

Human Rights & Conflict in Darfur

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Civil and political rights are presented alongside ‘second-generation rights’ or social, economic and cultural rights in the Universal Declaration of Human Rights (UDHR).¹ Diverse ideological underpinnings created fractures between these two sets of rights, which were separated out into two treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), during the Cold War. However, these rights are inextricably linked and this division hampers the practical implementation of a comprehensive human rights framework. The Vienna Declaration (1993) epitomized this sentiment when it reaffirmed the indivisibility these rights, returning to the original purposes of the UDHR.

Civil and political rights violations often run in tandem with economic, social and cultural rights violations; violations of either category interact with and reinforce each other. These are multi-layered occurrences; different degrees of violation of distinct rights can occur concurrently. The essential interrelationship of human rights will be demonstrated through an examination of pre-conflict Darfur. This analysis maps out how social, economic and structural inequalities have interacted with civil and political violations to lead to the current crisis. An examination of certain flashpoints, where civil and political factors clearly impinge on social, economic and cultural ways of life, reveals that the division of economic, social and cultural rights and civil and political rights in human rights law is redundant. Given the reality that both sets of rights are often violated simultaneously, it does not make sense to focus only on first generation rights (as many NGOs, such as Human Rights Watch, Amnesty International and International Crisis Group tend to do), while people lack access to water, food, healthcare and education.

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights suggest that, ‘A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.’² Sudan, as a signatory of the ICCPR and the ICESCR (both ratified in 1986), is expected to refrain from acts of commission (where state parties deliberately take retrogressive measures against their citizens), and also has an obligation to protect its citizens from third party violations (acts of omission). In a heavily indebted country such as Sudan, the government could draw on the limited resources argument to explain failure of progressive realization, therefore this analysis will focus on the minimum core standards, such as the ability to access basic foodstuffs, basic housing and shelter, access to essential healthcare and the most basic forms of education. The failure of a State party to satisfy these basic minimum requirements for a significant portion of the population ‘is, *prima facie*, violating the Covenant’.³ The first section of this paper will examine the colonial legacy in Darfur, followed by a section considering the socio-economic ways of life and geopolitics of the region. The impact of the Arab supremacist ideology and al-Bashir’s Islamization programme in Darfur is analyzed in sections III & IV. Responses to structural inequalities that resulted in gross human rights violations are then described, while the final section deals with the Sudanese State and international human rights monitoring bodies.

I: The Colonial Legacy

Bilad al-Sudan, literally translates to ‘Land of the Blacks’, stretched from the Red Sea to the Atlantic Ocean.⁴ The primary motivation for incursions by Arabs and Egyptians into *Bilad al-Sudan* was for financial gain. Early plunderers sought precious materials, such as gold and

ivory, and also slaves. The British led colonial regime in Sudan administered the Arab North separately from the traditionalist animist south targeted by Northern slave-traders, under the auspices of protecting southern African peoples from the ravages of slavery. Sudan's borders, like many African states, were the outcome of a series of conferences held by European powers in Berlin (1884-1885).⁵ Significant geopolitical factors were not taken into account when the imperial powers drew up new state boundaries. Warring tribes became subjects of the same political entity resulting in lasting social cleavages and fractures, while kin-community were segregated by these artificial lines of European convenience. These actions have, at least in part, contributed to countless conflicts in post-colonial African states.⁶

The colonial state, by its nature, was exploitative and totalitarian.⁷ A highly centralized administrative structure with colonial offices that reported directly to the imperial base was deemed an effective way of expropriating resources, while stemming popular dissent by keeping the 'natives' out of the proverbial loop. However, in some of the late-acquired colonies, such as Britain's Sudan, some cost-cutting measures were needed, as these territories were draining the empire's coffers.⁸ Authoritarian administrative structures were centralized in Khartoum and locals deemed suitable for education in the colonial administrative methods gradually replaced costly expatriate workers.⁹

In order to consolidate their authority, the British groomed children of the *Mahdiyya* (followers of the al-Mahdi) in their methods.¹⁰ Arab Muslims became the favored class and Mohammedan courts, guided by the sharia, were permissible in matters relating to marriage rites and inheritance.¹¹ The British model of Native Administration or 'Indirect Rule' was developed primarily in response to economic considerations.¹² By this formulation, judicial power was devolved to tribe leaders to deal with inter-tribal and intra-tribal disputes. This was 'colonialism on the cheap'; the establishment of a fully-fledged administrative regime was not required, as local tribesmen were paid small salaries to retain control on a very small budget.¹³

A colonial 'divide-and-rule' strategy, intent on suppressing potential tribal alliances by keeping different ethnic groups at loggerheads, was applied to Sudan. It was vital that such groups remain atomized and separate, alliances or any trends toward homogeneity could threaten the colonial child, usurping British power at the centre. A dual system developed, under which high-status Arabs were selected for education in the British system, while Southern education was left in the hands of largely under-funded missionaries, thus keeping the Southern 'natives' backward and thwarting any signs of North-South alliance-building. In 1907, 18.9% of the college student population was 'African', yet by 1944 this number had fallen to 1.6%.¹⁴ Prunier describes this colonial 'benign neglect' as 'parading as cultural respect', while the government invested significantly in social, economic and political development in the North, the south remained underdeveloped and secluded.¹⁵ Not only the south, but other provinces, such as Darfur, the last to be incorporated, also stagnated under the British led Condominium.

