

# Fighting impunity: legal aid in Darfur

by Maarten Barends

**A rule of law vacuum exists in Darfur, more so than in any other region in Sudan. UNDP's Rule of Law Programme is supporting law enforcement and judiciary officials in assuming their responsibilities under national and international law – and working with them to end the current climate of impunity.**

The armed conflict in Darfur has led to systematic violations of international humanitarian and human rights law against civilian populations, contributing to a breakdown of law and order. Local communities are held captive by fear. Despite the huge scale of humanitarian intervention, human security and protection remain serious concerns for the war-affected populations. Direct attacks on civilian populations remain commonplace and include arbitrary killing, rape, looting and serious impediments to the freedom of movement.

As law enforcement and judiciary officials in Darfur lack the capacity and incentives to uphold and protect human rights, war-affected populations remain vulnerable to arbitrary violence and deprivation of physical, material and legal safety. Given the lack of adequate and responsive law enforcement, despite extensive sexual and gender-based violence (SGBV), women in particular are reluctant to seek justice and file complaints against attackers.

UNDP Sudan, in partnership with the International Rescue Committee (IRC) and a number of Sudanese human rights organisations, has embarked on an ambitious Rule of Law Programme in Darfur. The programme seeks to raise awareness of human rights and rule of law; empower local stakeholders to actively engage in preventing and bringing an end to existing violations of international standards; restore confidence in informal and formal rule of law institutions; and gradually build a culture of justice

– a culture that is responsive to long-term capacity building and sustainable human development.

## Raising awareness

The UNDP Rule of Law Programme in Darfur was launched in September 2004 with the full endorsement of the local and federal authorities and the active support of local communities. By the end of 2006, our human rights training had attracted over 25,000 people throughout Darfur, including members of the Sudanese Armed Forces (SAF), Popular Defence Forces (PDF), Sudanese Police Forces (SPF), National Security (NS), non-state armed groups (NSAG), local militias and communities close to the warring factions. Through its awareness-raising efforts, UNDP tries to convey the key message that human rights cut across all regions and all religions. Human rights belong to all.

The training also extends to war-affected populations. It is as important for displaced and other war-affected populations to be aware of their rights as it is for local authorities and tribal leaderships to be conscious of and live up to their responsibilities under national and international law. By engaging all Darfurian stakeholders in an open discussion in a neutral setting, the training provides an opportunity to start to address some of the root causes of the conflict. The objective therefore is not only to raise general awareness about the rule of law and human rights but also to change attitudes and mindsets, to build confidence and promote

reconciliation, and to instil again in Darfur a sense of doing what is right – based on local custom, international standards and universal ethics.

## Building local capacities

Training, however, is not an end in itself. Awareness raising must be complemented and reinforced by parallel efforts to ensure protection through building the capacity of local rights groups, and continuously mentoring and monitoring all stakeholders, in particular potential perpetrators of human rights abuses. The UNDP Rule of Law Programme in Darfur has therefore established Legal Aid Centres and paralegal groups, as well as a Legal Aid Network of Darfurian lawyers, to empower local communities and improve access to justice.

Additionally, UNDP has initiated a series of Rule of Law seminars in close collaboration with the Darfurian State Universities. These seminars – which bring together local academia, government authorities, civil society organisations and community representatives – provide a platform to raise awareness about rule of law and human rights. They aim to foster dialogue among stakeholders, promote freedom of speech and assembly and also build confidence and foster reconciliation. Since March 2005, we have organised more than a hundred Rule of Law seminars, drawing in hundreds of people, and witnessing increasing levels of open and frank debate.

Notwithstanding some of the successes in areas where troops of the African Union Mission in Sudan (AMIS)<sup>1</sup> have been deployed, there is a clear need for further capacity building in order for the AMIS forces in Darfur to be more effective. Following requests by AMIS and the wider humanitarian community, UNDP, OHCHR, UNFPA



UNDP-IRC  
Rule of Law  
Training in  
El Geneina.

UNDP

and UNICEF have developed a joint programme in order to support the AMIS forces' capacity to protect the civilian population in Darfur, and to contribute to an environment conducive to restoring human security and full respect for human rights and the rule of law.

Given the prevalence of SGBV in Darfur, the lack of access to justice and the social stigmas attached, the UNDP Rule of Law Programme in Darfur pays particular attention to SGBV by undertaking prevention, protection and response activities in settings where no previous action has been taken. This includes advocating for the rights of women, advising states on how to adapt legislation

and policies so they conform to international standards, and taking action to minimise the increased risks caused when individuals or groups are affected by conflict. Activities include providing capacity-building support to the formal and informal justice systems – such as training of judges and prosecutors – and ensuring that survivors are supported in their attempt to seek legal redress.

The UNDP Rule of Law Programme in Darfur – which is implemented concurrently with humanitarian action – also aims to lay the building blocks for fully-fledged recovery when the security and political situation stabilises. Building on principles of empowerment,

inclusion and participation within an early recovery framework,<sup>2</sup> rule of law programming amidst armed conflict has to take into account the lack of security, continued political instability and the likelihood of relapse into conflict. Addressing these requires a practical, flexible and constantly evolving approach that is locally driven.

