

**Third periodic report  
of the United Nations High Commissioner for Human Rights  
on the human rights situation in the Sudan**

Issued by the Office of the High Commissioner for Human Rights in cooperation with the United Nations Mission in Sudan

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## I. INTRODUCTION

1. This report covers the period of December 2005 to April 2006,<sup>1</sup> and is issued by the Office of the High Commissioner for Human Rights (OHCHR) in cooperation with the United Nations Mission in the Sudan (UNMIS). It is the third report issued jointly by OHCHR and UNMIS.<sup>2</sup> The report covers seven human rights issues:

- The impact of the conflict in Darfur on civilians and the Government of Sudan's inability and unwillingness to hold perpetrators of international crimes accountable;
- The persistence of sexual and gender-based violence in Darfur;
- The ill-treatment, detention, and harassment of people who voice their human rights concerns in the Sudan;
- The problem of torture and cruel, inhuman, and degrading treatment in detention facilities in Khartoum and Darfur;
- Reforming the Government's security apparatus to prevent it from committing human rights violations with impunity;
- The problem of Other Armed Groups (OAGs) in Southern Sudan and the three Transitional Areas (Abyei, Southern Kordofan, and Blue Nile States);
- Emerging human rights issues in Eastern Sudan.

The report is not intended to be comprehensive. It offers several recommendations aimed at addressing the human rights problems noted in this report.

2. The factual information in this report was gathered by UNMIS Human Rights Officers who monitor, document, and report on human rights violations and abuses. The report is primarily based on direct investigations and information collected from victims, witnesses, and Government authorities. The human rights mandate of UNMIS is derived from two main sources. The Government of Sudan and the United Nations signed a joint communiqué in July 2004 that committed the Government to allow the deployment of human rights monitors in Darfur. The second source of the mandate was set out in Security Council resolution 1590 (2005), which established UNMIS and called on it to ensure an adequate human rights presence, capacity and expertise to carry out human rights promotion, civilian protection, and monitoring activities.

3. In addition to its fieldwork, UNMIS brings human rights concerns to the attention of national and local authorities and provides them with recommendations. The human rights component of UNMIS also organizes and leads human rights training and capacity- and institution-building activities. It provides advisory services to civil society, the Government, legal professionals, and the judiciary, and submits reports and provides information to the UN Secretary-General, his Special Representative, OHCHR, and the broader international community. In support of the work of the UNMIS Human Rights Unit, the Special Representative of the Secretary-General (SRSG) for Sudan, Mr. Jan Pronk, has taken an active role in speaking out on human rights issues, including attacks on civilians in Darfur, violence against women, forced relocations of internally displaced persons, media censorship, and UNMIS access to detention facilities.

4. As of early April 2006 there were 76 UNMIS Human Rights Officers. The majority of them were located in the four UNMIS Darfur field offices in El Fasher (North Darfur), El Geneina and Zalingei (both in West Darfur), and Nyala (South Darfur). Human Rights Offices

were also open and staffed in Juba and Abyei in the south of Sudan, and in Kassala in Eastern Sudan. The headquarters office was located in Khartoum.

### **A. General Findings**

5. Almost one and a half years after the signing of the CPA, the Government is falling far short of many of the human rights commitments it made under the CPA and Interim National Constitution. The major shortcomings highlighted in this report include:

- The commission of human rights violations in Darfur as the conflict escalated;
- Failure to protect civilians from attacks, including sexual and gender-based violence, in Darfur;
- Failure to hold people accountable, including high-ranking officials, for conflict-related crimes;
- Ill-treatment, detention, and harassment of people who voice their human rights concerns throughout the Sudan;
- Obstruction of the work of UNMIS Human Rights Officers;
- Failure to reform National Security and to reform laws that guard State officials from criminal prosecution; and
- Failure to pass legislation to establish a National Human Rights Commission in accordance with the Paris Principle.

### **B. Recommendations**

6. The recommendations below provide several key solutions to ensuring that the Sudan fulfills its human rights obligations in accordance with both the CPA and Interim National Constitution, and international human rights law.