The 'benign neglect' and 'divide-and-rule' policies were particularly devastating to Darfur. Non-Arab peoples of Darfur had very little access to the remunerative government jobs; low-paid as they might have been these jobs were won by the Arab comprador class.¹⁶ Indirect rule through the devolved authorities of native administration assured a modicum of stability, but no progress was encouraged. The people of Darfur were not to know the benefits of agricultural development, education or improved healthcare under colonialism. Agricultural irrigation schemes developed by the British were centered in the Ghezira and Eastern regions.¹⁷ Khartoum benefited from 56% of all investment, while a stark 5.6% reached Darfur.¹⁸ Darfur also fared badly in healthcare; by the end of the 1950s this region still had no maternity hospital.¹⁹ At independence in 1956, Darfur had the lowest number of hospitals of all the Sudanese states.²⁰ A line can be drawn between these post-colonial structural

inequalities and social, economic and political violations that fueled more recent conflict in Darfur.

II: Land & Livelihoods

Darfur, meaning the 'Land of the Fur', with a surface area of 100,000km² is almost the size of France and has several distinct geographical zones, from arid desert in the North to rich savannah further south. 'African' groups indigenous to the region, for example, the Fur, Masalit, Berti, and Brigid, engaged in socio-economic activities such as agriculture, *wadi* farming and livestock raising.²¹ These activities require land and water; lack of access to either can act as a stranglehold on people's livelihoods, making it impossible to eke out a living in such inhospitable climates. Nomadic Arabs groups, Bedouins, *Abbala Rizeigat*, and *Baggara* cattle herders, traveled with their animals further south along migratory routes during the dry season. 'African' sedentary farmers were mainly found in the south, and were landowners under the hakura system established during the Sultanate of Darfur. Landless or '*dar-less*' nomadic groups refer back to their original exclusion under the Sultanate hakura system of land tenure. When different ethnic groups competed for the same resources, a balance was struck through Native Administration courts. Nimeiri dismantled these structures in the 1970s, and this coupled with his failed 'breadbasket of the Arab world' agricultural policy for Sudan and severe environmental degradation, resulted in heightened inter-ethnic tensions and conflict. Very little of the money borrowed by successive Sudanese governments in the 1970s and 1980s ever reached the outlying regions desperately in need of agricultural programmes and irrigation schemes.

Food Shortages & Famine

In his book 'Development as Freedom, Amartya Sen describes how public policy can contribute to food shortages and famine. The presence of a non-democratic authoritarian regime along with a sense of cultural superiority and perceived distance between the ruler and the ruled, are critical components of food shortages. In Darfur in the 1980s, the perceived distance between ruling Arab riverine elite and the 'African' tribes in the peripheries was insurmountable, thus frustrating efforts to prevent imminent famine.²² Famine also takes hold when there is an absence of democratic institutions that keep the executive in check. Sen describes how Sudan and Ethiopia both experienced an overall decrease in food production between 1979/81 and 1983/84, whereby Sudan's food production decreased by 11%.²³ Yet this was far less than the dramatic decreases experienced by Zimbabwe and Botswana. Nonetheless, Botswana and Zimbabwe did not go on to experience devastating famines, in part due to timely interventions by their respective governments. Sudan and Ethiopia, with authoritarian regimes, both experienced famines.

Sudanese leaders were informed of impending food shortages in Darfur. In 1980, Ahmed Ibrahim Diraige, an ethnic Fur, was assigned to the position of Governor of Darfur in an effort to dampen down ethnic tensions that had been rising.²⁴ He was determined to end the rampant impunity and corruption that besieged local government in the area. Diraige observed the manmade ecological devastation at the grassroots. Repeatedly the annual rains failed, and funds earmarked to improve water resources in Darfur were siphoned off, never to reach those in need at the fringes. Few bore holes and wells had been dug under the Nimeiri administration, and those excavated before his reign were seriously degraded with the water contaminated.²⁵ Prunier notes that, 'miles of piping imported for Darfur had been lying for years in Port Sudan with nobody bothering to collect it, the rural water teams did not receive their salaries on time, and the relevant ministries in Khartoum simply issued glorified statistics bearing no relationship to reality.'²⁶ In 1983 Diraige wrote what was to become known as 'the famine letter', which warned Nimeiri about the grave consequences of inaction in the provinces. This threatened to shatter the entire artifice of Nimeiri's ill founded 'breadbasket policy'. Although Nimeiri dismissed Diraige's warning, by 1984 he could no longer ignore the ravages of famine. In direct contravention of international law, Nimeiri grossly underestimated the food deficit.²⁷ As the hungry and destitute started to arrive in

Khartoum, the government, rather than feed the masses, forcibly removed them in trucks and deported them back to Darfur and Kordofan.²⁸ Such action violates the right to food, an essential component to the right to life. This crisis contributed to Nimeiri's downfall. A military-led transitional government attempted to stabilize the situation in order to allow a civilian democracy to come to power in 1986. Sadiq al-Mahdi's democratic regime (1986-1989) was plagued by internal conflicts and strife and was not strong enough to address the political, economic and social concerns of the people.²⁹ His government was easily unseated by al-Bashir in 1989.

