts, the mission was informed that a committee composed of the Chief Justice, the Attorney-General and the Governor of the Province had been established to review and report on the case of every prisoner recommending either suspension or remission of sentences passed. These recommendations were to be given to the president of the Transitional Military Council. No information has been received as to the status of the recommendations.

### **Reactions to the «September Laws»**

There were few supporters of the «September Laws». The only group interviewed which appeared to be giving its unconditional backing to the laws was the Islamic Front. However, there were and are supporters of the idea that Sudanese legislation should be based, to some extent, on Shari'a and Islamic jurisprudence.

Many of those who supported the incorporation of some aspects of Shari'a into the Sudanese legal system were opposed to the way this had been done under the regime of former President Nimeiri, because they considered that the laws distorted the image of Shari'a. Others pointed to the excesses that had occurred during the emergency saying that they had no relation to Shari'a. A number pointed to the distortions created when certain aspects of the legislation were taken from Western legal systems and others from Islamic jurisprudence. Some who had an interest in seeing a long-term conversion to Islamic jurisprudence felt that such changes had to be gradual, needed proper economic and social conditions within the country, and had to take account of minority rights. No specific plan was given as to how this might be accomplished. Some of these people expressed a belief that the law needed to reflect more adequately Sudanese society, culture and values.

As noted earlier, there were many groups within the society that were opposed to the passage of the «September Laws» and who were opposed to making Islamic law binding on all citizens of the country. Many expressed concern over their effect on the unity of the country. The general sentiment appeared to be that the laws had been enacted as a tool of repression, rather than out of religious motivations.



At the time of their enactment, the laws were criticised by members of the judiciary, the bar, the professional unions, several political parties including the Umma, the Communists and the Ba'thists, some members of the army, members of the business community, the southern Sudanese and the Christian churches.

Some of the specific criticisms raised during the Nimeiri government against the laws were (1) the unconstitutionality of the Judicial Sources of Law Act which, if applied in full, would effectively override the constitution and allow all constitutional protections to be ignored, this without any discussion or decision on the issue by the population or the People's Assembly; (2) the harsh application of the laws by the police and the security forces, which led to constant invasions of privacy and a feeling of general insecurity among the population; (3) the application of Hadd penalties to crimes that were essentially Western in definition, and in the case of theft, the application of Hadd penalties to those in need or without advice that need was an available defence; (4) the summary proceedings employed by the courts under the Judiciary Act 1405, which deprived defendants of a fair trial; (5) the inclusion of state security offences in the ordinary penal law, and the authorising of preventive detention and the use of special courts by the criminal code; (6) the appointment of judges who did not have adequate training or qualifications; and (7) the carrying out of sentences of flogging before defendants could appeal.

Both the judiciary and the bar prepared statements of protest about Judiciary Act 1405, and submitted them to the President who refused to accept them. The Bar Association also held two debates on the laws, one in April 1984 and the other in November 1984.

### **Moves to repeal or amend the State Security Act, 1973, Judiciary Act 1405 A.H., the Judicial Sources of Law Act, the Criminal Code and the Penal Code, since March 1985.**

Shortly after the change in government the judiciary submitted a petition to the new government to review «hastily passed laws». During October 1985 the National Alliance submitted a detailed memorandum requesting the repeal, in whole or in part, of the State Security Act, the September 1983 laws, the law concerning the Exercise of Political Rights of 1974 and Judiciary Act 1405. The memorandum sets out some of the major deficiencies in each law. It was signed by the Umma Party, the National

Unionist Party, the Trade Union Alliance,<sup>60</sup> the Sudan Communist Party, the Arab Ba'thist Socialist Party (Sudan), Workers and Farmers' Party, Sudanese Women's Association, Sanu Party, Arab Socialist Nasserite Party, Islamic Socialist Party, Sudanese African Conference, Socialist Workers' Organisation, General Union of Jibal al Nuba. The National Alliance has continued to call for the repeal or revision of these laws.<sup>61</sup>

As indicated earlier, statements made by Gen. Swareddahab, Prime Minister Gizouli and the Council of Ministers made clear that the interim government did not intend to repeal all the laws, but did intend to revise them substantially.<sup>62</sup> Committees were set up under the auspices of the Attorney-General to review the laws and to make recommendations. The State Security Act and Judiciary Act 1405 have now been repealed. As noted earlier a new draft penal code was circulated by the Attorney-General, but it met with considerable opposition because of its retention of Hadd penalties and the inclusion of the crime of apostasy.

