

THE OBSERVATORY

for the Protection of Human Rights Defenders

L'OBSERVATOIRE

pour la Protection des Défenseurs des Droits de
l'Homme

EL OBSERVATORIO

para la Protección
de los Defensores de Derechos Humanos

Open letter to Omer Hassan Ahmed Elbashir, President of the Republic of Sudan

Paris - Geneva, November 7, 2005

Mr. President,

The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, wish to express their deep concern regarding new infringements to freedom of association in Sudan, as well as the deterioration of the situation of human rights and humanitarian organisations, in particular in Darfur.

I. The “Organisation of Humanitarian Voluntary Work Act, 2005”

The Observatory is very concerned at the signature of a provisional Presidential Decree titled “Organisation of Humanitarian Work Act, 2005” on August 4, 2005, which, if passed by Parliament, would impose serious restrictions to the freedom of association in Sudan.

According to the information received from the Sudan Organisation Against Torture (SOAT), the decree that was signed by yourself will be presented to Parliament for ratification at its new session, planned in mid-November 2005. This Decree expansively defines “civil society organisations” as the “organisations, unions, associations, non-governmental or national semi-governmental local organisations operating in the field of voluntary work and registered according to the provisions of this Act”. It also defines “voluntary work” as “any non-profit, non-governmental, voluntary, charity and humanitarian activity performed by any civil society organisation, charity institution, international non-governmental organisation (INGO) whether it is a donor organisation or an organisation which executes its programmes provided that such activity shall have cultural, social, development, relief, welfare, services, scientific or research objectives”. In fact, both foreign and local humanitarian and human rights organisations fall under the scope of the Decree.

The Observatory is very concerned about the potential negative implications of this text for Sudan’s civil society. Indeed, far from improving the environment for the operations of NGOs in Sudan, the temporary decree’s provisions are designed to control and criminalise NGOs and their members.

- Control over NGOs’ activities

The Observatory is concerned at the fact that the Presidential Decree, through measures bringing human rights defenders and humanitarian staff under the strengthened control of the government, is designed to limit their space for work.

The Decree indeed foresees the appointment, by the President of the Republic, of a “General Registrar of Organisations”, that will “register, renew and cancel registration of the federal civil society organisations and INGOs”. The General Registrar will be able to “request any information or data concerning the work of any of [these] organisations and to examine records thereof to ensure that procedures and actions taken are consistent with this Act”. He will “form administrative investigation committees, whenever it is necessary to investigate violations committed by any civil society organisation, INGO or individuals belonging to the same with respect to this Act and regulations there under”, will “supervise elections of the federal civil society organisations”, and will “settle conflicts and disputes which may arise between and among civil society NGOs or between them and others”.

- Modalities for NGO registration / Rejection of registration / Cancellation of registration

NGOs have to apply for registration before the General Registrar. One of the conditions for the registration is that “any federal national civil society organisation” seeking registration should not have less than 30 members. However, according to the same article, the Minister of Humanitarian affairs or the General Registrar “may [...] approve registration of organisations which have less than 30 members”, which gives a large room of manoeuvre for the government to decide which organisations should be registered or not.

The registration of any civil society organisation may be rejected, “a) if the statute [of the organisation] contradicts the provisions of this Act or the general policies set in connection with the voluntary and humanitarian work; [...] c) if the competent or the technical specialised authorities do not approve the registration”.

The registration of any federal national civil society organisation or foreign voluntary organisation may be cancelled by the General Registrar if “after the necessary investigation he is convinced that: [...] b) the civil society organisation or the INGOs violated the provisions of this acts or its regulations, or violated the provisions of any other applicable law or the general policies of the state in the field of voluntary humanitarian work; c) if the founders members have ceased activities for a year”.

The vagueness of the terms used both in the conditions for rejection and cancellation raises fears that some organisations might see their registration denied or cancelled on very arbitrary purposes.

Moreover, the text foresees that “non-governmental organisations, unions, associations, national semi-governmental organisations and INGOs existing before the commencement of this Act shall rectify conditions thereof for registration pursuant to this Act in 90 days as from the date of issuance of this Act [...]” This raises fears that organisations that have not been well-considered by the authorities till now for being, for example, too critical of the government’s policies, might see their registration refused during this re-registration process.

