

**Insurgency & International Law:
The Case of Darfur**

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Foreword

This is the first in a series of pamphlets discussing insurgency and its legal validity under international law. Taking controversial and often emotive conflicts as examples, the author argues passionately for the contention that was once understood as a mainstay of normative legal thinking: that the struggle against oppression is not only legitimate but commendable.

This pamphlet looks at Darfur and the struggle of its peoples against racial and colonialist domination from the Sudanese central authority. Written from a British perspective, the author looks at the implications of the demonisation of the term insurgency and its effects in two specific matters. Firstly, the deliberate oversight by governments – particularly the British – of the definitions of international law and the legitimacy they ascribe to liberation movements. As we go to press, the comments by British Defence Minister John Reid regarding the need for international law to be revised evidence the lengths to which governments are now willing to erode well-established legal principles and norms. Secondly – again with specific regard to the British experience – the ‘glorification of terrorism’ has recently been outlawed in Britain. Already derided as ambiguous and a dangerous curtailment on academic freedom, this offence could see support for legitimate resistance movements criminalised. It would mean that support akin to that given to the struggle against apartheid would be illegal.

Whilst both author and publishers unequivocally condemn human rights abuses – whoever the perpetrators – they hope that these discussions will awaken the latent interest of both public and policymakers who have become immune to the calls for freedom of many oppressed peoples around the world, as more and more oppressive regimes use Western government’s vogue for labelling all who take arms against rulers as terrorists.

It is worth noting that on the South Bank of the River Thames, near the Millennium Eye, stands a small but significant memorial to those British volunteers who gave their lives in the struggle against Spanish fascism during the Spanish Civil War in the 1930s. They paid with their lives – they were cruelly vilified by their contemporaries and labelled treacherous communists by the government of the day. They are eulogised now. Must we wait 70 years before we realise that the criminalisation of and silence we have imposed not only on those who join liberation movements, but also on those who applaud them, is wrong?

Islamic Human Rights Commission
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Introduction

From the invasion of Iraq to the conflicts in Palestine, Chechnya, Kashmir and Darfur, the British and American governments and their various cohorts in the war on terror have used these arenas of struggle as examples of ‘havens for international terrorist activity’. In the process, insurgency has become a dirty word, and all those accused of participating in or supporting one, labelled terrorists.

Lambasted for poor human rights records, the governments of those countries against whom this so-called terrorism is waged, are keen to oblige with the names of all those they wish to see eradicated – quite literally in some cases – from the political scene. Uzbekistan’s murderous regime is now given further succour, by benevolent allies in the West and even the use of evidence extracted by torturous methods in this country lands on the desk and is used by British powers that be¹. Likewise Indian and Israeli atrocities find succour in the examples now set by the leaders of the war on terror.

For those with even an inkling of the nature of the issues in these places, it is known that the struggles of the various movements in these conflicts are for liberation. The definition of them as ‘terrorist activity’ is at best the over simplistic generalisation of those who do not believe in the use of violence per se, or a deeply cynical and perverse act of vilification by those whose moral compass advocates freedom for some and not for, or at the expense of, others . The implications of this perversion are many but this report focuses on two with specific regard to the situation in Darfur.

The author of this report and its publishers are based in the UK and the following speaks to its government, policymakers and wider public to understand the process underway and to halt what is clearly a descent into authoritarianism and thought policing. Without the crucial ability to support these movements, then the atrocities that have been taking place in all these lands will be able to continue and worsen.

International law provides a principle for self-determination through insurgent action, and thus when fighting against the evil of ethnic suppression and occupation, it is crucial for those who have the ability to speak to have the freedom to support them and highlight their struggle.

The following argument will provide a brief synopsis of the history of the conflict and the issues surrounding claims that this insurgency is one of terrorism. It will be argued that the situation is one where there is a legitimate struggle for freedom and thus its supporters should not only have the right to voice their views, but for those who support the international rule of law – if they are genuine in their sentiment - there is an obligation to support them.

