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CLASSIFYING THE KILLINGS IN SUDAN AS GENOCIDE

Sudan gained its independence from Great Britain in 1956. The citizens of Sudan lived in peace and prosperity until 1983 when civil war broke out.¹ Since 1983, over 2 million Sudanese citizens have perished as a result of the war.² The Muslim North, which is made up of government supporters and National Islamic Front (“NIF”) members, has been feuding with the non-Muslim South, which is comprised of rebel soldiers from the Sudan People’s Liberation Army (“SPLA”).³ Although both parties in the conflict have committed human rights abuses, the Sudanese government is responsible for the bulk of the violence. It has been reported that government soldiers have performed aerial raids over southern villages often targeting churches, hospitals, and international aid groups. Civilians that are not killed by government forces are taken captive, and are usually either enslaved or sent to “peace camps” where they are forced to convert to Islam in order to receive food rations.⁴

The Sudanese government has also destroyed southern villages without the use of military force. The government has attacked civilian food production sources and then refused to allow the citizens to receive relief. For instance, in July 1992, the NIF burned southern villages destroying crops in the process, and then refused to allow United Nations (“U.N.”) and international relief agencies to airlift food supplies to the displaced citizens.⁵ The United States Committee for Refugees reports that there have been more deaths in Sudan than in Bosnia, Kosovo, Afghanistan, Chechnya, Somalia,

¹ Marguerite Feitlowitz, *Is There Genocide in Sudan?*, SUDAN MAGAZINE, Apr. 2002, at <http://www.crimesofwar.org/sudan-mag/sudan-in-discuss.html>.

² *Id.*

³ The National Islamic Front is a militant Islamic political party which overthrew the elected government of Sudan in 1989. The SPLA split into two factions in 1991—SPLA-Torit and SPLA-Nasir. Both factions of the SPLA are not only guilty of humanitarian abuses against government soldiers but also against each other. Human Rights Watch, *Sudan*, at <http://www.hrw.org/reports/1994/WR94/Africa-09.htm> (last visited May 14, 2003).

⁴ See Human Rights Watch, *Civilian Devastation: Abuses by All Parties in the War in Southern Sudan* (1993), available at <http://www.hrw.org/reports/1993/sudan/> (last visited Feb. 4, 2003).

⁵ *Id.*

and Algeria combined.⁶ In addition, the Sudan has the highest numbers for displaced persons in the world. There are approximately 4 million internally-displaced persons within Sudan and about 500,000 refugees scattered throughout other countries.⁷

The Sudan has a diverse racial, ethnic, and religious makeup and all of these characteristics have contributed to the conflict. Approximately 33 million people live in the Sudan and there are more than 500 ethnic groups.⁸ It has been reported that 52% of the population is African, 39% is Arab, and 9% classify themselves as "other." With regard to religion, 70% of the Sudanese are Muslim, 25% practice the traditional African religion, and 5% are Christians.⁹ The conflict is often characterized as the Arabic speaking, Islamic North against the African South where Christianity is the dominant religion, but this characterization is not necessarily accurate. Predominantly Muslim villages are also attacked. For example, the Nuba ethnic groups, living in central Sudan, have had their villages burned, looted, and pillaged by the North, and yet they are Muslim.¹⁰ Although differences in religion and ethnicity may play a part in the ongoing conflict in Sudan, they are not the only causes of strife. The right to control southern Sudan's oil reserves has also been a huge motivating factor in the northern government's interest in expanding into the southern region.

In May 1999, the Sudanese government began earning hundreds of millions of dollars from oil exports.¹¹ Engineers in Khartoum built a 1,000 mile long pipeline that connects a large oil field in southern Sudan called the Muglad Basin to oil tankers on the Red Sea.¹² Approximately 8 billion barrels of crude oil are located

⁶ Feitlowitz, *supra* note 1.

⁷ *Id.*

⁸ Paul Salopek, *Drilling For Oil, Hoping For Peace*, NAT'L GEOGRAPHIC, Feb. 2003, at 38.

⁹ *Id.*

¹⁰ Karen E. Lang, *Nuba Still Standing*, NAT'L GEOGRAPHIC, Feb. 2003, at 60-7.