Another committee was formed under the auspices of the Attorney-General, which included the President of the Bar Association, to review all Sudanese legislation to ensure that it conformed to international human rights standards. In addition, the Ministry of Foreign Affairs decided to review the question of the ratification of the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. On 27 February 1986 the Attorney-General announced to the United Nations Commission on Human Rights that Sudan had ratified these instruments.

### *Recommendations*

14. The new government is urged to consider as a matter of priority the repeal of the Code of Criminal Procedure (1983), the Penal Code (1983), and the Judicial Sources of Law Act. Each of these laws undermines the Rule of Law in Sudan, and weakens the protection of human rights.

15. Concerning the code of criminal procedure, the mission recom-

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<sup>60</sup> This is the alliance of professional organisations.

<sup>61</sup> The Bar Association president has also submitted a memorandum calling for the repeal of certain laws affecting human rights and democratic freedoms, including the State Security Act of 1973.

<sup>62</sup> One government official later told a member of the mission that the Council of Ministers had recommended the repeal of the Civil Procedure Code, the Code of Criminal Procedure, Judiciary Act 1405 A.H., the Judicial Sources of Law Act and the Tax Statute.

mends that the provisions concerning the use of preventive detention be abolished.

16. The repeal of the provisions in the Code of Criminal Procedure concerning the appointment of judges is welcomed. The new government is urged to enact a new criminal code containing all guarantees for a fair trial, and to give particular attention to the safeguards contained in the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights.

17. The Judicial Sources of Law Act 1983 contravenes the Transitional Constitution, and also undermines a defendant's right to a fair trial by giving the judge wide discretionary powers in formulating charges, accepting evidence and determining guilt or innocence. It should be repealed.

18. Notwithstanding the sensibilities surrounding the discussions on the Penal Code, its repeal is recommended. Given the history of its enactment by Provisional Order, and its inclusion among a group of laws that the majority of the population perceive as repressive, there are significant reasons to justify its repeal. In this way, open and frank discussions can take place on the content of the penal law that will apply to the now democratic Sudan. The new government is also urged, in this regard, to bear in mind the difficulties these laws present to national unity; nearly a third of the country's population would be immediately resentful if a new penal code resembled too closely that enacted in 1983. In drafting a new code existing international standards should be borne in mind, particularly those on cruel, inhuman or degrading treatment or punishment.

## VIII.

# Other Constitutional and Human Rights Issues

### Freedom of Expression and Association

In 1970 the press was «nationalised». The law governing the media was revamped several times, but government control over it was maintained. The Sudan News Agency (SUNA) which had been an independent news organisation was made a semi-government body. This gave the government the ability to control both the inflow and outflow of news to and from Sudan.<sup>63</sup> Members of the Board of Directors of some of the larger daily newspapers were appointed from members of the SSU.

As outlined above, all political parties other than the SSU were banned, and the State Security Act was used to stifle dissent.

In its preliminary report the mission noted that during its visit political debate was being conducted openly and that it viewed this as a positive development. Reports from the country since the mission's return, indicate that open public debate has continued, and that over 30 political parties were to take part in the elections.

The mission also noted that newspapers printed by the various parties were openly critical of government policies, and that even the government newspaper on occasion contained critical articles and editorials. Many groups were being given access to the government run television station.

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<sup>63</sup> One member of the mission had occasion to go through back issues of SUNA daily bulletins. The reporting always reflected the government point of view, and news was often limited to announcements of Committee meetings and reports on speeches made by President Nimeiri.

The mission felt and expressed some concern at the suggestion that a law be passed requiring the registration of political parties; the mission urged that this be approached with caution. According to information received since, it was finally decided not to enact such a law.

### *Recommendations*

19. The new government is recommended to consider returning SUNA to its former independent status.

20. All laws limiting the formation of political parties or the expression of divergent political views should be reviewed, bearing in mind the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, and their repeal considered.