¹ Murray C, www.craigmurray.co.uk

History and Context

Racism, genocide, colonial domination and subjugation, are often laid at the door of, but in actual fact are not limited to, inter-religious rivalries. Tribalism and ancestry of supposed nobility have often been crucial factors which take precedence over any religious or ethnic considerations, culminating in an irrational prejudice which in turn leads to hate and conflict. The situation in Darfur epitomises this form of conflict, where tribalism and arrogance have resulted in the torture, death and humiliation of a specifically defined people.

The international rule of law is not a concept that is synonymous with democratic institutions as many people commonly misunderstand it to be. International legal order is based around certain fundamental norms which have developed through customary international law and UN based systems that have provided a strong system for States to conduct their affairs. The principle of self-determination is one that has been protected by the United Nations and thus must be given full support internationally by States and individuals.

The Darfurian people have been under a constant struggle to find a place within Sudanese society. Since the arrival and departure of the British, they have been neglected and left to fend for themselves in the face of great famine and starvation. Being of a non-Arab background, the Darfurians have found no option other than to fight against their Khartoum government which attempts to suppress and subjugate this forgotten people through the use of armed bandits.

The much cited racism of the Arab Sudanese authorities against all non-Arabs further underlines the importance of the right for people to use force, especially when they wish to politically determine themselves. The country is one that is considered to be Muslim, yet the issue here is not of religious conflict as may be considered with some of the other case studies. Rather the conflict in Sudan highlights the need for general humanitarian concerns even at the smallest of tribal levels.

Darfur is somewhat unique in its geographical location through its strong links to both the Arab and African worlds. This factor alone is quintessential when considering the development of the conflict there and the demographic distribution of the various tribal people.

Its exact location is in western Sudan; however, in the east it borders the north and west Kordofan States. The south of Darfur borders with northern and western Bahr El Ghazal States, and finally in the west it borders with Libya, Chad and the Republic of Central Africa. Sharing such a variety of borders with different cultures and peoples, Darfur has had great intermingling across its borders resulting in a diversity of tribalism with roots stemming from many different languages, and cultures.²

Within Darfur, one can clearly identify 65 tribes, each with their own system of identified hierarchies and social cohesion. The Darfurians can however be split into two main groups, the Arab and non-Arab tribes. Within the Arab tribal system, one can find the Taisha, Salamat, Beni Halba, Beni Hussein, Tarjam, Messeria, Ziadia, and Rezigat. While the main non-Arab tribes include the Fur, Zaghawa, Masaliet, Dinka, Berti, Birgid, Bidiat,

² El Obeid H (2000) 'Small Arms Survey in Darfur And Investigation of the Child Soldier', p.6

Gola, Kbaka, Gimir, Mararit, Mima and Falata.³ The wide tribalism and ethnic diversity in the Darfur region provide issues of an internal element. In order to examine any relevant claims of self-determination in light of genocide and oppression, the history and context of the tribalism in Darfur must be understood to ascertain the correctness of any claim.

17th - 19th Century

In the 17th century, Sulayman Solongdungo established the Fur Sultanate. The process of incorporation of tribes and ethnic groups into the sultanate was predominantly peaceful.⁴ By 1787, the Fur Sultanate had extended as far as the Nile thereby opening Darfur up to commerce around the globe. Due to this expansionism, Islam began to be slowly adopted by the Darfurian people. According to O'Fahey,

“In the 17th century among the non-Arab populations of western Darfur Islam had made little inroad on their traditional beliefs, but was gradually beginning to grow in little nodules of influence radiating out from the Keira Sultan or tribal leaders, to whose courts the first fuqara (holy men or learned ulama) began to find their way.”⁵

It was the period between the 17th and 18th century that the Keira Darfurian State adopted Islam as the regional religion, however further than that, it is important to note that it never actually adopted the shariah (Islamic law) as the legal system of the land. The people of Darfur were in fact islamised through a process of cultural assimilation due to the steady stream of Islamic holy men who came to settle in the courts of the Sultans throughout the region.⁶ The Keira Sultanate managed to maintain its rule until 1874 when it was invaded by the Ottoman Empire under a joint Turco-Egyptian rule.