III: Islamization

From its early days the al-Bashir regime constructed a fictitious image of Sudan, while the reality of societal discrimination and inequality remained behind the smokescreen. There were even some attempts at projecting the appearance of a moderate Muslim State, and a denial that the regime was in fact a reconstituted National Islamic Front. Several former NIF leaders were imprisoned, although they were permitted to leave their cells to attend political meetings.³⁰ This regime, like its predecessors, was again centre-focused or 'Nilocentric', and no real development work that was desperately needed to restore livelihoods in the wake of the 1984/85 famine took place in Darfur or Kordofan.³¹ Bashir's fervent focus on self-sufficiency compounded the humanitarian crisis. Echoing Nimeiri's earlier avoidance of pending disaster, Bashir ignored the 1990 famine and cut Darfur off from humanitarian assistance. Under international law, if a state cannot meet its obligation to fulfill, it must appeal to the international community for assistance, 'States that, through neglect or misplaced national pride, make no such appeal or deliberately delay making it are violating their obligation'.³² Government propaganda further glossed over the suffering of the people of Darfur with slogans like 'we eat what we grow!' even though the land was exhausted, resources depleted and what remained, a source of contention between groups and within groups.³³

Arab nomads found their traditional livestock migratory routes or *marahil* and grazing areas fenced off by settled farmers. The precious wells and the seasonal *wadi* beds, which had in the past been used as dry season grazing areas by nomad groups were increasingly being used by settled farmers for the production of cash crops.³⁴ Competition over resources became flashpoints for ethnic conflict, for example the Arab-Fur war of 1988-89. Quite independent of the central regime, representatives from the warring parties initiated a peace movement in 1989 to resolve the inter-ethnic dispute. These efforts were undermined by the lack of development in the region, the use of Darfur as Libya's military playground, and a pervasive ideology that pitted 'Arab' groups against 'African' neighbors, manipulated by central government and in contravention of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.³⁵ More disputes followed, Arab-Zaghawa (1994) and the Arab-Masalit war from 1996-1998. During the 1990s it became obvious that the government were not merely guilty failing to protect its citizens from third parties, when in January 1997 an elderly Masalit man found pastoralists' animals trampling his fields and he hunted them away. In retaliation, he was killed along with three others. A subsequent confrontation led to more deaths. But a new kind of response was introduced to the region when the government sealed off Dar Masalit, sent in armed militias supported by helicopters and killed over 2,000 people.³⁶ The government managed to draw attention away from decades of social and economic underdevelopment in Darfur by scapegoating 'African' ethnic groups with an Arab supremacist ideology imported from Libya supported by military strategies developed during the civil war in the South.

IV: The 'Arab' v. 'African' Dichotomy

Culture & Cultural Identity

15(1) The State Parties to the present Covenant recognize the right of everyone:

- (a) to take part in cultural life³⁷

Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes everyone's right 'to take part in cultural life'. Article 15(1)(a) read with the non-discrimination clause of Article 2(2) and Article 2(1) regarding the progressive realization of the rights offers some protection of an individual's cultural life.³⁸ Article 27 of the International Covenant on Civil and Political Rights (ICCPR) reads:

In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.³⁹

In Article 27 there is an acknowledgement that culture is a thing that is to be enjoyed in community with others, and can be connected to religion and language. While individuals might practice these things alone, acquisition of language, religion and cultural mores occurs through social interaction, and thus is protected in Article 27. Culture and cultural identity have become inextricably linked to conflict in Darfur. Cultural identity can be seen as the manifestation of shared sets of values, and while this can be closely related to religious identity, it is not always exactly the same, as the case study exemplifies, whereby people of the same Muslim religion fight each other, in part fuelled by perceptions of difference and crystallized boundary markers between groups. The idea of ethnicity, or some sort of genealogically distinct tribal history has been fused with cultural identity, so that now pejorative out-group labeling manifests in verbal abuse during violent assaults. Yet most experts refute the claim that any significant racial differences exist, due to long histories of intermarriage between ethnic groups. Although physically the differences are imperceptible, ideological chasms have been created between what is perceived as 'Arab' vis-à-vis that which is 'African'. This paper views culture as fluid and changing, and notes that this 'Arab-African' dichotomy is a relatively recent development in the long history of the Darfur region, and while groups often clashed in the past over competing material and land claims, these did not fall into the trap of an 'Arab-African' binary identity.