### **States of Emergency**

A state of emergency was declared on 6 April 1985 by the military authorities, immediately following the overthrow of the Nimeiri government. Although it was never revoked, its enforcement was relaxed. However, following a demonstration organised by the Islamic Front on 22 September the government issued a statement reminding the population that the state of emergency was still in force and banned all further demonstrations. The reason given for this was the fear that any counter-demonstrations might lead to violence, as there had been some clashes between demonstrators and counter-demonstrators. Concern was expressed at the time that the government was attempting to limit the expression of other opinions.

In view of the mutiny which took place on the night of 24 and 25 September the mission was unable to recommend in its preliminary report that the state of emergency be lifted immediately.

Since then the government has announced the lifting of the state of emergency.

### **The Transitional Constitution**

Soon after the formation of the new government, a committee was

established to draft a transitional constitution. The committee members included the President of the Bar and a nominee of the Transitional Military Council (TMC). The others were representatives of a wide group of political interests; they used as a starting point for their work the 1956 transitional constitution with the 1964 amendments. Some provisions were taken from the 1973 Constitution.

The Constitution went through several drafts in this Committee before being submitted to the Council of Ministers and the TMC for approval and adoption. Several areas of controversy appeared during the course of the drafting.

One concerned the extent to which the Constitution should expressly reflect the adherence to Islam by a majority of the population. At a late meeting of the Committee (apparently one which was not fully attended) the provision which now appears as Article 4 was inserted. It declared Shari'a and custom to be main sources of legislation, with personal matters for non-Muslims to be governed by their personal law. This provision was taken from the 1973 Constitution and was objected to by some members of the Committee, as it had been used by Nimeiri as a justification for the introduction of the September laws.

Another involved the law-making authority of the TMC and the Council of Ministers. The draft proposed by the Committee gave the TMC an ultimate veto. The Council of Ministers objected to this, and for a considerable period of time there was a stalemate. Finally a compromise was reached which provided that should the two bodies be unable to reach agreement on any particular piece of legislation, the question would be put to a joint meeting and the bill would have to be passed by an absolute majority.

The legislative authority of the Constituent Assembly was also an issue of controversy. The members of the committee were divided as to whether the Constituent Assembly should be given this authority. Some felt that if it became involved in day to day legislative activities, it might not focus its efforts sufficiently on the drafting of the permanent constitution, and would thereby prolong the transitional process.

Finally, views differed as to whether or not the transitional constitution should be capable of amendment prior to the adoption of a permanent constitution, and if it could be amended, which body or bodies should have authority to amend it. The final text allows for amendments; prior to the election of the Constituent Assembly amendments require a two thirds vote of a joint meeting of the Council of Ministers and the TMC. After the election, amendments may be made by a two thirds vote of the assembly.

After lengthy negotiations between the Council of Ministers and the TMC, the Transitional Constitution was adopted on 10 October. It sets out the structure of government for the periods prior to and after the election of the Constituent Assembly, until the adoption of a permanent constitution. Prior to the elections the Transitional Military Council is designated as the Supreme Constitutional Authority, and is made responsible for the armed forces. It is to exercise legislative functions in consultation with the Council of Ministers. The Council of Ministers is responsible for the administration of government and is answerable to the Transitional Military Council.

Following the elections, the government will consist of a Supreme Commission, a Constituent Assembly and a Council of Ministers. The Supreme Commission which is to be the «high constitutional authority of Sudan» will be elected by the Constituent Assembly. The two bodies will have joint legislative authority; the specific procedures for the passage of legislation are to be agreed upon by them after the elections. The five members of the Supreme Commission are to make decisions by majority vote.

In addition to electing the Supreme Commission, the other powers of the Constituent Assembly are: (1) drafting a permanent constitution; (2) approving legislation; (3) electing the Prime Minister; (4) general control of the government, including approval of the budget and decisions on State policies; withdrawing its confidence from the government or removing any minister from office; (5) deliberating on issues of state policy and holding of commissions of inquiry; and (6) formulating its own rules of procedure. The assembly's term has been set at four years from the date of its first session; it cannot be dissolved and is to be transformed into the Parliament after approval of the permanent Constitution. The President of the TMC is to convene the first session within two weeks of the announcement of the results of the elections, and the assembly is to meet at least once a year thereafter, with the interval between sessions being no greater than two months. The permanent constitution must be passed by a two thirds vote of the Constituent Assembly. Freedom of debate is guaranteed by the Transitional Constitution.