The short Ottoman rule was very much plagued with internal strife and revolt by the Fur and Baggara tribesmen.⁷ What was very much evident through this period of the 19th century was that the people of Darfur had never been treated well by the invaders who settled in their lands. The Darfurian elite exploited the people by enslaving many of them in order to increase their slave trade and also applying heavy taxation upon them.⁸ Those elite constantly vying for power took the region through great turmoil as the Darfurians had no option other than to become embroiled in the conflict.

It was in 1883 that The Mahadiya took control from the Ottoman forces under the control of Muhammad Ahmad who had declared himself as the Mahdi (the promised one). Unfortunately for the people of Darfur, despite their unification in overthrowing the Turco-Egyptian rulers, they could not unite upon the Mahdist movement, especially under Khalifa Abdullahi of the Taisha who succeeded Muhammad Ahmad.

The Fur and the Rezigat people staged a series of revolts against the Mahadiya between 1858-88 increasing instability within the region.⁹ What is particularly interesting about

³ Ibid, p.6

⁴ O'Fahey R.S. (1980) 'State and Society in Dar Fur' C. Hurst and Company

⁵ Ibid

⁶ Spaulding J and O'Fahey R.S. (1974) 'Kingdoms of the Sudan' London Methuen

⁷ Daly D (1986) 'Empire on the Nile: The Anglo-Egyptian Condominium' Cambridge

⁸ Spaulding J and O'Fahey R.S. (1974) 'Kingdoms of the Sudan' London Methuen

⁹ de Waal A (1989) 'Famine that Kills' Clarendon Press

this situation is that the Mahdist movement, instead of occupying the region fully, forced the migration of the Taisha Baggara to the Mahadiya State of Omdurman.¹⁰ Although the Baggara were not happy to make such a move, they did so anyway under the threat of Khalifa (who was originally from the Taisha), and thus the previously nomadic people, came to become a tribal army to the Mahadiya.¹¹

The severity and barbarity that became synonymous with this period of history resulted in the name '*umm kwakiyya*' in other words, years of misery, burning and banditry, being attached to the Ottoman and Mahadiya rule.¹² Darfur itself became the first to break free from the Mahadiya with the arrival of the Keira descendent, Ali Dinar. He was a Fur loyalist who had served Khalifa Abdullahi before returning to Darfur in order to restore the Fur Sultanate.¹³ The previous regimes had left Darfur in tatters, and as a result, Ali Dinar found himself with the enormous task of trying to maintain his independent sovereign Sultanate in the face of the widespread destruction left by a severe famine and internal warfare.

20th Century

It was not until 1916 that the British conquered Darfur after having taken Khartoum already eighteen years earlier. When the British finally invaded, they killed the Sultan and annexed the Darfurian lands. As with every single colonial context, the British abused Sudan to feed its own colonial campaigning and oppression. The Sudanese people were used in order to serve the needs of the British colonial economy.¹⁴

The chosen form of industrial exploitation for the Sudanese people was the production of cotton to help the British textile industry flourish. The Anglo-Egyptian Condominium rule established schemes in the cotton-picking areas which did indeed benefit those people living in Jazira and the Nuba Mountains, especially in the areas of education and health services; however any region outside the scheme was neglected. Darfur was one such neglected region, and by 1955, out of the 1170 implemented schemes, none were in Darfur. Economically the region was left in complete disarray.

In 1956 Sudan was finally given its independence as a sovereign State. Since then it has had a line of both military and democratic regimes. Initially it was founded on the two major Sufi Tariqa groups that emerged as forerunners for leadership. The two main parties were the Umma Party (UP) with its followers predominantly from the Baggara and Fur, the Ansar Sect (followers of the Mahdi), and the National Unionist Party (NUP) with its followers from the Khatmiya (adherents of Sufi Islam).