¹¹ Salopek, *supra* note 8 at 47. All U.S. companies stopped drilling in the Sudan in the 1990s after the U.S. had imposed sanctions against the country for its alleged support of terrorists. Currently, a company called The Greater Nile Petroleum Operating Company, which is made up of engineers from China, Malaysia, Canada, and the Sudan, extracts approximately 240,000 barrels of crude oil a day from the southern region of Sudan. In two years, the company expects to double its production. French, Swedish, and Austrian companies also plan to pump oil from southern Sudan if the area becomes more stable in the future. *Id.*

¹² *Id.* at 41.

underneath regions in southern Sudan that are the traditional homeland for various ethnic groups including the Nuer and Dinka.¹³ It is the northern-based government's belief that the only way to access the 8 billion barrels of crude oil is to remove ethnic groups like the Dinka and Nuer that live on the oil-rich land.¹⁴ In 1999, the oil production yielded profits of hundreds of millions of dollars and more for the Sudanese government.¹⁵ In light of the massive amount of revenue that oil can generate for the government, a Sudanese cabinet member declared, "What prevents us from fighting while we possess the oil that supports us in this battle even if it lasts for a century?"¹⁶

I. GENOCIDE IN SUDAN?

As a result of the decimation of many southern Sudanese tribes in the government's quest for oil, many human rights groups and international critics question whether the Sudanese government is guilty of committing genocide against its own citizens. Vowing never to allow the atrocities of the Nazi Holocaust to be repeated, the Office of the High Commissioner for Human Rights ratified the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948, and the Convention became effective on January 12, 1951.¹⁷ Article II of the Convention defines genocide as:

[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as: a) Killing members of the group; b) Causing serious bodily or mental harm to

¹³ *Civil Devastation*, *supra* note 4, at 21. The Dinka and Nuer ethnic groups survive on the land in the Upper Nile Region of the Sudan by farming and herding. The villages cannot rely solely on cultivation because the area has a tendency to both flood and endure long periods of drought. Moreover, the clay soil in the region is not conducive to farming. *Id.*

¹⁴ The Committee on Conscience has issued a genocide warning for Sudan, Africa's largest country. See Committee on Conscience, *Genocide Warning: Sudan*, at <http://www.usmmm.org/conscience/sudan/sudan.php> (last visited Feb. 4, 2003).

¹⁵ Irving Greenberg & Jerome Shestack, Editorial, *Carnage in Sudan*, WASH. POST, Oct. 31, 2000, at A23, <http://www.usmmm.org/conscience/sudan/editorial.php>.

¹⁶ *Id.*

¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951), available at http://www.unhchr.ch/html/menu3/b/p_genoci.htm.

members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent birth within the group; e) Forcibly transferring children of the group to another group.¹⁸

Different opinions exist regarding whether or not genocide is taking place in the Sudan. Robert O. Collins, co-author of the book entitled *Requiem for Sudan: War, Drought and Disaster on the Nile*, argues that genocide has not taken place in the Sudan. Collins contends that, “[u]nlike the Nazi Holocaust of European Jewry, the Sudanese government does not have a rational, methodical, massive scheme to liquidate a particular group or people . . . [o]n the contrary: the NIF doesn’t want to eliminate the southerners . . . it wants to dominate, exploit, and enslave them.”¹⁹ Helen Fein, the Director of the Institute for the study of genocide at John Jay College takes the differing view that “genocide by attrition” is taking place in Sudan.²⁰ She views the concentration and forced displacement of people, together with “systematic deprivation of food, water, and sanitary or medical facilities, which leads to death through disease or starvation, is tantamount to genocide.”²¹ U.S. House of Representatives member Chris Smith, Chairman of the Subcommittee on International Operations and Human Rights Crimes Against Humanity in Sudan supports this view. In his opening statement to the Subcommittee Hearing on Sudan in 1999, he stated:

[T]he only . . . question is whether there is genocidal intent . . . Although it might be possible to argue that the bombing of villages and the crucifixions and even the mass rapes may have been committed in an attempt to subjugate the people of southern Sudan rather than to destroy them, I can find no way to reconcile this argument with the hundreds of thousands of deaths in recent years . . . Why would Khartoum have engineered a famine in the south, and then imposed a ban on airlifts of food by the United Nations agencies

¹⁸ *Id.*

¹⁹ Feitlowitz, *supra* note 1.