With respect to the Council of Ministers, the Prime Minister is to be appointed by the Supreme Commission after his or her election by the Constituent Assembly. All other ministers are appointed by the Supreme Commission on the advice of the Prime Minister. The Council of Ministers is responsible for the executive and administrative functions of government and is answerable to the Constituent Assembly.

The Judiciary is recognised as a separate and independent body. It is

to be independent in the performance of its functions and is not to be subjected to any outside influences or pressures in carrying out its duties. It is responsible to the Supreme Commission for the performance of its duties in accordance with the constitution and the law. The Supreme Court is made the custodian of the Constitution. A Supreme Council of the Judiciary, composed of the Chief Justice, the Chief Justice's deputies, the presidents of the regional Courts of Appeal, the Attorney-General, the president of the Bar and the Dean of the Faculty of Law of the University of Khartoum, is to make all recommendations for appointments to the bench. Appointments will be made by the Supreme Commission. The details concerning organisation of the judiciary have been left to implementing legislation. However, specific powers have been given to the Supreme Court; among them: (1) interpretation of the Constitution and legislation; (2) resolution of constitutional challenges to legislation; (3) protection of the rights and freedoms guaranteed by the Constitution; (4) resolution of conflicts concerning jurisdictional questions in the courts; (5) appellate review of cases; and (6) any other matters determined by the constitution or the law.

The articles governing the judiciary leave some unanswered questions, and the mission would urge the new government to review these articles. First, article 123 concerning tenure and removal sets out guidelines for removal of Supreme Court judges; there do not appear to be guidelines for the removal of lower court judges. Second, article 124 governing the powers of the Supreme Court does not state explicitly that the Court has the power to review the constitutionality of executive decisions.

Articles 17 to 33 contain guarantees for the protection of fundamental freedoms; included *inter alia* are guarantees for equality before the law, protection against discrimination, freedom of religion and beliefs, freedom of expression, freedom of association; liberty and security of the person; the right to bring an action at law, the right to a fair trial; freedom from torture or cruel or inhuman treatment; and participation in public affairs.

As noted in the preliminary report there are some concerns about this section of the constitution. Each of the guarantees is limited by a proviso stating either «except as prescribed by law» or «except in accordance with the law». This language deprives the guarantees of much of their force. It appeared in previous constitutions and was used by the former government to curtail severely the exercise of these rights.

Questions were raised about this issue with government officials during the mission's visit to Khartoum. The mission was told that article



33, which states that the rights protected by the constitution shall not be derogated from except by legislation enacted for the purpose of protecting public security, public morality, public health or the safety of the national economy, was designed as a savings clause in order to prevent such abuses.

It is the view of the mission that article 33 is not sufficient for this purpose. Certain provisions such as the right to equality before the law (Article 17), the right to freedom of belief (Article 18), the principle of legality (Article 27) and the prohibition against torture (Article 29) should never be subject to derogation. The mission suggests that these provisions be deleted or else that they be redrafted in a more restrictive fashion, perhaps using the Covenant on Civil and Political Rights as a model.

Another area of concern raised by the mission is article 133 which permits the declaration of a state of emergency. In discussions with government officials the mission noted that the derogation provisions of article 133, which allows the suspension of some or all of the rights guaranteed by the Constitution except the right to go to court, was overly broad, and would, on its face, permit the government to derogate from all rights, including those that are non-derogable under the Covenant on Civil and Political Rights, such as the right to life. Article 33, cited above, would not protect against such derogations.

The mission urges the new government to review this article in light of Article 4 of the Covenant on Civil and Political Rights.

Finally, the mission must note that some representatives from southern Sudan have misgivings about the implementation of the Transitional Constitution as they did not participate in its formulation. This is a matter of serious concern, and the mission would urge the new government to be open to the possibility of amending the Transitional Constitution after consultations have taken place.

### *Recommendations*

21. In order to guarantee the independence of the judiciary, it is essential that removal procedures be set out for all judicial posts. Article 123 should be amended to include removal procedures for lower court judges.

22. Great abuses of power occurred under the Nimeiri government. To avoid their repetition, some form of accountability is necessary. A

right of judicial review over executive actions would assist in this regard. It is recommended that article 124 be amended to make explicit the right of the judiciary to review executive actions.

23. The provisos in Article 18 to 24 of the Constitution, which limit the exercise of constitutional rights are too broad. They should be deleted or redrafted more narrowly, perhaps using the Covenant on Civil and Political Rights as a model.