- Sanctions

The General Registrar “may, following the conduct of necessary investigation, in case of any violations to the provisions of this act or regulations there under and upon approval by the Minister [of Humanitarian Affairs]” inflict any of the following penalties : a) Bring to attention; b) Warn; c) Suspend the activities of the organisation for any period he deems appropriate; d) Dissolve the executive committee and form a transitional steering committee for a period not exceeding one year; e) Cancel registration; f) Expulse the INGOs from Sudan; g) Confiscate the property and funds of the organisation or the charity institution following confirmation of indictment or charge against the same by a competent court”.

The General Commissioner for Humanitarian Work, who is at the head of the Humanitarian Aid Commission also established by the Decree and assigned by the President of the Republic, “may, upon approval of the Minister inflict the following penalties [...] : a) Expel any foreigner appointed in any INGO or assigned tasks therein; b) Dismiss any member of any national organisation or charity organisation upon recommendation from the competent authorities; c) Prohibit any member from practising any kind of public voluntary activity for a period which he deems appropriate; d) Transfer any individual to a competent court on crimes and offences with respect to public funds an unlawful and suspicious wealth; e) Confiscate funds and properties illegally obtained by a member following confirmation or indictment or charge by a competent court.”

In case of final cancellation of registration of an organisation “all the assets and properties of the organisation whether fixed or mobile should go to the Ministry of Humanitarian Affairs.”

- Foreign funding

The Observatory is finally concerned at the fact that “No registered civil society organisation shall, under this Act, receive funds or donations from outside the country or from any foreign person inside the country or from any other body unless upon verification of the source of funds and approval by the Minister to this effect.”¹ This

¹ This violates in particular article 3 of the Declaration on Human Rights Defenders adopted by the UN General Assembly on December 9, 1998, which states that “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.”

provision might be used as a very concrete discretionary tool in view of limiting or preventing the activities of civil society organisations.

The Observatory considers that this law constitutes a negative step adding to numerous other obstacles faced by national and international human rights and humanitarian NGOs, in terms of administrative hindrances, harassment, and security infringements.

The Observatory finally notes that Sudanese civil society, which has addressed a memorandum to the Constitutional Court of Sudan at the end of September 2005, in order to denounce the infringements of the Decree and to ask the Court to declare it unconstitutional, has received no response to this date, in particular due to the fact the composition of the Court, established by the Peace Agreements in January 2005, has still not been defined.

II. Administrative and judicial measures / Fear for security

- Obstacles in the accordance of visas and permits

While international human rights NGOs are denied the deliverance of visas when it comes to conduct field investigations into the human rights situation in Sudan, humanitarian international NGOs face the increasing reluctance of Sudanese authorities to provide them with working permits, in particular in South-Darfur.

The problems currently faced by many NGOs working in humanitarian assistance, such as the Norwegian Refugee Council (NRC), are a flagrant illustration of this. Indeed, the NRC, which has acted as the co-ordinator of the Kalma camp since 2004, was ordered to leave the camp in May 2005. The authorisation to work in the country was renewed for a period of three months, however, since August 22, 2005, the agreement designating the NRC as co-ordinator of the camp has expired and the Humanitarian Aid Commission (HAC), which emanates from the Ministry of Humanitarian Affairs, has delayed the decision on the renewal of the authorisation. Moreover, on September 26, 2005, national security came to the NRC with a letter from the HAC, stating that two of their protection officers had to leave Darfur within 72 hours because they would have allegedly falsified their travel permits.

As a consequence of not having an international agency as coordinators, the international community working in Kalma camp has not been able to coordinate the humanitarian assistance, putting at risk, the very living conditions of the thousands of Internally Displaced Persons (IDPs) living in the camp (approximately 90.000 IDPs are receiving food by World Food Program in Kalma camp).

In addition, in the last three months, more than 20 expatriates were rejected by national security at the Nyala airport under arrival, for not giving copies of their travel permits (even though many have an ID-card issued by the HAC, which is based on the copy that the national security officers at the airport are requesting). The same procedure is also valid for departure, while the same national security ask for the same copies. The procedure, which affects both NGOs and UN agencies, is considered by NGOs and the UN agencies to be an impediment and a harassment to the humanitarian community in Darfur.