²⁰ *Id.*

²¹ *Id.*

that had formerly been allowed to conduct such airlifts, unless it wanted to destroy the people of southern Sudan as a people?²²

II. SUDAN PEACE ACT

In October 2002, President Bush signed the Sudan Peace Act into law.²³ Under the Sudan Peace Act, a cease-fire exists, and the U.S. will issue sanctions against Khartoum if the government does not negotiate in good faith at the peace talks in Nairobi, Kenya. Furthermore, the U.S. will provide Sudan with \$300 million in aid over a three year period.²⁴ The peace talks are supposed to last until March 2003. In July 2002, the NIF and SPLA representatives both agreed to have a referendum to decide if the Southern region could gain independence after a six year transition period.²⁵

Shortly after this momentous event, each side claimed that the other had violated the cease-fire agreement. A SPLA spokesman, George Garang, said, "It always seems when we start negotiating with the government of Sudan they always attack on the eve of negotiations. We are not surprised that they are doing the same again. We know that they are not interested in peace."²⁶ The peace talks had been suspended in November 2002, but the parties resumed negotiations on January 23, 2003, and are focusing on the topics of power and wealth-sharing between the government of Sudan's current president, Lt. Gen. Omar al-Bashir, and the SPLA.²⁷ The United States is happy that the peace talks have resumed but remains worried that the government in Sudan continues to attack rebels in violation of the cease-fire agreement reached in October 2002.²⁸ According to SPLA leader Garang, government soldiers re-

²² *Crimes Against Humanity in Sudan: Hearing Before the Subcomm. on International Operations and Human Rights of the House Comm. on International Relations*, (1998) (statement of Rep. Chris Smith, Member, House Comm. on International Relations), available at http://www.freedomhouse.org/religion/country/sudan/sudan_chris-smith.htm (last visited on Apr. 27, 2003).

²³ Sudan Peace Act, H.R. 5531, 107th Cong. (2002).

²⁴ David Gollust, *US Concerned About Military Moves In Sudan*, VOA NEWS.COM (Jan. 23, 2003), at <http://www.voanews.com/article.cfm?objectID>.

²⁵ *Id.*

²⁶ Katy Salmon, *Sudan Peace Talks Expected to Resume Thursday*, VOA NEWS.COM (Jan. 22, 2003), available at <http://www.voanews.com/article.cfm?objectID>.

²⁷ Gollust, *supra* note 24.

²⁸ *Id.*

cently injured 10 children that were living in a camp for displaced persons in the Western Upper Nile Province of Sudan.²⁹

Despite the allegations, the United Nations Secretary General's Envoy to Sudan, Tom Vraalsen, believes that there have been "positive developments that demonstrate the commitment by both parties to the humanitarian imperative." For example, beginning in November 2002, people in the Sudan have received food rations, over a million children have been immunized for polio, and barges carrying food and other supplies have been able to travel within Sudan in order to provide aid.³⁰

Even though ethnic groups in Southern Sudan have endured twenty years of catastrophic human rights abuses that have been recognized as genocide by the U.S. House of Representatives; there appears to be hope for peace in the future. U.S. and U.N. officials are optimistic that both parties in the conflict can be successful in the peace process. However, even though both parties have finally begun working together to bring peace to the region, the oil, which the government is interested in, still sits beneath the soil where the Dinka and Nuer tribes grow their crops and herd their cattle.

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²⁹ *Talks to End Sudan's Civil War Resume*, INT'L HERALD TRIB. ONLINE (Jan. 24, 2003), at <http://www.iht.com/articles/84484.html>.

³⁰ *Peace Talks Restart in Nairobi*, ALLAFRICA.COM (Jan. 23, 2003), at <http://allafrica.com/stories/200301230157.html>.