24. Similarly, Article 133 permitting the declaration of a state of emergency requires redrafting in light of article 4 of the Covenant on Civil and Political Rights. The present text is very broad and would permit unlimited derogations from virtually all rights protected by the Constitution.

25. The possibility should be kept open of amending the Transitional Constitution if it prove desirable as a result of negotiations with southern representatives.

## **Draft National Retribution Law**

In its preliminary report, the mission noted the ongoing discussions on a draft «National Retribution Law» which would have deprived all those who served in the administration of former President Nimeiri of their political rights unless they could prove that they had not actively collaborated with the regime and were not responsible for decisions taken by it. The mission expressed concern over the legislation as it would have created crimes retroactively, with the onus of proof on the defendant.

Since the publication of its preliminary report, the mission has been informed that a decision was taken not to adopt such legislation. Discussions are now in progress concerning legislation that would govern the behaviour of all future government officials.

## **The Bar Association**

The Sudan Bar Association has long been respected for its independence and for its commitment to uphold the Rule of Law. All practising lawyers must be members of the Bar Association.<sup>64</sup> The Bar is governed by

<sup>64</sup> There are approximately 2,000 practising lawyers in Sudan. After obtaining a university degree in law, candidates must sit a further examination and, if they pass, must then do a year's training.

an 11-member Council which is elected by its General Assembly. There are no regional bar associations, nor is there a requirement that the Council be geographically representative.

Discipline is the responsibility of a Committee which is under the Bar's auspices but has members from the judiciary and the Attorney-General's Chambers. There is a published Code of Ethics.

The profession is governed at present by the Advocates Act of 1983. It contains guarantees for the profession's independence. The members of the Council and of the Bar interviewed by the mission expressed their general satisfaction with the Act.

Throughout the period of the Nimeiri government, the Bar protested against violations of human rights. Members of the Council were arrested on several occasions because of this. The Bar has consistently offered its services to those accused of political crimes, and on occasion, members assigned by the Bar to handle these cases have been arrested. In addition, the Bar has given its support to the Judiciary in its struggle to preserve its freedom.

During 1983 and 1984 a number of protests were made by the Bar to the President concerning the «September Laws», and it organised debates on the laws. As noted earlier, a detailed memorandum outlining the weaknesses of Judiciary Act 1405 was prepared by the Bar. During October 1984 the President initially refused exit visas for members of the Bar who were to attend a meeting of the Union of Arab Lawyers because of their outspoken position on the laws. After several days of confrontation and negotiations the President issued the visas. The Bar also protested against the trial and execution of Mahmoud Mohamed Taha in January 1985. It was one of the main professional unions to participate in the April strikes which brought down the Nimeiri government.

Since the change in government the Bar has participated in the meetings of the National Alliance, and has continued to work for the protection of human rights. Shortly after the change in government it called for the repeal of the September laws. Recently, through its president, it submitted a list of 10 legislative provisions to be repealed because of their restrictions on the exercise of human rights. The memorandum also recommends that articles 33 and 133 (referred to above) of the Transitional Constitution be amended. The Bar has also recommended ratification of the following international and regional human rights instruments: the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, and the Human Rights Charter of the Islamic Conference Organisation.

A joint committee composed of members of the Bar Council and professors of the University of Khartoum Faculty of Law are reviewing Sudanese legislation to ensure it complies with international human rights norms. This committee also intends to make recommendations for provisions to be included in the permanent constitution.

### *Recommendations*

26. The new government is urged to give serious consideration to the Bar's proposals for (1) the elimination of legislative provisions restricting the exercise of fundamental freedoms; (2) amendments to articles 33 and 133 of the Transitional Constitution; (3) ratification of international and regional human rights instruments<sup>65</sup> ; (4) amendments to existing legislation in light of existing international human rights standards; and (5) articles to be included in the permanent constitution.

### **Prisons and Treatment of Detainees**

Prison administration in Sudan is separate from police administration and falls under the jurisdiction of the Minister of Interior. There is a Director of Prisons who oversees the prison system and is answerable to the Minister. Prison officials are expected to attend a separate college and the government is correctly proud of this training requirement. The mission was able to meet with both the Minister of Interior and the Director of Prisons.