Although the Umma Party managed to take a monopoly of western Sudanese votes, they were eventually challenged by certain regional movements such as the Front for the Renaissance of Darfur (jabhat nahdat Darfur), the Muslim Brotherhood movement and

¹⁰ Mohamed Salih M.A. (2005) 'Understanding the Conflict in Darfur' Occasional Paper Centre of African Studies University of Copenhagen

¹¹ Holt P.M. (2000) 'A History of the Sudan from the Coming of Islam to the Present Day' Pearson Education Limited

¹² de Waal A (1989) 'Famine that Kills' Clarendon Press

¹³ Ibid

¹⁴ Nibbick T (1987) 'Class and Power in Sudan: The Dynamics of Sudanese Politics' Albany

its successors the National Islamic Front (NIF) and National Congress Party.¹⁵ Despite the power struggle and the clear role taken by certain Darfurians, the system of schemes left by the British had not been removed, but in fact by the mid-sixties there were 2280 schemes, none of which were still in Darfur.¹⁶

All of the politics and history mentioned above can be linked to the present day situation in Darfur. The conflict that has developed in Darfur, has been the result of a conflict that existed between the central Sudanese government and the Darfurian region.

After a long line of military coups, suspension of the constitution and banning of certain political parties, on 30th June 1989, the NIF staged a military coup overthrowing Sadiq Al-Mahdi. Essentially they looked to Islamacise Sudan and in doing so, also promote the status of the elite north. What is also key at this time is the promulgation of the Popular Defense Forces (PDF) Law 1989¹⁷, which created a national paramilitary force under the supervision of the national army. Conscripts were taken from the Darfurian people who formed no less than 40% of the paramilitary force.

By 1999, the PDF had increased so greatly in numbers, that there were 150,000 of them while only 80,000 regular Sudanese troops. These paramilitaries helped the NIF government to control any insurgencies that may have wished to revolt and take power.¹⁸ The NIF has to a great extent had its power taken away by the activities of armed bandit gangs such as the Janjaweed who are present not only in Darfur, but also Chad and the Central Africa Republic.

The Janjaweed are seen differently in various regions throughout Sudan. In Darfur itself, the people see them according to their own tribal loyalties and political positioning. There is a typical view in the media that portrays the Janjaweed as an Arab grouping only synonymous with perpetrators of human rights violations. This, although not being completely untrue, misses the point that the Janjaweed were essentially formed simply with the task of being a counter-insurgency force.¹⁹

It is the gangs of bandits that have formed as part of the Janjaweed that are internationally looked down upon as they are considered to be criminals who act without any authority or control. They do not have any formal training or command structure, although they do fight alongside the regular armed militia.²⁰

The call for 'jihad' against the south was not just invoked by the government against the Christians (despite having Christians serving in the SPLM/SPLA Sudanese army); it was also directed against the non-Arab Muslim populations in regions such as Darfur and the Nuba Mountains. The NIF implemented a tactic of specifically allowing the anti-Darfurian Baggara to be recruited in the Janjaweed with the sole purpose of policing Darfur for any kind of political dissent and subjugating the people through tactics of fear

¹⁵ Aegis Report on the Relationship between the Fur tribe and the National Islamic Front, based on information provided by Darfur Centre for Human Rights and Development 1993

¹⁶ Nibbick T (1987) 'Class and Power in Sudan: The Dynamics of Sudanese Politics' Albany

¹⁷ Mohamed Salih M.A. (2005) 'Understanding the Conflict in Darfur' Occasional Paper Centre of African Studies University of Copenhagen

¹⁸ Ibid

¹⁹ Young H (2005) 'Darfur 2005: Livelihoods Under Siege' South African Regional Poverty Network

²⁰ Ibid

and suppression. The Janjaweed were described in a report to the UN Secretary General as being:

“[A] generic term to describe Arab militias acting, under the authority, with the support, complicity or tolerance of the Sudanese State authorities, and who benefit from impunity for their actions.”²¹

Although the above statement is an oversimplification of the problems faced by the Darfurians, especially with the Arab/non-Arab dichotomy, the continued oppression of the people of Darfur has been systematic and akin to genocide. In the face of such oppression, insurgency movements have arisen, and they now fight for their right to equality and political determination. In order to understand the liberation movements though, one must understand where their right to self-determination comes from.