#### 7. General Recommendations

- The Government should continue the initiatives it has taken to respect human rights. This should lead to the strengthening of a human rights infrastructure that is capable of ending Sudan's history of gross human rights violations. At the center of this project should be a strong, independent National Human Rights Commission that provides oversight of and impartial advice to the Government. The Commission's findings should be made public and be widely disseminated;
- In Darfur, the Government and rebels should immediately respect the governing ceasefire agreement, recognizing its impact on reducing further displacement and reducing violations of international humanitarian law and international human rights law. The Government should also disarm the militia and protect the physical security of all Darfurians by putting in place a credible, capable, and professional police force and judiciary;
- Those responsible for human rights abuses and violations of international humanitarian law should be held accountable. This should occur regardless of where the crimes took place, when they took place, and who committed them.

#### 8. Accountability for conflict-related crimes

- The Government should strengthen its law enforcement and judicial systems with the aim of holding perpetrators of human rights abuses and violations of international humanitarian

law responsible for their actions. This must include eliminating legal obstacles to justice, such as immunity provisions for Government officials. Alongside this, the Government should cooperate fully with the ICC to bring justice to Darfur. The Government should also be unbiased and non-manipulative of reconciliation processes, and ensure that these processes do not deflect justice for gross human rights abuses and violations of international humanitarian law;

- With respect to the 21-year civil war, the Government should remedy its failure to address gross human rights violations and violations of international humanitarian law. As a first step it should begin the “comprehensive process of national reconciliation and healing” that the CPA calls for. It should also establish the National Human Rights Commission and allow it to play an important role in mapping out these crimes and propose relevant mechanisms for establishing accountability for past crimes;
- Throughout the Sudan, a strengthened judicial system which meets the required standard of impartiality and independence, with sufficient judges and prosecutors, is sorely needed, to ensure that individuals have an effective remedy for human rights violations and that oversight of local law enforcement and security apparatus is effective.

9. Sexual and gender-based violence in Darfur

- The Government should continue its initiatives to confront and remedy the problem of sexual and gender-based violence in Darfur. An effective approach to solving this problem will have numerous targets, including law enforcement officials, the judiciary, healthcare providers, and community leaders. It is imperative that perpetrators of sexual abuse are held accountable, regardless of whether they are State officials or private individuals;
- The Government should continue to implement activities identified in the National Action Plan to end violence against women in Darfur, particularly the Government’s commitment to disseminate the Rules of Application for Criminal Circular 2 and ensure compliance of all government officials. Officials who fail to comply with the Criminal Circular 2 or to fulfill their responsibilities regarding investigations of sexual abuses complaints should face administrative sanctions;
- The Darfur State Committees should continue their work, but should close the gap between their intentions and actions. They should be more proactive and meet their stated goals and timelines.

10. Voicing human rights concerns in the Sudan

- Government officials should refrain from harassing, arresting, detaining or physically abusing individuals who bring human rights abuses to the attention of the police, other government authorities, or the international community. Government officials should also refrain from harassing, arresting, detaining, or physically abusing individuals who carry out activities relating to human rights issues, including rule of law, peace-building, and conflict resolution;
- The Government should hold accountable individuals who are responsible for harassing, arresting, detaining and physically abusing people who voice their human rights concerns. Those in command in the various government institutions, which include National Security, the police, and Humanitarian Aid Commission (HAC), must take responsibility for the actions of their subordinates;
- The Government must undertake legal reform to include: the abolishment of impunity provisions that protect State officials from prosecution; the reform of the recently enacted Organization of Voluntary and Humanitarian Work Act of 2006; and the reform of

restrictions in the National Press Laws that can be used to threaten the work and independence of journalists;

- Government officials should cease restricting the work of UNMIS Human Rights as provided for in the July 2004 joint communiqué in Darfur between the Government of Sudan and Secretary-General Kofi Annan, Security Council resolution 1590 (2005), and the 28 December 2005 signed Status of Forces Agreement. The Government should articulate to local authorities, in writing, the above recommendations, as well as the mandate of UNMIS Human Rights.
- The Government must undertake legal reform to include: the abolishment of impunity provisions that protect State officials from prosecution; the reform of the recently enacted Organization of Voluntary and Humanitarian Work Act of 2006; and the reform of restrictions in the National Press Laws that can be used to threaten the work and independence of journalists;
- Government officials should cease restricting the work of UNMIS Human Rights. It should fully respect its obligation of cooperation as provided for in the July 2004 joint communiqué in Darfur between the Government of Sudan and Secretary-General Kofi Annan, Security Council resolution 1590 (2005), and the 28 December 2005 signed Status of Forces Agreement. The Government should articulate to local authorities, in writing, the above recommendations, as well as the mandate of UNMIS Human Rights.