Officials explained that the Standard Minimum Rules for the Treatment of Prisoners were being used as guidelines in the administration of the prisons and the Commander had an admirable knowledge of the rules as well as of other prison systems throughout the world.

The mission asked for and received permission to visit Korber Prison in North Khartoum. It was escorted by members of the senior prison staff. However, the mission's visit was confined to a small exercise yard, to the hospital wing and to some workshops. It was not permitted to visit any of the living quarters or the main prison yard where, it presumed, the majority of the 600-prisoners were held. No explanation was given for the

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<sup>65</sup> As noted above Sudan has ratified three of the most important international instruments, namely, the two UN Covenants and the African Charter.

restricted visit. The mission did notice that in the area it was permitted to visit one prisoner was shackled in leg-irons. This type of restraint is prohibited by the Standard Minimum Rules.

There are both open and closed prisons in Sudan; placement is determined by the prisoners' behaviour and the crime he or she was convicted of. The open prisons are operated as farms. Prisoners may receive permission for up to three months leave per year. Female prisoners are placed in separate blocks. There are separate juvenile facilities.<sup>66</sup>

One member of the mission was able to visit one such facility. While the prison administrators were making efforts to provide education and rehabilitation services, the resources provided to the facility were inferior to those provided to the adults at Kober prison.

Prisoners have a right to receive visits from their families, and to send one letter per month at government expense. Visits from legal counsel are also permitted. Relatives may bring food to prisoners.

It is difficult for the mission to assess the extent to which the rules are in fact being applied. The officials the mission spoke with put great emphasis on the rehabilitation and education programmes available. However, others familiar with the system claimed that the rehabilitation programme was not well-coordinated and did not provide opportunities to those most in need of them, and that social workers assigned to the prisons have difficulty in carrying out their tasks.

There is also some question whether the work programmes provided in the prisons comply with the rules governing work. It does not appear that the prisoners are receiving remuneration for their work (see Rule 76). Also outside firms supply materials to the prisons and they apparently sell some of the products being produced there (see Rules 72 and 73).

### *Recommendations*

27. The mission is conscious of the difficulties facing prison officials, particularly the scarce resources available given the needs of the country as a whole. However it suggests that some conditions can be improved, particularly in juvenile facilities, and that the prisons be made open to visits by outside agencies.

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<sup>66</sup> The mission was told that institutionalisation was a measure of last resort with respect to juveniles.

## **Legal Services**

Legal aid in serious criminal cases is paid for by the government, and the programme is administered by the Bar Association. Until recently legal aid in civil cases was available only through the Bar. The University of Khartoum has now established a Legal Aid Centre which handles both civil and criminal cases. In addition, a Committee has been established under the auspices of the Attorney-General and the Chief Justice to establish a more comprehensive legal services programme, focusing particularly on problems of the poor and of women. The mission commends these efforts, and again, while recognising the scarcity of resources, encourages the government to support these activities to the extent it is able.

## **International Human Rights Instruments**

In its preliminary report the mission had recommended that the government ratify the covenants on Economic, Social and Cultural Rights and Civil and Political Rights and the African Charter on Human and Peoples' Rights. During the February 1986 session of the UN Commission on Human Rights the Attorney-General announced that these instruments had been ratified. The mission warmly welcomes this development. It does recommend however, that the government give consideration to ratifying the Optional Protocol to the Covenant on Civil and Political Rights.

A new organisation, the Sudanese Organisation for Human Rights, was formed in order to work for the respect and support within Sudan of human rights and fundamental freedoms guaranteed in these and other human rights instruments. Another organisation, Amnesty Sudan (no relation to Amnesty International) which had worked from London to bring to light the abuses of the former government is now working within Sudan for the protection of human rights. In addition, the Bar Association, in conjunction with the University of Khartoum Faculty of Law, is reviewing the country's legislation to ensure that it conforms to the obligations undertaken with the ratification of these instruments.

## ***Recommendation***

28. The new government is urged to work with the Bar Association, the University of Khartoum, and the human rights groups to ensure that full respect is given to the protection of all human rights.