Racialisation

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form...⁴⁰

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits the dissemination of racialised propaganda promulgating notions of ethnic or cultural superiority by States or within states. Yet successive Sudanese governments have resorted to illiberal and politically manipulative programmes of Islamization. When Nimeiri introduced sharia law to the Sudanese state in 1983, he effectively re-ignited Southern discontent. Sadiq al-Mahdi thought that it would be politically expeditious to dismantle the legislation institutionalized by Nimeiri. However, his successor, al-Bashir introduced new Islamic Codes in 1991, which established 'Public Order Courts', that were officiated by 'by junior military officers and Islamist judges whose only legal training was in Sharia'.⁴¹ In the early 1990s Sudanese Islamists embarked on an ambitious programme of social transformation that 'set about a far-reaching project of creating a new Islamist constituency'.⁴² These projects were to impose hegemonic Islamic control over all significant social, economic, and political state institutions. In order to propagate the Islamic project in all areas, Bashir established Popular Committees, putative devices of social monitoring and control. These Committees were particularly reprehensive in their dealings with Sudanese women, Muslim and non-Muslim alike, who had to abide by dress codes and codes of conduct derived from interpretations of the text of the Koran and Sunna.⁴³ This was a plain violation of peoples right to take part in cultural life and also a violation of non-Muslims' religious freedom.⁴⁴ That this programme was clearly underpinned by a racist

ideology compromised Sudan's adherence to principles contained in ICERD. Not all Muslims thought that al-Bashir's programme of Islamization was a positive thing for Sudanese society; an educated group of moderate Muslims, the Justice and Equality Movement, began to question these cultural, social and political policies.⁴⁵

V: Responses to Structural Inequalities

Article 25.1 of the Universal Declaration of Human Rights (UDHR) affirms 'Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services', and Article 12 of the ICESCR acknowledges 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. In General Comment 14, the Committee on Economic, Social and Cultural Rights links Article 12 to the spirit of UDHR, stating that the right to health also included 'the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.'⁴⁶ Although the government of Sudan ratified significant human rights treaties, the non-discriminatory enjoyment of human rights was not a reality for the people of Darfur.

The Black Book

In 1999, an underground manuscript entitled 'The Black Book' first appeared on the streets of Khartoum.⁴⁷ This offered 'a political and economic anatomy of marginalization in Sudan' through statistics that graphically captured endemic structural inequities.⁴⁸ Political inequalities, such as the fact that not one Sudanese leader ever came from an ethnic group other than the three Arab elite groups from the central regions (representing just 3% of the entire population), were detailed.⁴⁹ The Justice and Equality Movement (JEM), a broad based Islamic movement borne out of disillusionment with Khartoum's malign and neglect, were thought to be responsible for this compendium. JEM activists realized that the government's claim that 'we are all one' was hollow, as both 'native' Arabs and non-Arab Muslims in Darfur were treated like second-class citizens.⁵⁰ A JEM coordinator recounts his experience of education, which clearly manifests an Article 27 violation:

There was too much suffering. I traveled 60kms to go to primary school, in Korno, when I was 7; 350 kms to go to intermediate school, in Fasher, and 1,000 kms to go to university in Khartoum. It was forbidden to speak the Zaghawa language in school. In primary school, the teacher gave us a blue ticket to pass to any boy who spoke Zaghawa. At the end of the day, anyone who had a ticket was whipped.⁵¹

JEM's manifesto highlighted pressing socio-economic concerns, such as the failure of the state to provide basic healthcare and education. The entire province of Kutum, with a population of 551,000 had only one doctor and no specialist.⁵² Health insurance was privatized, and healthcare deteriorated, 'the city of Geneina got its first x-ray machined in 1978. It lasted for seven years or so. Since the 1980s, patients requiring x-ray had to leave for Nyala or Khartoum, for x-ray [sic], a trip of two to six days for those who could not afford air tickets'. A decline in the minimum standards of social and economic rights is considered a violation of the ICESCR.⁵³ The Black Book also notes that basic education was not being provided by the state in the provinces. In Western Darfur, primary schools were shut down for over two years due to lack of funding for schoolbooks and teachers' salaries.⁵⁴ Recruitment bars in local government and state jobs, and discrimination in the Popular Defense Forces could no longer be tolerated by the marginalized masses of Darfur. Although JEM was an Islamic movement, and favored some type of Islamic inspired government structure, it did not agree with Islam being foisted on peoples of different faiths and was therefore suspicious of Bashir's Islamization programme. Furthermore, JEM disapproved of the Naivasha Peace Process, as it sidelined entire regions of Sudan, such as Darfur, the Beja Hills and Kordofan.⁵⁵

When it became obvious to JEM that reform from within was impossible, they joined the SLA attack on the government military base in al-Fashir on the 25th April 2003, a critical point in the escalation of violence in Darfur. The Sudanese government, already stretched to military capacity with the war in the South, decided to use a cheap, but deadly military tactic, which they had exploited previously in the Nuba Mountains and oil fields of the South. The government cajoled impoverished Arab nomads, many of whom had longstanding disputes with their 'African' neighbours, into taking up arms, in a bid to cut the base of support for the growing rebel movements. Suleiman, a native Berti from Darfur, warned against the use of militias in Darfur, saying that this would have 'terrible repercussions on inter-tribal relations for the next several decades'.⁵⁶ He advised that lasting economic and social solutions would be a way of tackling the discontent in Darfur, but was ignored and dismissed as Governor. Instead the government unleashed the Janjaweed, armed with an Arab supremacist ideology, and government issued weapons, on the non-Arab peoples of Darfur.⁵⁷

