



Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

International non-profit organization (Belgium 15.075/96)

www.cpti.ws

Bruineveld 11 • B-3010 Leuven • Belgium • Ph.: +32.16.254011 • e-✉: cpti@cpti.ws

Belgian account: 000-1709814-92 • IBAN: BE12 0001 7098 1492 • BIC: BPOTBEB1

Representative to the UN in Geneva:

Derek Brett

Avenue Adrien-Jeandin 18

1226 Thônex.

Tel./fax: 022 860 24 63

Email: dubrett@talk21.com

Submission to the 89th Session of the Human Rights Committee: March 2007

Conscientious Objection to Military Service: Issues for the Country Report Task Forces

SUDAN

SUMMARY

There have been no reports of persons seeking exemption from military service in Sudan on the grounds of conscientious objection.

Three explanations, operating in combination, might be put forward:

- 1) No legislative provision for the recognition of conscientious objection exists,**
- 2) The recruitment procedures in practice are not such as would lend themselves to the assessment of such claims. Forced recruitment into opposition armed groups and government-allied militias is widespread in conflict zones; “compulsory national service” has also in the recent past been enforced by random, forcible methods.**
- 3) Avoidance of military service is widespread and unimpeded among the population outside the conflict zones; to plead conscientious objection is unnecessary.**

Serious issues are however posed by reports that as a precondition of receiving a secondary school certificate and thus qualify for admission to higher education students of both sexes are required to undergo military training, and perhaps a year of active service.

The complex armed conflicts in three distinct regions of Sudan, the South, the East and Darfur in the West, have brought severe human rights abuses, not least in the form of forced recruitment. In particular, successive reports on children and armed conflict presented to the UN Security Council by the Secretary-General¹ have named various parties as having recruited persons aged under 18, in some cases by force, in order to use them in these conflicts. Those named have included forces under the control of the government, opposition armed groups and militias allied with the government. Among the many and severe violations of human rights involved in unlawful forced recruitment, it should not be forgotten that this gives no possibility for those affected to exercise the right of conscientious objection to military service.

Recruitment by law into Sudanese Government armed forces takes three distinct forms; voluntary long-term recruitment into permanent regular forces, which has historically predominated, conscription under the National Service Act of 1992, and enlistment in the paramilitary forces created by the Popular Defence Forces Act of 1989. For these two Acts, the Sudanese Government has cited the overall authority of the People's Armed Forces Act of 1986; "Article 10, paragraphs 4 and 5, stipulates that all those capable of bearing arms are regarded as a reserve force and that the President of the Republic may call upon them to serve in any branch or unit of the armed forces whenever the need arises. Paragraph 5 also stipulates that, without prejudice to the provisions of paragraph 4, the President of the Republic may require any person who is capable of bearing arms to undergo military training and thus be prepared as a member of a reserve force in accordance with the conditions specified by any law or decree in force."² In fact, provisions for obligatory military service date back to 1972 but had rarely been enforced in earlier years.³

To the above categories should now be added recruitment into the Sudan People's Liberation Army, which under the 2005 Interim Constitution⁴ is recognised as an autonomous part of the National Armed Forces in Southern Sudan. The SPLA Act of 2003, which has been provisionally incorporated under the interim constitution, gives details in the relevant section (Paras 7 - 11) of the induction process, stipulates that "Any "person who has for six months been in receipt of military pay as an enrolled or enlisted person and been borne on the rolls of any command, corps, unit or department, shall be deemed to have been duly enrolled or enlisted, and shall not be entitled to claim his discharge on the ground of any illegality or irregularity in his enrolment or enlistment,"(Para 10) and provides for the extension in a state of emergency of any originally-contracted term of service by up to twelve months.(Para 11); however apart from the stipulation that only nationals of "New Sudan" are normally eligible (Para 7), it gives no details of who may or may not be recruited or liable for recruitment.

¹ UN Documents Refs. A/61/529-S/2006/826; A/59/695-S/2005/72; A58/546-S2003/1053;

² Committee on the Rights of the Child, Periodic Reports of States Parties due in 1997: SUDAN, UN Document CRC/C/65/Add.17, 6th December 2001, para. 39.

³ Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998. (<http://wri-irg.org/co/rtba/sudan.htm>).

⁴ Para 154 (1) and (2). The Interim Constitution and subordinate laws may be accessed on www.gurtong.org.