## **Support From the International Community**

**In its preliminary report the mission encouraged the international community to support the efforts of Sudan in its struggle to rebuild the institutions of democracy and to ensure that any internal difficulties are not fuelled by outside influences. Such support continues to be important, especially in light of the serious economic difficulties facing the country and the continuing war in southern Sudan.**

## IX.

# Summary of Further Recommendations

1. The mission therefore recommends to the newly elected government that full genuine and open recognition be given to the fundamental diversity of Sudanese society, and that a commitment to tolerance and to the harmonious preservation of that diversity in the institutions of government, the constitution and the fundamental laws be made. This will help to insure that ethnic diversity is not manipulated for purposes of political gain.

2. It renews its recommendations in the preliminary report that weapons distributed by the army to civilians should be retrieved and steps taken to ensure that no further such actions occur, and that a major effort towards education in ethnic/racial understanding should be made at all levels of education and among the adult population. This would serve to counter those who might try to use ethnic differences as a means of causing political upheaval with a view to attaining power. Effective use could be made of the media, particularly television, in this regard.

3. In addition more needs to be done to ensure fair access to the country's scarce resources and full participation in the country's political system by all groups.

4. The mission cannot pretend to have solutions to the complex problem in the South. As stated by the majority of those interviewed, there is no military solution. Gaining a military advantage would be that and no more; it would not achieve a lasting solution to the problem. Political accommodation is the only feasible response.

5. Nor can a purely regional arrangement resolve the underlying tensions. There are half a million southerners in Khartoum alone, and



their interests need protecting as much as the interests of those still living in the south. National legislation cannot be used to impose the will of the majority in the areas of religion, morals and social organisation on a distinct ethnic group that comprises at least 30% of the country's population. Nor can the country afford to ignore the development needs of such a significant portion of its population. The central government must reflect in its composition and outlook the diversity of the nation.

6. Those working to protect and preserve minority interests do not serve those interests by adopting intransigent positions. Serious attempts at negotiation are needed on both sides, and new ideas and approaches must be considered. There are many countries with significant Muslim populations, and the interests of both Muslims and non-Muslims have been catered for elsewhere. More study needs to be made of approaches taken by other countries to this sensitive question.

7. There has already been talk of a new regional government bill. If this occurs, a unified southern region will, no doubt, be created. Although many of those interviewed stated their belief that the majority of southerners were in favour of reunification, it is evident in the speeches and memoranda of some southerners that they are opposed to reunification of the south. The reasons for this need to be identified and the conflict resolved so that the events of 1981 and 1982 are not repeated.

8. The mission hopes that the SPLM and the new government will open a serious dialogue for the purpose of resolving this conflict.

9. The mission had recommended in its preliminary report that the national security legislation be repealed. It welcomes the decision of the interim government to do so. The broadness of the language and the extraordinary powers it gave to the executive and the security forces led to its misuse and to human rights violations.

If new security legislation is to be enacted, the offences should relate to specific acts and behaviour posing actual threats to the security of the state. They should not criminalise, as did the prior legislation, mere opposition to or criticism of government policies, or the exercise of trade union rights, and should conform with constitutionally or internationally protected rights.

10. In its preliminary report the mission recommended that the practice of trying security offences before special courts be abolished, noting that such courts pose an inherent threat to the protection of human rights as well as undermining the independence of the judiciary. Security offences, like other criminal offences should be tried before the ordinary courts.

11. Another recommendation contained in the preliminary report

was the abolition of the powers of preventive detention. The mission noted that these powers were easily abused, and that as long as the power existed there was a potential for its abuse. This recommendation is renewed.

12. In its preliminary report the mission welcomed the disbanding of the state security forces. It understands that a new National Security Force has been established under the jurisdiction of the police. The mission has not had an opportunity to review the legislation governing this organisation, but given the difficulties that arose with the previous security forces, the new government is urged to review the legislation to ensure that the powers of the security police are well-defined and comply with all constitutional safeguards and with international protections for human rights.

13. All those at present detained under the State Security Act or the state of emergency be released or immediately charged and brought to trial.

14. The new government is urged to consider as a matter of priority the repeal of the Code of Criminal Procedure (1983), the Penal Code (1983), and the Judicial Sources of Law Act. Each of these laws undermines the Rule of Law in Sudan, and weakens the protection of human rights.

15. Concerning the code of criminal procedure, the mission recommends that the provisions concerning the use of preventive detention be abolished.