More generally, the application for travel permits, visa, residence, work permit and exit and re-entry visas is particularly difficult. As a consequence, many NGOs felt obliged to hire special staff to deal with the legal procedures to apply. All these permissions are commonly not given for long periods of time, making the situation of legal instability to a permanent process. Moreover, some of them faced accusations of falsification of travel permits; such was the case, for example, of the International Organisation for Migration (IOM) - which has United Nations status and had in June 2005 one international staff member arrested for allegedly falsifying travel permits (the situation was solved by UN on the same day).

- New provisions in South-Darfur

A circular was promulgated in 2005 by the local authorities of South-Darfur stating that NGOs who would draft "false reports" or "non-professional" organisations would be evicted from the region. The vagueness of these provisions raises fears that they be used in an arbitrary manner to sanction NGOs that would be too vocal in criticising the official policies or in denouncing rights violations of the population.

- Arbitrary detentions and judicial proceedings

Members of human rights NGOs operating in the Darfur region were regularly targeted and accused, amongst others, of undermining State security. For instance, members of the Sudan Social Development Organisation (SUDO), a locally registered NGO which promotes sustainable development and human rights, were frequently arrested and arbitrarily detained in the past few years. Mr. **Madawi Ibrahim Adam**, president of SUDO, was arrested on May 8, 2005, along with his colleagues Mr. **Yasir Saleem**, a photographer at SUDO's Documentation Unit, and Mr. **Abdullah Taha**, Mr. Madawi's personal driver. Mr. Madawi and Mr. Yasir were charged with espionage against the country, a crime which carries the death penalty under the Sudanese Penal Code, and entering and photographing military areas. On May 11, 2005, Mr. Taha was released without any official charges held against him. Mr. Yasir and Mr. Madawi were respectively released on May 12, 2005 and May 17, 2005 but the charges against them have not been officially dropped².

Similar charges were pronounced against staff members of international NGOs : On May 30, 2005, Mr. **Paul Foreman**, Director of Doctors Without Borders / Holland (Médecins sans Frontières (MSF) / Holland) was arrested and charged for "publication of false news", "omission to produce document or deliver statement" and "espionage against the country"³. These charges were related to a report published by MSF-Holland in March 2005 which detailed some 500 cases of rape in the course of four and a half months in Darfur. On May 31, 2005 Mr. **Vincent Hoedt**, MSF regional Coordinator for Darfur, was also arrested for the same reason. The government reportedly requested, through the HAC, that this report not be published on the grounds that the information contained in it were "false" and that "these kinds of false reports damage the image of Sudan". Furthermore, the authorities demanded that MSF-Holland hand over the medical documents used in the publication and evidence of these claims. MSF-Holland refused to name its sources or share its medical files on the grounds of doctor-patient confidentiality⁴.

Although all charges against both Mr. Paul Foreman and Mr. Vincent Hoedt were dropped on June 19, 2005, such proceedings and harassment contribute to the precariousness of many associations, in particular those working on rights protection.

More generally, human rights NGOs and individuals involved in the monitoring of human rights all over Sudan, faced many acts of repression. At the end of August 2005, some judicial proceedings were launched against SOAT, which was charged with "disclosure of military information" (article 59 of the Penal Code), "propagation of false news" (article 66), "breach of public peace" (article 69), "public nuisance" (article 77), in relation with the publication of a press release on the arrests that took place from August 1 to 3, in Khartoum, Juba and Malakal. If the charges were confirmed, in addition to the sanctions they may lead to for SOAT, there are fears that the new Decree be used as a tool to sanction local NGOs that receive funding from SOAT – a UK based organisation -, such as the Amal Center for the Rehabilitation of Victims of Torture and Violence in Khartoum, which was subjected to many acts of repression in the past.