### UNDP Legal Aid Network

In an effort to empower local communities and promote access to justice in Darfur, UNDP has established a Legal Aid Network – a network of 61 Darfuri lawyers who take on cases referred to them

through the UNDP Legal Aid Centres<sup>3</sup> and paralegal groups, as well as a number of different UN actors (including UNMIS, UNFPA, UNICEF and UNHCR), INGOs and Sudanese civil society organisations. The Network was set up in August 2005 when three lawyers in North Darfur agreed to represent cases that had been referred to them by UNDP. It has since expanded considerably with the signing of cooperation agreements with the Goodwill Organisation and the Amel Centre, an affiliate of the London-based Sudanese Organisation Against Torture (SOAT)<sup>4</sup>. The legal aid lawyers not only support individual people in need of legal advice and representation but also help fight impunity by strengthening the justice system in Darfur and ensuring it lives up to basic national and international standards. UNDP Rule of Law Officers on the ground continuously monitor the referral of cases and the quality of the court representation – and provide technical advice and guidance together with partners such as UNMIS and the International Rescue Committee.

While UNDP aims to strengthen the Sudanese formal and informal justice system, and address impunity by ensuring compliance to Sudanese domestic law, UNDP does not condone certain penalties that must be regarded as torture or cruel, inhuman and/or degrading treatment or punishment. Therefore, the lawyers of the UNDP Legal Aid Network make every attempt to avoid these and advocate for alternative sentencing, thereby setting precedent for reforming the law. In addition, diplomatic efforts must be stepped up to promote legal reform at the national level and ensure Sudan's ratification of a number of important international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979)<sup>5</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT 1984)<sup>6</sup>.

At present, there is a wide range of obstacles to accessing justice in Darfur, including a deep mistrust among the local population of the very institutions that are tasked with ensuring their safety and security, continuing harassment and violence,

severe capacity deficits and overly complex bureaucratic procedures, high costs and pervasive corruption. The provision of legal aid enhances an individual's capacity to deal with these constraints. Indirectly, it also enhances the potential for swift, fair and impartial administration of justice and peaceful conflict resolution.

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### Forced marriage

In February 2004, a 14-year-old girl was forced by her father to marry a soldier. Her father threatened to kill her if she refused. In January 2006, UNFPA approached UNDP for legal assistance and one of the legal aid lawyers took on the case. She filed a case on behalf of the girl, requesting the Court to dissolve the marriage on the grounds that the girl had been a minor when married and had been forced to do so by her father, under threat of death. In court, her father confessed that he had indeed forced his daughter to marry. Her husband agreed to a divorce if reimbursed for the marriage expenses. The girl's father agreed and the marriage was dissolved.

### Charged with adultery

In spring 2006, a new-born child was found hidden in a latrine in Abu Shouk IDP Camp. It was reported to the local UNDP Legal Aid Centre. The paralegals took the baby to a camp clinic and reported the incident to the police. The mother was located and charged with unlawful sexual intercourse (*zina*) and attempted murder. The paralegals then referred the case to the UNDP Legal Aid Network. When the legal aid lawyers interviewed the accused, she said she had been raped by an unknown soldier but had been too frightened

and ashamed to tell anyone. Her husband had been absent for more than two years; when he returned, the lawyers convinced him that his wife had indeed been a victim of rape. He, her step-son and her grandmother all testified in court that her behaviour after the birth of the child had been out of character. The lawyers of the UNDP Legal Aid Network represented the accused in court and convinced the judges that, under normal circumstances, no woman would try to kill a 14-day-old baby. The Court agreed and acquitted the woman of all charges; she was immediately released. She received psychosocial treatment from the SOAT/Amel Centre and the baby was eventually re-united with the mother and her husband.

### Conviction for rape

In February 2006, a 26-year-old woman with mental health problems of the Zaghawa tribe was raped by a policeman in the area of Golo. The rape was witnessed by four people. The woman's brother, also a policeman, took her to El Fasher hospital where the assault was noted officially. He sought legal assistance from the UNDP Legal Aid Network whose lawyers filed a case with the police. A police investigator interviewed the four witnesses and arrested the suspect. Under Sudanese law, members of the Sudanese Police Force enjoy immunity from prosecution. In May 2006, however, he was dismissed from the police force, thus permitting the lawyers to pursue a criminal case against him. The lawyers filed a request for private prosecution and lodged a psychiatric report noting that rape victim suffered from severe mental health problems and needed psychiatric treatment. The SOAT/Amel Centre provided treatment for the woman. The Court found the accused guilty and sentenced him to four years' imprisonment.

1. [www.amis-sudan.org](http://www.amis-sudan.org)

2. Early Recovery aims to generate self-sustaining nationally-owned and resilient processes for post-crisis recovery, encompassing livelihoods, shelter, governance, environment and social dimensions, including the reintegration of displaced populations.

3. UNDP currently operates seven Legal Aid Centres across Darfur, each staffed by approximately 25 paralegals.

4. [www.soatsudan.org](http://www.soatsudan.org)

5. [www.unhcr.ch/html/menu3/b/e1cedaw.htm](http://www.unhcr.ch/html/menu3/b/e1cedaw.htm)

6. [www.unhcr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhcr.ch/html/menu3/b/h_cat39.htm)