11. UNMIS access to National Security, Military Intelligence and rebel detention facilities

- Government officials in Khartoum should clearly articulate in writing to all detention facility officials its agreement that UNMIS Human Rights should be granted free, unannounced, and unfettered access to detention facilities. Local officials should in turn inform their subordinates of this policy in writing so that access can be granted if the detention facility director is unavailable. A copy of such correspondence should be given to UNMIS Human Rights.

12. Reforming Sudan's security apparatus

- Sudan's security apparatus should undergo radical legal and institutional reform. The Interim National Constitution envisages reforming the National Intelligence and Security Service, but other institutions should be included in this process. As a whole, the reforms should focus on repealing broad powers of detention, withdrawing impunity provisions, and establishing effective judicial and legislative oversight mechanisms for accountability. These reforms must be authorized as well as implemented. In addition, emergency laws should only be in place if necessary, the parameters for derogations must be well-defined, and any derogation must be absolutely necessary, proportionate, and regularly reviewed.

13. Southern Sudan: integration of Other Armed Groups

- The Government must ensure that OAGs come under a strong command structure and are held accountable for their actions;
- The Government must ensure that the attack against the convoy at the Balom checkpoint is thoroughly investigated and individuals found guilty of orchestrating and participating in the attack are brought to justice. The investigation should pay particular attention to the potential responsibility of SAF soldiers who knew of the attack but did not take adequate actions to try to prevent it;

- Movements of OAGs for purposes of integration should be separated in time and space from the movement of civilians, and appropriate authorities should receive advanced and detailed notification regarding the movement of troops and civilians;
- The Government must underscore to the parties to the ceasefire agreement that a breach of the agreement cannot be used to justify disproportionate and unnecessary use of force.

14. Eastern Sudan: emerging human rights issues

- The Government should not hold people in incommunicado detention;
- The Government must not resort to excessive use of force and torture or cruel, inhuman or degrading treatment as a method of addressing illegal cross border trafficking and smuggling;
- See also recommendations above on allowing people to voice their human rights concerns and on the reform of Sudan's security apparatus and emergency laws.

## II. POLITICAL CONTEXT

15. After a 21-year civil war, the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) signed the Comprehensive Peace Agreement (CPA) in Nairobi on 9 January 2005. The CPA provides operational modalities for a six-year interim period, at the end of which the people of Southern Sudan are to determine through a referendum if they wish to remain part of a united Sudan under the system of government established in the CPA, or secede.

16. Following the signing of the CPA, General Omar Hassan Ahmad Al-Bashir, who had been President of Sudan since the military coup in 1989, was sworn in as President of the Government of National Unity (GNU) on 9 July 2005. Dr. John Garang de Mabior, the Chairman of the SPLM/A was sworn in as First Vice-President of the GNU and President of the Government of Southern Sudan (GoSS). Ali Osman Mohamed Taha, the previous First-Vice President and chief negotiator at the Naivasha peace negotiations, was sworn in as Second Vice-President of the GNU. An Interim National Constitution was signed by President Bashir on 9 July 2005, and a state of emergency was lifted in all states except Darfur, Kassala, and Red Sea. On 30 July 2005 the First Vice-President, Dr. John Garang, died in a helicopter crash and was succeeded by Salva Kiir Mayardit as both the First Vice-President of the nation and President of the GoSS.

17. The human rights provisions in the CPA and the Interim National Constitution mark a watershed in Sudan's commitment to end a history of widespread human rights violations. The Constitution states that "all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part" of its Bill of Rights. Key to respecting this constitutional commitment is the Government's respect for the CPA and the variety of mechanisms it put in place to combat the pervasive marginalization of certain populations in Sudan. Many of these mechanisms are aimed at distributing political power, Government institutions, and the dividends of Sudan's natural resources throughout Sudan in a fair and equitable manner.

18. The implementation of the CPA has generally been slow, but there was some progress. By the end of October and early November 2005, there was the formation and staffing of the Assessment and Evaluation Commission (AEC), the National Petroleum Commission (NPC), the Cease-fire Political Commission (CPC), the Fiscal and Financial Allocation and Monitoring Commission (FFAMC), the Technical Ad hoc Border Committee and the National Judicial Service Commission (NJSC). On 8 January, the SPLA and South Sudan Defense Forces (SSDF)

signed the “Juba Declaration,” which outlined the process for integrating former SSDF forces into the SPLA. On 17 January 2006, the National Assembly endorsed the Joint Integrated Units (JIU) Act, which provided for the establishment of JIUs, their mandate, areas of deployment, uniform, and common doctrine. In February 2006, the Ceasefire Political Commission (CPC) convened its first meeting and two Demobilization, Disarmament and Reintegration (DDR) institutions (the National Council for DDR and the Northern Sudan DDR Commission) were established by Presidential decrees. A ceremony to launch the National Mine Action Authority (NMAA) was held on 7 March 2006.<sup>3</sup>