Finally, on October 1, 2005, Mr. **Mohamed Ahmed Alarbab**, a human rights lawyer, was arrested in Khartoum and detained at the police station in Mayo, in the area of Khartoum, where he was reportedly beaten and subjected to severe pressure. Mr. Alarbab was working on cases of persons arrested following riots in the Soba Aradi area of Khartoum on May 18, 2005, after the killings of 14 police officers and civilians, when violence erupted in the Soba Aradi Area of Khartoum, populated by IDPs (the incident began when police officers entered the Soba area of Khartoum under the government scheme of relocating IDPs as part of a larger area-replanning programme). In the ensuing days, hundreds of people were arrested and detained including families and children. As of November 7, 2005, Mr. Ahmed Alarbab was detained at Kalakla police station and was denied visits from his family and access to legal advice. Mr. Alarbab was reportedly under investigation for offences under Articles 21, 24 (Participating in Commitment of a Criminal Act), 130 (Murder), 50 (Crimes against the Constitutional System), 51 (Crimes against the State), and 77 (Public Disturbance), 107 (Sheltering a Criminal) of the 1991 Sudanese Penal Code.

- Attempts to security / Criminality

The Observatory is preoccupied by the attempts to the security of local and international staff, in particular in South-Darfur. The Observatory recalls that on December 12, 2004, two Sudanese employees of the British NGO Save the Children, Messrs. **Abbaker Al-Tayeb** and **Yacoub Abdel Nabi Ahmed**, were killed during the attack of

² See Observatory urgent appeals SDN 001/0104/OBS 001, 001.1 and 001.2.

³ This violates in particular Article 6.b of the UN Declaration on Human Rights Defenders which states that "Everyone has the right, individually and in association with others to, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms".

⁴ See Observatory urgent appeal SDN 001/0605/OBS 038.

their aid convoy, leading to the withdrawal of the association from the area⁵.

Moreover, numerous cases of criminality have recently been reported, as well as robbery of trucks and other equipment. Such acts take place in spite of the establishment of a curfew in the region, which makes think that they might be perpetrated by or with the complicity of official security forces. Some cases of kidnapping against local staff members sponsored by the Sudan Liberation Army (SLA) were also reported. In particular, on September 29, 2005, three armed men from the SLA attacked a SUDO vehicle and kidnapped three of its staff members inside ZamZam Internally Displaced Camp (IDP), on the outskirts of Al Fashir. These aid workers were Mr. **Salah Idris Mohamed**, SUDO coordinator in Alfashir, Mr. **Ahmed AbaKar Musa**, accountant, and Mr. **Salim Mohamed Salim**, ZamZam camp SUDO coordinator. The kidnappers also stole four million Sudanese Pounds (around 159 euros) from the SUDO accountant and ordered the aid workers to drive out of ZamZam Camp towards Southern ZamZam Camp. They were finally released unharmed, on October 6, 2005.

At a time when assistance to nearly 2 millions of IDPs is vividly needed, the Observatory is more than preoccupied at the obstacles put to the work of those who try to bring them assistance and defend and promote their rights. More generally, the Observatory is concerned that the provisional Presidential Decree might engender acts of repression against any organisation working in favour of civil and political rights and economic, social and cultural rights.

The Observatory urges the Sudanese authorities to :

- revise the “Organisation of Humanitarian Work Act, 2005”, in order to conform with international and regional instruments relative to freedom of association;
- deliver, in the soonest delay, a working authorisation to the NRC and ensure that the organisation be able to work without any hindrances, as well as any other international NGOs working in Sudan;
- put an end to any kind of retaliation, including judicial persecution, against human rights defenders and humanitarian staff members;
- ensure that the Constitutional Court be operational in the soonest delay, so that a response be given to the NGOs’ Memorandum;
- conform with the provisions of the UN Declaration on Human Rights Defenders, in particular with the above mentioned articles and article 12.2, which states that “The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- more generally, conform with the Universal Declaration on Human Rights and the regional and international instruments relative to human rights binding Sudan.

Sidiki KABA
FIDH President

Eric SOTTAS
OMCT Director

⁵ See Observatory Annual Report 2004.



International Federation for Human Rights
17, Passage de la Main d'Or
75 011 Paris, France
Tel : 00 33 1 43 55 25 18
fidh@fidh.org



World Organisation Against Torture
Case postale 21 - 8 rue du Vieux-Billard
1211 Genève 8, Switzerland
Tel : 00 41 22 809 49 22
omct@omct.org