VI: The Sudanese State & International Human Rights Law

Sudanese governments have signed up to and ratified a several Human Rights treaties, with some notable exceptions.⁵⁸ Legislative and policy decisions made by successive governments regarding the provinces in the 1970s and 1980s led to a decline in the housing and living standards of the people of Darfur, and is held to be inconsistent with the purposes of the ICESCR.⁵⁹ Al-Bashir's government submitted a state report to the Committee on Economic, Social and Cultural Rights in 2000. Unfortunately, the Committee's concluding observations are vague and lack substance. Contemporaneous social scientific research on Sudan was not accessed by the Committee, and was mirrored by a dearth of relevant statistical and demographical material from the State. Nonetheless, the Committee does question the status of the Covenant vis-à-vis certain Islamic sharia codes and draws attention to the punishment of flagellation or lashing women, 'for wearing allegedly indecent dress or being out in the street after dusk, on the basis of the Public Order Act of 1996, which has seriously limited the freedom of movement and of expression of women'.⁶⁰ The committee may have highlighted discrimination against women as Sudan has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women. The Committee on Civil and Political Rights also voiced concern about the treatment of women in 1997, stating 'restrictions on the liberty of women under the Personal Status of Muslims Act, 1992 are matters of concern under articles 3, 9 and 12 of the Covenant'.⁶¹ The Committee monitoring the Convention on the Rights of the Child has been vocal in stressing Sudan's shortcomings in the protection of children, specifically children caught up in conflict the south and west of the country.⁶² The Committee drew attention to the high illiteracy rate among rural women, and the issue of state obstructing aid access to internally displaced persons (IDPs), 'in order to provide for adequate (interim) measure ensuring the basic needs of this group such as adequate basic shelter, employment, food and health care, and the continuation of education for the children'.⁶³ It is interesting to note that while paragraph 37 mentions IDPs, they are also protected in other areas of international law, yet a grave deterioration in economic, social and cultural rights standards in Sudan's provinces pass without comment.⁶⁴ Also, al-Bashir's Article 8 violation in banning trade unions when he assumed power goes without comment.

The Committee on the Elimination of the Discrimination of Racism was one of the first monitoring bodies to mention the issue of Darfur in a challenging response to Sudan's 2001 State Report.⁶⁵ In paragraph 11, the Committee asks the State 'to guarantee all Sudanese, without distinction based on race, color, descent, or national or ethnic origin, freedom of religion, opinion, expression and association; the right to security of person and protection by the State against violence or bodily harm; the right to study and communicate in a chosen language; and the right to enjoy their own culture without interference'.⁶⁶ Yet culture, language and cultural identity were being used as markers of binary identities; the African identity regarded as inferior, 'Africans' targeted and subjected to racist abuse. The ICCPR Committee found that the right to enjoy one's own language and culture was being violated in

Sudan, 'there is no recognition in law of the right to use local languages in official communications or administrative or court proceedings, and that religious minorities can be adversely affected by a range of discretionary administrative actions which can include the destruction of schools and educational facilities under town planning regulations'.⁶⁷ Furthermore, the Committee recommended that 'emphasis should be given to the need of ethnic and religious minorities, wherever they reside in the Sudan, to pursue and develop their traditions, culture and language, as required by article 27 of the Covenant'. Instead of diffusing tensions that arose as a result of famine, structural inequalities, and the militarisation of the region, the government sponsored bands of Arab militias and used them as 'a proxy instrument of military control'.⁶⁸ The CERD Committee reproves the government for failing to eliminate the practice of forcible abduction, 'the State parties, while disassociating itself from any such practices, attributes abduction to traditions deeply rooted among certain tribes. Notwithstanding this position, the Committee strongly emphasizes the State party's responsibility to undertake all measures to bring the practice of abduction to an end...'.⁶⁹ Interestingly, although the Committee on Economic, Social and Cultural Rights fails to remind the State to protect social, economic and cultural rights in the regions, the ICERD Committee 'urges the State party to uphold the fundamental economic and social rights of the Nuer and Dinka in the upper Nile region, including the right to personal security, to housing, to food, and to just compensation for property confiscated for public use'.⁷⁰

In Darfur, it was only when violence reached an unprecedented level that the world took note. Post-2003 UN Security Council Resolutions have come too late for the thousands that have died of starvation, malnutrition, lack of access to healthcare, or during childbirth. And while African Union involvement in chairing peace talks and mobilizing a small force to monitor the implementation of the peace agreement may have helped somewhat, economic, social and cultural rights are generally put on the back burner, sidelined by pressing militaristic and immediate human security concerns.⁷¹

Conclusion

This analysis has shown that it is impossible to segregate civil and political rights violations from economic, social and cultural rights violations, particularly in a pre-conflict situation where gross and systematic violations of both sets of rights occur. Highlighted were points where state policies negated the enjoyment of the basic minimum standards necessary for survival. Firstly, structural changes made by the British led Condominium ensured that a certain class of Sudanese would dominate politically, socially and economically in post-colonial times. Post-colonial governments have been plagued by the inability to engage in long-term planning, mainly due to endemic instability at the centre. Poor agricultural planning has contributed to environmental degradation, when coupled with recurrent drought this has resulted in cycles of devastating famine, food insecurity and lack of access of basic healthcare or education.