19. In contrast to this progress, as of 30 March 2006 many of the established institutions and committees did not regularly meet or result in substantive changes on the ground. Actual reconstruction had yet to start in the South and overall progress in the three Transitional Areas (Abyei, Southern Kordofan, and Blue Nile States) was limited. The National Petroleum Commission had not met regularly and there were no agreements on the rules of procedures or the mandate and composition of the commission’s Secretariat. The National Human Rights Commission, the Civil Service Commission, and the National Land Commission had yet to be established. The National Constitutional Review Commission was re-established through Presidential decree on 7 January 2006, but its new membership had yet to be named and it has not yet convened as of 30 March 2006. The establishment of the National Security Council and the National Security Service, which is critical to the reform of Sudan’s security apparatus, had not happened. The Abyei Boundaries Commission (ABC), which was mandated to define and demarcate the Abyei area, submitted its final report to the Presidency on 14 July 2005, but its decision had yet to be implemented. Various committees in Southern Sudan also had not been established and this too slowed down the CPA implementation process.<sup>4</sup>

20. The UN High Commissioner for Refugees estimates that the 21-year civil war in Southern Sudan sent more than half a million people into refugee camps in seven neighboring countries and displaced between four and six million within Sudan, including 2.5 million in the capital, Khartoum. In 2005 there were over 500,000 spontaneous returns in Southern Sudan. This included North-to-South and South-to-South return movements. The UN 2006 Work Plan projects the return of 680,000 IDPs and refugees for 2006. These movements require a committed effort to implementing the CPA so to reduce the considerable strain the movements are having on the already resource-deficient communities in the south and the three Transitional Areas. The movements also raised serious concerns about security for the returnees in transit and upon their arrival home.

21. In Western Sudan, the conflict in Darfur has left thousands dead and around two million people displaced. On 29 March 2005, the Security Council took special note of the conflict in Darfur and passed resolution 1591 (2005), which established a Panel of Experts charged with, among other things, conducting fact-finding activities to identify individuals who were impeding the peace process, threatening the stability in Darfur and the region, or committing violations of international humanitarian or human rights law or other atrocities. Based on its findings the Panel was to recommend to a sanctions committee the names of individuals who should have financial and other sanctions imposed on them. On 9 January 2006, the panel submitted its findings to the committee with a list of names that included high-ranking officials. In April, the Security Council passed resolution 1672 (2006), which placed sanctions on four individuals—one Government official, one militia leader, and two rebel members.

22. Two days after the Security Council passed resolution 1591 (2005) it passed resolution 1593 (2005), which referred the situation in Darfur to the Prosecutor of the International Criminal Court (ICC). The Government has repeatedly objected to this, claiming that Sudan is capable of

bringing justice to Darfur and that it would refuse to allow its nationals to be tried in an international court.

23. Since the conflict escalated in late 2003, the dynamics of the violence have become increasingly complex and volatile, with splits within the rebel groups and tensions existing between Chad and Sudan. As of December 2005, an estimated 3.6 million people in Darfur were in need of humanitarian assistance due to the combined effects of violence, displacement, and restrictions on movement, as well as an economic breakdown and loss of livelihood. Half of the 3.6 million in need are internally displaced persons.

24. Despite cease-fire agreements,<sup>5</sup> peace talks in Abuja, Nigeria,<sup>6</sup> and an African Union military presence in the region,<sup>7</sup> there continued to be human rights violations and protracted violence between Government forces, militias, and rebels, as well as between rebel factions. Numerous civilians were killed, arbitrarily arrested, raped, sexually assaulted, displaced, and tortured and subjected to other ill-treatment in custody.