The texts of the 1989 Popular Defence Forces Act and the 1992 National Service Act are appended to a 2001 Report by the Danish Immigration Service;⁵ as far as is known they remain in force unamended, but the exact relationship between the two forms of service is not always clear in practice, and it is sometimes not evident which is being referred to in a particular report.

The Popular Defence Forces Act set up a paramilitary force in order to “ - train citizens on military and civil capabilities (and) - raise security awareness and military discipline... in order to act as a back-up force to the other regular ones on request” (Para 5). Specifically, the force may be called upon “in any of the following situations: - training purposes, - disaster or emergency situations, - war or expectation of war” (Para 12). The Commander of the Popular Defence Force (PDF) is appointed by the Commander General of the Armed Forces, and must be an officer of the armed forces with the rank of Brigadier or above. There is provision for the secondment to the PDF of “any number” of officers or headquarters staff from the regular armed forces. (Para 7). The PDF has an autonomous budget under the responsibility of the Commander General of the Armed Forces. (Para 19). It is subject to military law (Para 17). Although it has sometimes been described as the armed wing of the ruling political party, the PDF is thus clearly integrated into the armed forces of the state.

Those enlisted must be of Sudanese nationality, not less than 16 years of age, medically fit and with a record of good conduct. (Para 11). Exemptions are possible on medical, discipline, family or security grounds. (Para 18); this, together with references to those who are called up to join the PDF (eg Para 13), clearly indicates that the possibility of compulsory recruitment into the PDF was at least contemplated. The precise details of recruitment procedures and length of service were however left for detailed regulations. (Para 20). Sources quoted in the Danish Immigration Service report⁶ generally agree that terms of service in the PDF had been set at a 45-day training period followed by twelve months of service for those who have completed secondary school education; eighteen months for those who have not. Some refer to a considerable element of Islamist “political education” in the PDF training.⁷ It appears that those who have served in the PDF are subsequently listed as reserves; the International Institute of Strategic Studies⁸ estimates the active strength of the force as 17,500, plus 85,000 reserves. However none of the sources consulted report any explicit mobilisations of reserves.

During the 1990s, the government ruled that certificates of the completion of secondary education - a precondition of entry into further education - would not be issued until after PDF service had been performed. According to one source, this applied to both sexes.⁹ Other, especially more recent, reports refer to the school

⁵ Danish Immigration Service, Report on fact-finding mission to Cairo, Khartoum and Nairobi: human rights situation, military recruitment, and entry and embarkation procedures in Sudan, 8 to 19 August and 20 to 23 November 2001

⁶ Op. cit, pp. 37, 41.

⁷ Ibid, pp. 36, 37, 40.

⁸ International Institute for Strategic Studies, The Military Balance, 2005/6, Routledge, London, p.246.

⁹ Danish Immigration Service, op cit, pp.37, 39; “The situation of Human Rights In the Sudan, March 1 - May 31 2003”, in Sudanese Human Rights Quarterly No. 15, June 2003, Sudan Human Rights Organisation, Cairo, pp 5-7.

certificates being available after the period of training, but to the twelve months of active service taking place after graduation - the Universities co-operating in the policing of this.¹⁰

As long as the service itself remains voluntary, this might not appear to be directly prevent the exercise of the right of conscientious objection to military service. The indirect restrictions placed on freedom of education would however represent a severe discrimination against any conscientious objectors who exercised their right, just as it would against any student who was prevented against his or her will from enrolling in the PDF. In this context, the alleged Islamist elements in the training not only raise issues of the freedom of thought, conscience and religion of the Christian minority - but may give rise to further discriminatory effects. An allegation is quoted that of one group of 231 Christian secondary school students recruited in 2001, 73 had not been allowed to complete the required service; some had also been the victims of assaults and harassment.¹¹

The (Compulsory) National Service Act of 1992 stipulates that “Every Sudanese who has completed eighteen years and not passed thirty-three years shall be liable to National Service.” (Para 7), which “may take place in a) the armed forces b) the police or other regular forces, c) Government or public sector units, or d) Public projects in development, economic or social service” (Para 8.1)

The duration of National Service is 24 months (Para 9.1), which is reduced to 12 months for University graduates “or equivalent”, or to eighteen months for those who have completed secondary education “or equivalent” (Para 9.2). Provision for “deducting any previous military service” (Para 9.5), together with a reference to the previous compulsory service law, “or similar other service” (Para 9.3) probably means that time spent in the PDF can be counted in partial or complete discharge of the National Service requirement, but this is not stated explicitly.