When a region so marginalized became militarized, it was easy for politicians to manipulate and mobilize a racialised ethnic polarization that pitted 'Arabs' against their 'African' neighbors. This analysis referred to manipulative government programmes of Islamization, for example an Arab supremacist ideology introduced into Darfur, which aimed to clear the land of 'Africans' or '*zurga*'. When this strategy began to gather momentum in the 1990s, the government was, at least, guilty of an act of omission, in failing to protect citizens from third parties.

A divide-and-rule strategy, adopted in the early days of colonialism that survived the nation-building project and prospered in the political bargaining and alliance building of the incumbent government, has resulted in one of the most unequal countries in the world. These inequalities are captured in the Black Book; this critique enumerates violations and neglect in both the socio-economic and the civil and political spheres, and illuminates the cronyism of

the Islamic regime. This type of neo-patrimonialism is thought to be characteristic of a turbulent state that engages in opportunistic political survival tactics, rewarding ever-changing coalitions in order to protect the ill-gotten gains of a war economy. Native administration has been manipulated to a point where the customary power tribe leaders exerted over land tenure is now defunct. Native administrators, or tribe leaders, have been replaced by government elected *amirs* or 'religious warriors', who aim to spread a radical version of Islam throughout the region. *Dar-less* Arab tribes are attracted by the promise of territory, which would end their decades-long search for land to support a livelihood. We have seen the consequences of being landless in a terrain that suffered environmental degradation and drought. Nomads, who were worst affected by the 1984/85 famine, were ripe for the plucking by Nilocentric governments. Recruits to the Janjaweed have benefited materially from the state of war, as have certain members of the ruling regime.

The regime's motivation for professing to engage with human rights bodies in part comes from interests in the global petroleum market, pressing economic concerns regarding external debt and the protection of huge personal fortunes amassed. What remains to be seen is how the human rights framework, while furthering our understanding of the causes of conflict, can be enacted to respond to persistent grave violations. Violations, such as the lack of minimum economic, social and cultural rights standards that occur in 'peace-time' are largely ignored by the world (NGOs, governments and the media) until a humanitarian disaster, such as the 1984-85 famine, or conflict takes hold. The Committee on Economic, Social and Cultural Rights issued weak concluding observations following the receipt of Sudan's 2000 state report. Leckie suggests that the state forfeits state sovereignty when there are gross and systematic violations of economic, social and cultural rights and that there is a responsibility on the international community to intervene in such circumstances. Perhaps economic, social and cultural rights indicators could play a role in the early warning system of the emerging responsibility to protect doctrine. Some sort of intervention, be it diplomatic or otherwise, at an early stage could conceivably avert costly and dangerous humanitarian and military missions later on.