25. The number of international aid workers responding to the crisis in Darfur rose from 228 in April 2004 to approximately 14,000 (national and international) by January 2006.<sup>8</sup> However, the positive impact of this increased assistance was significantly reduced by the insecurity that humanitarian actors encountered (i.e., deteriorating security climate, as well as ambushes on humanitarian vehicles and looting of goods). In accordance with United Nations security standards, United Nations agencies' accessibility throughout Darfur was available for only between 70 and 80 percent of the population between December 2005 and January 2006. In West Darfur, access was especially a problem, with United Nations access denied to more than half of the affected population.<sup>9</sup>

26. The situation in Eastern Sudan poses another challenge to peace. There, various political parties and armed movements have protested against their perceived historical marginalization by the central Government and, starting in the mid-1990s, periodically resorted to violence. The two largest parties that constitute this movement are the Beja Congress, whose membership is derived from the approximately 2.4 million Beja people, and the Free Lions, whose membership is derived primarily from the Rashayidah tribe. The two eventually merged, along with other smaller parties, to create the Eastern Front, which is a political party coalition with an armed branch. SPLA forces present in Eastern Sudan have acted somewhat as a buffer between the Eastern Front and the Government in various areas. The SPLA was, however, scheduled to exit the area by 9 January 2006. This deadline was postponed a number of times but the withdrawal was underway at the time of writing and is expected to be concluded by June 2006.

### **III. CONFLICT IN DARFUR AND ACCOUNTABILITY FOR CONFLICT-RELATED CRIMES**

27. Since January 2006, the conflict in Darfur reached a new level of violence, both in intensity and frequency. Fighting was especially intense in areas with a strong SLA rebel presence, such as Gereida, Shearia, and Jebel Marra. As a result of the fighting, Darfur's civilian population suffered from indiscriminate attacks, loss of property, and massive displacement. In many cases, people fled violence only to arrive at a place where they were subjected to more violence and again had to flee. In the Gereida area of South Darfur, well over 20 villages were attacked between January and April 2006 by armed militia and/or Government forces. Particularly alarming is that the Government reverted to using helicopter gunships on various occasions and reports that a white Antonov plane dropped bombs on the village of Joghana

(Gereida area in South Darfur) on 24 April. In attacks by militia where there was no clear Government involvement, the Government repeatedly failed in its obligations under international law to prevent them. While there is an abundance of State security forces in Darfur, there is an almost total lack of Government forces addressing the problem of human security.

28. In addition to fighting between Government forces, militias, and rebels, new to the violence was intra-SLA fighting and fighting along the Chad/Sudan border. This too was to the detriment of the civilian population. Since February 2006 in Masteri (near the border with Chad) the Sudanese Armed Forces (SAF) has been increasingly mirroring the behavior of their counterparts in places such as Shearia and Gereida. UNMIS Human Rights documented cases of SAF soldiers assaulting and torturing civilians, often based on their assumed rebel affiliation. Government soldiers in that area were also responsible for sexual and gender-based violence.

29. Alongside the intensification of the conflict, isolated incidents of people, and especially IDPs, being killed, physically abused, sexually assaulted, and harassed by militia continued daily. Additionally, Sudan's security apparatus continued to arbitrarily arrest people and abuse detainees for assumed rebel affiliation.

30. The humanitarian crisis, which was made worse by the renewed fighting, deteriorated further with humanitarian access seriously limited due to insecurity and real or *de facto* blockades on civilian populations. In some locations the Government and militia appeared to try to isolate the SLA by making roads impassable and implementing fuel embargoes. This was done without concern for the civilian population and is a violation of the Government's obligations under the International Covenant on Economic, Social and Cultural Rights not to prevent people from enjoying, amongst other rights, an adequate standard of living and the right to health. In other locations, the SLA ambushed and attacked humanitarian agencies and hindered their access to those in need. On 28 April 2006, UNMIS issued a press release noting, "Over the past few weeks, aid workers operating for non-governmental organizations (NGOs) and U.N. agencies have come under continuous attacks and harassment by armed groups in the area of Shangil Tobayi, Tawilla and Kutum in North Darfur. Several reports indicate that many of these attacks have been waged by SLA factions".

31. The principle of distinction, a cornerstone of international humanitarian law, is being flouted in Darfur by nearly all parties to the conflict. Fighters are not distinguishing between civilian and military targets. In many cases, fighters are targeting people based on their ethnicity rather than their participation in hostilities. Rebels, especially, must do a better job at distinguishing themselves from the civilian population when hostilities are taking place.

32. In the Gereida area in South Darfur, militias and Government forces attacked well over 20 villages between January and April 2006. On 24 April, hundreds of Arab militia jointly with Government forces attacked Joghana town (30 kilometres south-east of Gereida in Buram locality). The attackers used land cruisers, two Government attack helicopters, and one Antonov, which reportedly dropped bombs on the town. Several sources reported that the Antonov was painted white. On 21 April 2006, Dito village (north-west of Gereida) was attacked by Government forces that were reportedly supported by armed militia. Starting on 16 April 2006 Government forces began clearing the road from Nyala to Buram, with the alleged intention to attack SLA positions in the area.