Those liable for recruitment are instructed to register at the local office of the Regional Recruitment Administration, whereupon they are issued with the Service ID Card; thereafter both they and their employers are obliged to keep the recruitment authorities informed of their current address (Para 15). The assignment allocated and date for call-up are marked on the Service ID card; Paragraphs 17 and 18 set up a system for handling appeals against such decisions and applications for exemption, pardon, or postponement.

Exemptions apply to persons who are already enrolled as officers or men of the “armed forces, police forces, or other regular forces” or while they are “students of colleges and institutes preparing for graduation of armed forces officers, police forces, or other regular forces” (Para 10). Those medically unfit to perform “any service duty” are completely *pardoned* that duty. (Para 11.1); others, under Para 11.2, may be assigned to “the service that suits their abilities.” Sole household

¹⁰ Home Office (UK), Country of Origin Information Report: Sudan, London, April 2006, para 5.130; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) Sudan: 10th European Country of Origin Seminar, Budapest 1,2 December, 2005, para 3.8; Danish Immigration Service op.cit., p. 41.

¹¹ Danish Immigration Service op.cit., p. 42.

breadwinners may *postpone* their service until arrangements are made for the support of their families from public funds. (Para 12.1) Postponements until no later than the 32nd birthday *may* also be granted to those studying for first degrees (Para 12.2), and sometimes to persons undertaking further education or training, or certain public servants (Para 12.3). Citizens resident abroad are obliged to apply through the nearest embassy for postponement of their military service. (Para 13.2). In each case a fee will be charged for the appropriate certificate (Para 27). ***There is no provision to allow for the possibility of conscientious objection.***¹²

Once registered for National Service a person may not leave the country (Para 21), enrol at or graduate from any educational institution (Para 22), or engage in any form of employment or professional activity (Para 23) without holding an appropriately endorsed Service ID card, or a certificate of exemption, pardon or postponement. The actual numbers to be recruited, and the selection by age and sex of those to be called up, are however at the discretion of the Minister of Defence (Para 19).

Any person “who does not present himself for recruitment, or tries to avoid the service by deceit, or by inflicting any harm to himself” is liable for imprisonment for a period of at least two and not more than three years, and may be required to report for military service immediately following completion of the sentence (Para 28.3)¹³; anyone (except a spouse) aiding or abetting such avoidance “by withdrawing, deleting or dropping his name intentionally from the lists, or causing or helping to cause him a malignant accident, or by giving false information, or embracing his personality, or hiding him or using any other tricks” (Para 28.2) will be liable to three years imprisonment, or a fine, or both. (Para 28.1).

Those who complete military service are entitled “within reasonable time” to resume their studies or graduate; employers of more than fifty persons are also obliged to re-employ any person who has left in order to perform military service, providing that application is made within thirty days of the end of the national service. (Para 24). Conscripts also have the option of continuing service as regular members of the armed forces. (Para 25)

There is however no indication that systematic measures have ever been put in place to identify and trace those liable for this “CNS”, or Compulsory National Service. Instead it has been characteristically enforced - at least in the capital and other Northern cities, by “round ups” in schools, public places and residential areas, especially featuring traffic checkpoints manned by plain clothes military personnel.¹⁴ Men¹⁵ who appeared to be of the appropriate age and were not in possession of a valid Service ID card were summarily taken into military training camps, where they were often held incommunicado. There had been at least some instances of such forcible recruitment of persons younger (down to the age of 14), or older, than the legal recruitment age, of non nationals, or of those who had already performed military

¹² ACCORD, op. cit.

¹³ In general those found to have avoided military service, or deserters from such service, have not been charged, but simply posted to the front line. (ACCORD, op cit; Danish Immigration Service, op. cit. pp51, 53

¹⁴ See Danish Immigration Service, op cit, pp 35, 39 and 40.

¹⁵ Although there have been reports of the conscription of women, generally into auxiliary units, none of the accounts specifically mention women being recruited in such “round ups”.

service¹⁶ - indeed, even without wilful disregard of the rules, it is in the nature of such a process that those who ought not be liable for recruitment will often have no opportunity to prove this.