²¹ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General, 25 January 2005, p.33

Internal Self-Determination

Internal self-determination places a strong emphasis on the ‘populations of sovereign States’ throughout the whole territory, politically determining themselves. Cassese points out that, “Internal self-determination means the right to authentic self-government, that is, the right for a people really and freely to choose its own political and economic regime.”²² This right is especially given to a people who are being discriminated against on racial or religious grounds who bear no such equal malice to their oppressors.

It is the 1970 Declaration on Friendly Relations which finally recognised the right of those racial groups who had been traditionally denied their right to political access. Article 1 of the Declaration reads,

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of this Charter.”

What is interesting to note regarding the development of this Article, are the views taken by the major States of the world. Capitalist States were very much for allowing the right of people to determine their own political destiny, while their socialist counterparts were totally adverse to any such inherent right for internal self-determination.²³ By general consensus, it was agreed by the parties that there was no right to internal self-determination for oppressed racial minorities²⁴, and that would have been the end of the matter had it not been for its saving clause which states:

“Nothing in the foregoing paragraph [proclaiming the principle of self-determination] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”

It is the final section of the saving clause which is by far the most important, it holds that political determination must be, ‘without distinction as to race, creed or colour.’ The attacks by the Janjaweed and the level of intolerance shown by the northern Sudanese clearly are enough to satisfy the criteria relating to inequality.

Antonio Cassese makes a point regarding differentiation that, “...the right of internal self-determination embodied in the 1970 Declaration is a right conferred only on *racial* or *religious* groups living in a sovereign State which are denied access to the political decision-making process; *linguistic* or *national* groups *do not* have a concomitant right.”²⁵

²² Cassese A (1995) ‘Self-Determination of Peoples’ Cambridge

²³ Ibid

²⁴ Arangio-Ruiz G (1972) ‘The Normative Role of the General Assembly of the UN and the Declaration of Principles of Friendly Relations’ 137 HR, p.565

²⁵ Cassese A (1995) ‘Self-Determination of Peoples’ Cambridge

Taking into regard the fact that one may view the differentiation between the Darfurians and the Khartoum government being one that is geographical, could one possibly still hold that internal self-determination is a right that can be conferred upon these people? In this case one must turn to the overall situation in Darfur, rather than simply looking at the peoples of specific regions. The Darfurians may only have a geographical differentiation to the northern Sudanese; however there are definite racial and religious groups through the whole of Sudan who are being oppressed by the governmental militia.

The right to internal self-determination is one that has achieved the level of *jus cogens*²⁶ and it can be said to go so far as being a peremptory norm²⁷ of international law. According to State practice and *opinio juris*²⁸ though, this could only be seen to go as far as racial groupings rather than those based solely on religion.

The cases of South Africa and Southern Rhodesia provide more than adequate examples of how the principle of self-determination applies to racial groups looking for equality without having to secede. In fact, secession was not allowed by the UN and the OAU in order to block the formation of Bantustan States. Internal self-determination allows for true equality to be sought within a land, while external self-determination provides a convenient excuse to those wishing to maintain their racist policies.

The right of self-determination is one that is reserved for the people of the State. Third party States must be wary of interfering with such a right, as stated by the UN Committee on Human Rights,

“All States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States’ obligation under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination.”²⁹

The insurgency fighting for justice against oppression must thereby come from the people alone in order to satisfy the conditions for self-determination. By fighting for equality, they will better achieve their own form of government which will culturally and socially suit their context best. Outside interference can only ever lead to outside interests corrupting the nature of the determination, thus it becomes even more important for the struggle to take place between the people alone.