Notes

- ¹ J. Woods, "Justiciable Social Rights as a Critique of the Liberal Paradigm" (2003) 38 Texas International Law Journal, p. 793.
- ² "The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights" (1998) 20 Human Rights Quarterly, p. 695.
- ³ *Ibid.*
- ⁴ Y. F. Hasan, *The Arabs and the Sudan: from the seventh to the early sixteenth century*, (1967), p. 1.
- ⁵ J. Castellino and S. Allen, *Title to Territory in International Law: A Temporal Analysis*, (2003).
- ⁶ B. Ibhawoh, "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State" (2000) 22 Human Rights Quarterly, p. 845.
- ⁷ L. Camp Keith and A. Ogundele, "Legal Systems and Constitutionalism in Sub-Saharan Africa: An Empirical Examination of Colonial Influences on Human Rights" (2007) 29 Human Rights Quarterly, p. 1068.
- ⁸ Even though this was a joint Anglo-Egyptian co-domination of the peoples of Sudan, in reality colonial efforts were led by Britain with Egypt taking a back seat role in the process.
- ⁹ More advanced tribes that were deemed to have an edge over more 'backward' native tribes.
- ¹⁰ The al-Mahdi had led a successful rebellion against the Turco-Egyptian colonizers and managed to retain de facto control over central regions of Sudan. Ali Dinar, seizing on the vacuum created, reestablished the Sultanate of Darfur, which remained independent of the British led Condominium until 1917.
- ¹¹ Subjects had a choice between operating in the common law system or deferring to sharia law; A. Al-Azmeh, *Islamic law: Social and Historical Contexts*, (London 1988), p. 235.
- ¹² This system was codified in a number of ordinances (1922, 1925, 1927, and 1928), 'which regulated the administrative and judicial powers of tribal sheikhs and established a hierarchy of local courts in the Anglo-Egyptian Sudan', Abdul-Jalil, Mohammed, and Yousuf's chapter entitled 'Native Administration and Local Governance in Darfur', in A. de Waal (ed.), *War in Darfur and the Search for Peace*, (2007), p. 45.
- ¹³ J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p. 35.
- ¹⁴ H. J. Sharkey, *Living with Colonialism: Nationalism and Culture in the Anglo-Egyptian Sudan*, (Berkeley, Calif.; London 2003), p. 29.
- ¹⁵ M. Rüniger, *Land Law and Land Use Control in Western Sudan: The Case of Southern Darfur*, (London 1987), p. 37.
- ¹⁶ Tim Niblock quoted in M. Rüniger, *Land Law and Land Use Control in Western Sudan: The Case of Southern Darfur*, (London 1987), p. 40.
- ¹⁷ The Ghezira region of Sudan hosted the largest irrigation scheme in the world in the 1940s.
- ¹⁸ G. Prunier, *Darfur: The Ambiguous Genocide*, (London 2005), p. 31. By the dawn of independence, Darfur still had no agricultural expert or investments into the land.
- ¹⁹ *Ibid.*, p. 30.
- ²⁰ J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p. 35.
- ²¹ The Fur, the Zaghawa and the Masalit, are generally considered the three largest 'African' tribes in Darfur.²¹ Other groups that are frequently mentioned are the Tama, the Gimr, the Berti, the Meidob and smaller ones such as Daju, Beigo and Birgid.
- ²² *Zurga*, a pejorative term meaning 'African' or slave, also used are the terms 'nuba' and 'abid'.
- ²³ A. K. Sen, *Development as Freedom*, (Oxford 1999), p. 176.
- ²⁴ G. Prunier, *Darfur: The Ambiguous Genocide*, (London 2005), p. 47.
- ²⁵ *Ibid.*, p. 49.
- ²⁶ G. Prunier, *Darfur: The Ambiguous Genocide*, (London 2005), p. 49.
- ²⁷ Nimeiri stated that it was only 5,400 tons, whereas FAO estimated that it was closer to 39,000 tons, *ibid.*, p. 50.
- ²⁸ G. Prunier, *Darfur: The Ambiguous Genocide*, (London 2005), p. 51.
- ²⁹ De Waal notes how Sudanese governments, since independence, have been unable 'to establish unchallenged political dominance over the state', and have been marred by contending powerful elite competing for power, for more on these dynamics, see A. de Waal (ed.), *War in Darfur and the Search for Peace*, (2007), p. 4.
- ³⁰ J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p. 27.

³¹ de Waal has critiqued the Sudanese government for its 'Nilocentrism', in A. de Waal, "Who are the Darfurians?" (2005), 104 *African Affairs*, pp. 181-205.

³² 'The Right to Food', Preliminary report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler, United Nations General Assembly, 56th session, U.N.DOC A/56/210.

³³ J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p. 25.

³⁴ Environmental Degradation as a Cause of Conflict in Darfur, In U. f. Peace (ed.), (Khartoum 2004), p. 37.

³⁵ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969, Article 4.

³⁶ J. Flint, A. de Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p. 72.

³⁷ International Covenant on Economic, Social and Cultural Rights. Concluded: 16 December 1966, entered into force 3 January 1976. 993 UNTS 3, Article 15(1)(a).

³⁸ Article 2(2) reads: 'The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status', and Article 2(1): 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'.

³⁹ International Covenant on Civil and Political Rights, including Optional Protocol. Concluded: 16 December 1966, entered into force: 23 March 1976. 999 UNTS 171, Article 27.

⁴⁰ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969, Article 4.

⁴¹ African Rights (Organization), *Sudan's Invisible Citizens: The Policy of Abuse Against Displaced People in the North*, (London 1995), p. 39.

⁴² J. Flint, A. de Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p 27.

⁴³ *Ibid.*

⁴⁴ International Covenant on Civil and Political Rights, including Optional Protocol. Concluded: 16 December 1966, entered into force: 23 March 1976. 999 UNTS 171, Article 18.

⁴⁵ It should also be noted that other strands of Islamism existed for centuries in Darfur, the type of Islam that took root in Darfur derived from Tijaniyya Sufism, which originated in Morocco. Darfurians have always valued the Islamic tradition and have gone to great lengths to transfer these religious values onto their children in *khalwa* schools, even if they themselves might have been what El-Din describes as 'lax' in their practice. Islamism in Darfur melded with local traditions, whereby the home brewing of beer was deemed acceptable. Another Islamic strand or trend also influenced Darfurians in the 20th century; this was the Muslim Brotherhood of Egypt. Darfurian students who studied in Cairo universities returned with this new ideology that was a stricter and more organized form of Islam than was had become the norm in Darfur. But both these influences are distinct from the radical and militant Islamism espoused by the NIF-NCP, formulas that were ultimately rejected by JEM and caused several moderates to leave the so-called 'color-blind' Islamic movement. For further information on Islamism in Darfur see El-Din's chapter, entitled 'Islam and Islamism in Darfur' in A. de Waal (ed.), *War in Darfur and the Search for Peace*, (2007), pp. 92-112.

⁴⁶ E/C.12/2000/4. (General Comments).

⁴⁷ J. Flint, A. de Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p 92.

⁴⁸ De Waal estimates that Sudan 'is one of the most unequal countries in the world', although exact statistics on the distribution of wealth are difficult to attain. For more on analysis on the development of these disparities, see A. de Waal (ed.), *War in Darfur and the Search for Peace*, (2007), pp. 8-11.