16. The repeal of the provisions in the Code of Criminal Procedure concerning the appointment of judges is welcomed. The new government is urged to enact a new criminal code containing all guarantees for a fair trial, and to give particular attention to the safeguards contained in the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights.

17. The Judicial Sources of Law Act 1983 contravenes the Transitional Constitution, and also undermines a defendant's right to a fair trial by giving the judge wide discretionary powers in formulating charges, accepting evidence and determining guilt or innocence. It should be repealed.

18. Notwithstanding the sensibilities surrounding the discussions on the Penal Code, its repeal is recommended. Given the history of its enactment by Provisional Order, and its inclusion among a group of laws that the majority of the population perceive as repressive, there are significant reasons to justify its repeal. In this way, open and frank discussions can take place on the content of the penal law that will apply to the now democratic Sudan. The new government is also urged, in this

regard, to bear in mind the difficulties these laws present to national unity; nearly a third of the country's population would be immediately resentful if a new penal code resembled too closely that enacted in 1983. In drafting a new code existing international standards should be borne in mind, particularly those on cruel, inhuman or degrading treatment or punishment.

19. The new government is recommended to consider returning SUNA to its former independent status.

20. All laws limiting the formation of political parties or the expression of divergent political views should be reviewed, bearing in mind the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, and their repeal considered.

21. In order to guarantee the independence of the judiciary, it is essential that removal procedures be set out for all judicial posts. Article 123 should be amended to include removal procedures for lower court judges.

22. Great abuses of power occurred under the Nimeiri government. To avoid their repetition, some form of accountability is necessary. A right of judicial review over executive actions would assist in this regard. It is recommended that article 124 be amended to make explicit the right of the judiciary to review executive actions.

23. The provisos in Article 18 to 24 of the Constitution, which limit the exercise of constitutional rights are too broad. They should be deleted or redrafted more narrowly, perhaps using the Covenant on Civil and Political Rights as a model.

24. Similarly, Article 133 permitting the declaration of a state of emergency requires redrafting in light of article 4 of the Covenant on Civil and Political Rights. The present text is very broad and would permit unlimited derogations from virtually all rights protected by the Constitution.

25. The possibility should be kept open of amending the Transitional Constitution if it prove desirable as a result of negotiations with southern representatives.

26. The new government is urged to give serious consideration to the Bar's proposals for (1) the elimination of legislative provisions restricting the exercise of fundamental freedoms; (2) amendments to articles 33 and 133 of the Transitional Constitution; (3) ratification of international and regional human rights instruments; (4) amendments to existing legislation in light of existing international human rights stan-

dards; and (5) articles to be included in the permanent constitution.

27. The mission is conscious of the difficulties facing prison officials, particularly the scarce resources available given the needs of the country as a whole. However it suggests that some conditions can be improved, particularly in juvenile facilities, and that the prisons be made open to visits by outside agencies.

28. The new government is urged to work with the Bar Association, the University of Khartoum, and the human rights groups to ensure that full respect is given to the protection of all human rights.

*Appendix A*

**Detention Order (or Residence Order)**

To. (Name and designation of the person who is to execute the order).

**WHEREAS** .....  
is likely to commit an offence under this Act (state briefly the reasons for  
detention or restriction of residence) you are hereby required to detain him  
in .....

.....  
or restrict his residence in .....  
and search him for anything connected with the cause of his detention or  
restriction of his residence and forthwith produce the same before me.

Dated this ..... day of ..... 19.....

Signature or seal

*Appendix B*

**Convening order of the State Security Court**

In accordance with the provisions of section 31 (2) of the State Security Act, 1973 (or in the exercise of the powers conferred upon me under section 31 (2) of the State Security Act, 1973) I hereby order that: —

1. A State Security Court shall be convened for the trial of the accused .....

under sections.....

..... as follows: —

(a) ..... President

(b) ..... Member

(c) ..... Member

(d) ..... Member

(e) ..... Member

2. The Court shall follow the procedure provided for in .....

.....

and shall begin the proceedings by reading the charges against the accused .....

.....

3. The Court shall not be bound by the provisions of sections.....

.....

.....

4. The confirmation of the sentence of this Court or the appeal  
therefrom shall be submitted to .....

.....

**President of the Republic**  
**(or by authority of the President of the Republic)**

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## SECRETARY-GENERAL

NIALL MACDERMOT



INTERNATIONAL COMMISSION OF JURISTS

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