It would seem that there was a high degree of predictability even of the forcible round-ups; one source quoted by the Danish Immigration Service stated that they “almost always” took place on Saturday mornings.¹⁷ Indeed, it has been reported that sometimes local radio and television announcements instructed those eligible for recruitment to gather at a particular place and time.¹⁸

There seems to be general agreement in saying that the offspring of “well-connected” families have never been recruited in practice and that direct bribery in order to obtain false documents or to escape after forcible recruitment is not unknown - sums equivalent to \$100 being mentioned in 2001 - but that this was not a normal way to avoid recruitment.¹⁹

Within the national population as a whole, all the figures quoted imply that, contrary to the impression given by some reports, those who have been recruited into Government forces have never been anything but a very small and unfortunate minority. The International Institute of Strategic Studies²⁰ estimated the number of conscripts serving in August 2004 as 20,000, in an army about 100,000 strong in total. The International Commission of Inquiry on Darfur in January 2005 estimated the overall strength of the army at twice that figure, but including the PDF and “Borders Intelligence”.²¹ Even if to this higher estimate is added up to 30,000 members of the Sudan People’s Liberation Army, some 20,000 members of the armed groups loosely referred to as Janjaweed, and a few thousand more in miscellaneous other non-state armed groups²², the *total* number of people under arms in the country at any one time is much smaller than the number of Sudanese *of each sex* who reach the age of 18 *each year*, well over 400,000, according to current estimates.²³

Apart from the special case of those who are seeking to proceed to higher education, persons recruited have, as is usually the case in situations of forcible recruitment, tended to come from “the more vulnerable social groups”, in the words of the Danish Immigration Service report.²⁴ Most vulnerable of all are ethnic minorities, particularly those who have been “internally displaced”. In the 1990’s, those who had fled the conflict in the South were at particular risk of being recruited and being sent into the front line after only cursory training of between one and two months. Not surprisingly, casualties were disproportionately high. By 2001, the recruitment of southerners had reportedly declined because so many had defected to the SPLA when

¹⁶ Danish Immigration Service, op. cit., pp 35, 40.

¹⁷ Ibid, p.40.

¹⁸ UK Home Office, op. cit., para 5.129

¹⁹ Danish Immigration Service, op cit, pp 51-53, ACCORD, op. cit..

²⁰ International Institute for Strategic Studies, The Military Balance, 2004/5, Routledge, London, p.246.

²¹ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General, pursuant to Security Council Resolution 1564 of 18th September, 2004 (Geneva, 25th January 2005), para 78.

²² Based on the estimates given in the table on p.434 of The Military Balance, 2005/6, op. cit.

²³ CIA Factbook, 2007 (www.cia.gov/cia/publications/factbook/geos/su.html)

²⁴ Danish Immigration Service, op cit, p. 41.

deployed. At that time displaced members of ethnic minorities from Darfur - the Fur, Zagawet, Masalet - were targeted, along with the Nuba from central Sudan.²⁵ This in turn caused problems when the Darfur conflict erupted.²⁶ This has reportedly caused a shift in emphasis towards conscription from the rural Arab population, traditionally done indirectly through tribal leaders and sheikhs.²⁷

(This form of indirect conscription is also reported from the SPLA controlled areas in the South, where it allegedly frequently led to under-age recruits being offered in place of those of more economic value to the community.²⁸) The incidence of urban “round ups” was already much reduced by 2001;²⁹ according to some reports these have ceased altogether in the most recent years.³⁰

Suggestions for the list of issues:

1) Whether a period of military training and service in the PDF remains a prerequisite for obtaining certification of secondary education and thus admission to further education. What cultural and political, as opposed to strictly military, elements there are in PDF training. Further clarification of the current methods of recruitment and terms of service in the PDF; and of the breakdown of recruitment into the PDF and CNS (compulsory national service) by age, gender, and educational status would be useful.

2) Whether fresh recruitment into the SPLA has taken place since its integration as an autonomous part of the National Armed Forces. If so how has this been administered, who has been eligible / liable, and what are the terms of service?

3) Whether the State Party contemplates amending the military recruitment legislation to enable applications for exemption on grounds of conscientious objection.

19th February, 2007.

²⁵ Ibid, p.36

²⁶ See, Report of Asma Jahangir, Special Rapporteur on extrajudicial, summary or arbitrary executions - Mission to the Sudan (2004), UN Document E/CN.4/2005/7, Add.2, para 40.

²⁷ International Commission of Inquiry, op. cit., para 82.

²⁸ UK Home Office, op. cit., para 5.143

²⁹ Danish Immigration Service, op cit, pp 40, 47.

³⁰ UK Home Office, op. cit., para 5.130.