²⁶ Jus cogens – “A rule or principle in international law that is so fundamental that it binds all states and does not allow any exceptions” (Oxford Dictionary of Law, 1997)

²⁷ Peremptory norm – A totally immutable principle of customary international law which cannot be changed or overridden except by a principle of similar standing. (Oxford Dictionary of Law, 1997)

²⁸ Opinio juris – A legal obligation that results from the general practice of States. (Oxford Dictionary of Law, 1997)

²⁹ Report of the Human Rights Committee, UN Doc. A/39/40, 1984, p.143

Darfurian Liberation Movements

As a response to the Janjaweed and the tribal militia sponsored by the Sudanese government, insurgencies began to arise in order for the people of Darfur to achieve much needed equality. The imbalance of power and the misdistribution of national wealth were among the prime causes of instability. Extreme cases of human rights abuses led to a situation where the people could no longer sit back and wait for the government to give them justice. According to a report by Amnesty International,

“A lasting peace agreement in Sudan cannot be made while the human rights abuses of the war with the south are being repeated in Darfur.”³⁰

It has been documented that there have been carpet-bombing operations carried out by the Sudanese air force against villages. In a single week there were over 200 killings of women and children in the villages around Zalingei town in West Darfur. On 2nd January 2004, the Janjaweed were reported to have abducted at least 13 people, including children as young as the age of 9 from the Ma'un village near Kornoy. With many similar atrocities having already occurred, a mass exodus has ensued with more than 700,000 people having fled their homes.³¹

After widespread attacks on settler farming communities in Darfur, an alliance of ethnic groups opposing the governmental militia came together to form the Darfur Liberation Front (DLF) in the late 1980s. In 2003, their leader, Abdel Wahed Mohammed Al-Nur was supported by Eritrea who supplied much of the funding and resources that went into fighting the increasingly vicious attacks by the Janjaweed. The Sudan People's Liberation Movement (SPLM)³² provided training, arms and reconnaissance in order to gain a foothold in Darfur, a region which had historically been a stronghold against them. By 2003, the DLF had organised themselves to such an extent that changed their name to the Sudan Liberation Army (SLA) backed by their political wing known as the Sudan Liberation Movement (SLM).³³

The insurgency greatly shifted in ideology as the DLF began as a movement seeking the secession of Darfur from Sudan. However soon it became one seeking to liberate the whole of Sudan. Through the influence of the SPLM, a secular State was promoted through advocating negotiations with the Khartoum government. This was put forward in their Political Declaration which states,

“The Sudan Liberation Movement/Army is of the view that Sudan's unity is of paramount importance, but it should not be maintained and cannot be viable unless it is based on justice and equality for all the Sudanese peoples. Sudan's unity must be anchored on a new basis that is predicated on full acknowledgment of Sudan's ethnic, cultural, social and political diversity. Viable unity must therefore ultimately be based on the right of self-

³⁰ Amnesty International (2004) 'Sudan: Killings, abductions of children and arbitrary detention in Darfur'

³¹ Ibid

³² The SPLM is a member of the National Democratic Alliance (NDA) which is the main opposition party to the government in Sudan. The movement is the political wing of the SPLA which acts as their army.

³³ Mohamed Salih M.A. (2005) 'Understanding the Conflict in Darfur' Occasional Paper Centre of African Studies University of Copenhagen

determination and the free will of the various peoples of Sudan. The fundamental imperatives of a viable unity are an economy and political system that address the uneven development and marginalisation that have plagued the country since independence, so that the interests of the marginalised majority are adequately catered for and they are brought to the same level of development of the ruling minority. The SLM/A shall work with all political forces that ascribe to this view.”³⁴

Thus it can be seen that there has been a clear shift from desire to exercise external self-determination to one of seeking internal self-determination. What can be further seen from the political statement of the SLM is that they are still willing to give the government the opportunity to rectify the injustices in Sudan with the warning that if it does not work towards such a goal, the right of self-determination will be used.