⁴⁹ Those three groups are the Shaygia, Jaalyeen or Dongola. The Black Book presents statistical analysis of the ethnic backgrounds of those who attained power in Sudan, for example the Northern bloc made up of the riverine elite tribes, representing 5.4% of the population controlled 79% of Ministerial Positions between 1954-1964; 68.7% under Nimeiri; 70% under the Transitional Military

Council; down to 47.4% under Sadiq al-Mahdi, and so on and so forth. This dominance came at the expense of the provinces; the West (Darfur and Kordofan) was badly represented in almost every single government since independence, although it did enjoy slightly higher participation in al-Mahdi's democracy, see www.sudanjem.com/sudan-alt/english/, accessed 07/01/2007.

⁵⁰ JEM has links to the former Islamicist, Hassan al-Turabi, who was a senior strategist under the Bashir regime, but was dismissed by al-Bashir 1999 when he felt undermined and threatened by Turabi's growing power base. Turabi responded by forming an opposition party, the Popular Patriotic Congress, and lending support to resistance groups in Darfur, making this alliance potentially very dangerous to the NCP regime.

⁵¹ Taken from J. Flint, A. de Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), pp 92-93.

⁵² The entire Western Darfur province only had two specialists in the area of obstetrics, to service a population of 1,650,000, see www.sudanjem.com/sudan-alt/english/, accessed 07/01/2007.

⁵³ A. Chapman, "A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights" (1996) 18 Human Rights Quarterly 23-66.

⁵⁴ Out of a population of more than one million in Western Darfur, only 4,211 children were able to sit the Primary School Examination, unfortunately The Black Book does not specify the year in which this happened, but is presumably contemporaneous with the emergence of the book.

⁵⁵ For more on the Naivasha Peace Process see Adam Azzain Mohammed's chapter entitled 'The Comprehensive Peace Agreement and Darfur', in A. de Waal (ed.), *War in Darfur and the Search for Peace*, (2007), pp. 199-214.

⁵⁶ J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p 102.

⁵⁷ The name *Janjawiid* comes from Arabic, *Jim* signifying 'G' or G3 rifle; *Jinn* meaning devil and *Jawad* translates to horse, J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005), p 20.

⁵⁸ Sudan has signed up to The International Covenant on Civil and Political Rights (1986); The International Covenant on Economic, Social and Cultural Rights (1986); African Charter on Human and Peoples' Rights; The International Convention on the Prevention of All Forms of Racial Discrimination (1977); and all four of the 1949 Geneva Conventions relating to armed conflict (1957), but has failed to sign the Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance.

⁵⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 4.

⁶⁰ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sudan. 01/09/2000, E/C.12/1/Add.48, para. 24.

⁶¹ *CCPR/C/79/Add.85*. (Concluding Observations/Comments).

⁶² *CRC/C/15/Add.10*. (Concluding Observations/Comments), 1993, *CRC/C/15/Add.190*, 9 October 2002, *CRC/C/OPSC/SDN/CO/1*, 21 June 2007.

⁶³ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sudan. 01/09/2000, E/C.12/1/Add.48, para. 37. The Committee also reminded Sudan of that the date of submission for the next periodic report was the 30th June, 2003, but this was never received.

⁶⁴ For example, article 5 of the Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II), and also see Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

⁶⁵ The Committee states that 'concern was also expressed about the State party's role in the conflict that has erupted in the Darfur' in A/54/18, para.21(5). (Decision).

⁶⁶ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Sudan. 27/04/2001, CERD/C/304/add.116, para. 11.

⁶⁷ *CCPR/C/79/Add.85*. (Concluding Observations/Comments).

⁶⁸ J. Flint, A. De Waal and International African Institute, *Darfur: A Short History of a Long War*, (London 2005).

⁶⁹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Sudan. 27/04/2001, CERD/C/304/add.116, para. 12.

⁷⁰ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Sudan. 27/04/2001, CERD/C/304/add.116, para.

⁷¹ The AU led the Naivasha Peace Process, although Darfur and other regions were marginalized in this process. The AU also spearheaded efforts to reach a ceasefire agreement, which was brokered by Deby in Abeche in September 2003. The Humanitarian Ceasefire Agreement followed in April 2004 (Chad)

and the Declaration of Principles were reached in 2005. The Declaration of Principles does detail some social-economic concerns such as point 5 'National wealth shall be distributed equitably. This is essential to ensure the effectiveness of the devolution of power in Darfur, within the framework of a federal system of government, and to ensure that due consideration is given to the socio-economic needs of Darfur', and states that 'rehabilitation and reconstruction of Darfur is a priority, to that end, steps shall be taken to compensate the people of Darfur and address grievances for lives lost, assets destroyed or stolen, and suffering caused' (para. 10). While provision 12 aims 'at sustainable development, environmental degradation, water resources, and land use shall be addressed. Tribal land ownership rights (hawakeer) and other historical rights shall be affirmed within their historical borders'. Despite these social, structural and economic considerations, provisions contained within the Declaration have been largely ignored by the State.

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