The SLM finally declared their armed rebellion against the Khartoum Government on 13th March 2003 in order to, “create a united democratic Sudan on a new basis of equality, complete restructuring and devolution of power, even development and cultural and political pluralism.” As an open sign of their intentions to actively provide an egalitarian society, the SLA actively recruits Arabs in order to show that it is trying to rid the country of ethnic strife.³⁵

Wishing to highlight the problem of marginalised areas such as Darfur, another group who actively mobilised against the government is the Justice and Equality Movement (JEM). Although initially not taken to be a serious organisation with any considerable following especially due to their lack of military influence, the events since 2003 have pushed them to the forefront of the insurgency being more politically mature than the SLM/SLA. Article 2 of the JEM Protocol reads the purposes as being,

- “1. The Adoption of peaceful transition of power as a strategic option, meant to secure the stability and unity of the nation, and transparency and accountability in governance;
2. Assuring the establishment of national and regional criteria and modalities for the distribution of power and wealth which should positively reflect on the unity and diversity of the nation;
3. The implementation of a federal system of governance for all the six regions of the Sudan which shall allow for democratic self-governing by every region, within a united Sudan. Such regions are: the Central Region, the Northern Region, the Southern Region, the Eastern Region, Darfur and Kordofan Regions. The status the national capital (Khartoum) shall be considered as the 7th special region;
4. Participation by the regions in the central power, which shall be according to a national criterion based on the population of every region, as well as any other criteria to be agreed upon, provided that all the regions shall participate in governing the national capital and occupying the federal public positions in accordance with the population proportion for every region;
5. The restructuring of the armed forces in order to guarantee its national composition and orientation, and limit its role to the defence of the nation, provided that college and other enrolment for recruitment in the armed

³⁴ Political Declaration of SLA.SLM, March 14, 2003

³⁵ Young H (2005) ‘Darfur 2005: Livelihoods Under Siege’ South African Regional Poverty Network

forces shall be in accordance with the population proportion for every region.”³⁶

Once again, what is clearly apparent, is that the insurgencies across Sudan, and in particular the Darfurian region are very much intent upon an internal form of self-determination as a pragmatic solution to the conflict. Other groups that have been working for this same goal include the National Movement for Reform and Development (NMRD) and the Sudan Federal Democratic Alliance (SFDA).

³⁶ Justice and Equality Movement (JEM) Peace Proposal for Sudan in General and Darfur of 8th February 2005

How does international law apply and to whom?

All together, this situation has resulted in hate and violence which has shown no immediate signs of abating. Internal rivalries and break-away groupings have stopped any peace process from successfully taking place, as the government has more than one party to deal with.

Regardless of what the issues might be regarding the process of peace, what is clear, is that all of these organisations are fighting against the ruling National Congress party (essentially a small clique leading a hugely ceremonial party) and the northern Sudanese establishment. Are the abuses taking place on one side alone though? To which side does international humanitarian law apply?

The conflict that is taking place is one that is only at the level of an internal struggle. There are no international elements involved which could sufficiently provide the protections that are given by the Geneva Conventions. In this circumstance the law relating to internal armed conflicts must be looked at in order to establish the way in which the conflict must be fought in order to stop an escalation of violence and abuse. The problem with applying such a standard is that it is generally so minimal that it provides very little in terms of actual protection.

The Law of Internal Armed Conflicts is governed by Common Article 3 to the Geneva Conventions and their Second Additional Protocol. Common Article 3 has been regarded by most legal commentators as being a mini-human rights convention as it provides a basic standard of protection to all people. The Article reads as follows,

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all cases be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples.

2. The wounded and sick shall be collected and cared for.”

The protections that are given under the Additional Protocols under Article 4 provide ‘fundamental guarantees’ to all people involved in civil conflicts. These protections although not having been ratified by many States around the world, do provide a level of protection that is a useful standard for any Party to apply. The text of the Article states,

“1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

- (a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”

The abuse of the Darfurians by the Janjaweed and the Khartoum government aided militia must be repelled by any insurgency looking to promote freedom and equality for all people throughout Sudan. The government claims that the Janjaweed have gone out of control and that it is attempting to curb their actions; however practice has shown that this statement is only true at a theoretical level.

The unfortunate fact in this conflict is that there is a reciprocation of abuse by both sides. The more violent and aggressive one side gets in their tactics, the other provides an equally brutal answer. The atrocities committed by both sides in the conflict have only proven one thing, that there is a greater need for the implementation of international humanitarian law in order to promote some semblance of stability and humanity to both sides. Unlike with the ad hoc tribunals in the Former Yugoslavia, there should be an ongoing body in the region which monitors the human rights abuses and simultaneously works to bring perpetrators to justice.

The insurgents of Sudan are fighting for justice in the balance of power, development and resources. However that does not excuse them from obeying the international rule of law. If any insurgency seeks to use illegitimate tactics in order to fight its oppressor, then they must be held to account for those crimes. However that does not necessitate that the movement against oppression become illegitimate simply due to isolated illegal actions that are taken. War crimes must be condemned at all costs; however a rebellion for true political determination must be given full international support.

The oppression by the Sudanese government and the move for determination against it allows for the invocation of Article 1(4) of the Additional Protocol to the Geneva Conventions. Fighting for such causes have been given the status of an international armed conflict which allows for the granting of full protections under the Geneva

Conventions and also convictions for crimes of war committed contrary to those protections.

Supporting the Insurgency Equates to Promotion of the Rule of Law

The United Nations has made it one of its aims to support the struggle for self-determination for any people who have come under the threat of 'alien occupation'.

The *jus cogens* norms of international law were not formed as a temporary right, but rather achieved that status by default of the common desire by all nations to see such a rule established. Thus, the principle of self-determination, a concept that is promoted by the rule of law, must be supported in all of its manifestations.

Significantly, although the rule of international law forbids any intervention by a third party State, it is widely accepted that outside assistance can be given to liberation movements fighting against suppression and domination. Under international law, the principle of self-determination has taken a strong place in the norms of the international rule of law. Any attempt at subjugation of a people due to racism or some form of colonial domination goes against the very principle of international legal order.

All attempts to put a hold to racist regimes must be condoned by the international community; however support must come from ways other than military intervention. Third party States entering into the conflict will only bring further complication and other foreign agendas.

Conclusion

Sudan is in dire need of change. Tribalism and a long history of occupation have split the country to such an extent, that it is almost impossible for the people to agree on many aspects of life. There is one thing that they can and should change, and that is the evil of racism/classicism that pervades the ruling classes of Sudanese society. The Arab Khartoum government with its Janjaweed militia have destroyed the lives of many Darfurians and other tribal peoples. The opinion that an Arab speaking person is better a non-Arab has resulted in what is close to, if not is, genocide.³⁷

The SLM and JEM along with other insurgent movements are now fighting for a new Sudan. One where there is no distinction based around language and tribal origin. Despite their desire to secede, the Darfurian insurgents have realised that the greater goal is not simply separating to be rid of an issue, but rather fighting to attain a Sudan free of suppression. Whilst liberation movements are not immune from charges of gross human rights violations, it must be noted that criminal acts – which must be condemned and dealt with appropriately - do not invalidate a just cause.

There is no exact form that self-determination must take, no one single system that the people must choose in order for its correct implementation. However, what the principle does do is to provide the possibility for a nation to be at peace with what they choose for themselves, free of oppression or suppression. What studies also show is that where there is alien occupation, colonial domination or a racist regime, the international law of armed conflict allows for the full protection of the Geneva Conventions, and also any liabilities that may stem from disregarding them. Thus it is completely legitimate to fight against those regimes i.e. to undertake an insurgency.

The British government or any other regime cannot, if it claims to support the international rule of law, label insurgencies in Sudan, Iraq, Palestine, Chechnya and others as being ones associated with terrorism. Rather the government should give its full support to those who wish to make the world aware of the injustice that is taking place against these people both financially and politically. If they choose, however, to say that supporting insurgent organisations is ‘glorification’ of terrorism, then they are as guilty as those regimes which continually destroy the lives of those who live under their oppression.

³⁷ A UN figure of 70,000 dead has been found to be clearly wrong according to one BBC report. The figure of 70,000 dead only applies to the period between March and October 2004. The real figure of total dead could be anywhere up to 6 times the number. Of the population of 6 million that live in Darfur, 2 million have fled their homes and are living under famine conditions. Smith R (2005) ‘How many have died in Darfur’ BBC News

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