33. On 18 March 2006 armed militia mainly - most of them in military uniforms - attacked villages north of Gereida, including: Abdus, Misroh Sanamanaga, and Abujabra Dakma villages. In the attacks approximately 12 people were killed and nine people were injured. On 10 March

2006, armed militia riding horses attacked the villages of Sugur, Mitea, Haraza, Chudul, Gundiko, Kafala, Jazira, Bagmara, Umjmania, Umkirkir, Helat Naga, Nutty, Baloom, and Twomat. Twenty-nine people were killed and 11 injured. In some of these fights, tribes joined the fights late to benefit from the looting and land grabs.

34. This and other fighting has brought approximately 60,000 newly displaced persons to Gereida town since November 2005. The fighting exacerbated the humanitarian crisis, which was further worsened by a fuel embargo that was imposed in March and April. The embargo impeded the ability of NGOs to carry out their work as they needed to use fuel for their operations. In addition, as water pumps could not function without fuel, the embargo threatened the water supply and thereby threatened the livelihoods, health, and hygiene of IDPs and the host community.

35. In the Shearia area of South Darfur, the Government and militias targeted the Zaghawa community as a whole. The Zaghawa are of the same ethnicity as the dominant faction of the rebel opposition in the Shearia area and are perceived by the Government and militias as SLA supporters and spies. Violations against the Zaghawa include beatings, systematic looting, arbitrary arrests, closure of schools, and denial of access to water resources. This has resulted in thousands of Zaghawa being forcibly displaced from Shearia town, nearly emptying the town of all Zaghawa. Following a reconciliation initiative by the Government among Zaghawa and disputing tribes in late 2005, IDPs started returning to their houses. However, there was a significant deterioration in the human rights situation in Shearia town and surrounding villages between January and March 2006. New cases of SLA retaliation attacks against tribes perceived to be Government-allied tribes have also been reported.

36. In addition to the targeting of the Zaghawa community in Shearia, on 13 April 2006 approximately 500 members of Arab militia, described as being from the Misseriya tribe, attacked Kurunji village (Shearia area of South Darfur). Kurunji is inhabited by approximately 7,000 people primarily from the Birgit tribe. The attack was well coordinated. The attackers dragged men and women from their homes, beat them, looted their houses, and stole livestock. At least 15 villagers were killed and 19 wounded. There appeared to have been no SLA presence in the village, although some villagers did take up arms to resist the attack. AMIS personnel saw militia gathering five kilometres north of Kurunji, and a day before the attack (12 April) the militia were as close as two kilometres from the village.

37. On 14 February 2006, Government forces and allied militia carried out a joint attack with air support on Rahad El Reel (10 kilometres east of Shearia town in South Darfur). The SLA and IDPs reported that a mixed force of Government soldiers (with air support) and 300 militia members attacked the town. While there was an SLA presence in the area and the SLA shot down one Government attack helicopter, during the fighting seven civilians were allegedly killed and five injured in a manner that appeared to be in contravention of the laws of war. Houses were burned and militia and Government soldiers looted property.

38. Similar to the Gereida area, humanitarian access in Shearia was also restricted. Amongst other locations, people traveling on roads in and out of Labado in late March and April were attacked by militia or arrested and detained by National Security. This created a de facto blockade that prevented necessary humanitarian assistance from reaching people in need and prevented people from accessing goods and services available outside of Labado. The situation was made worse because there was no health care facility aside from an NGO clinic that operated once a week. It was reported that people, including young children, died in Labado due to lack of

medical facilities. People also died while en route to Muhajiria for medical care because the primary means of transportation (donkey carts) was too slow.

39. Eastern Jebel Marra, a location in West Darfur with a traditionally strong SLA presence, was a stage for violations to the ceasefire agreement by both the Government and the SLA. Clashes that occurred between December 2005 and April 2006 killed civilians, led to the displacement of the population from several villages, and forced the evacuation of the international presence from the area. This resulted in an exacerbation of an already poor humanitarian situation. On 24 December 2005, SLA troops attacked a Government convoy in the outskirts of Rockero, in Jebel Marra. During the attack, at least two men not participating in the hostilities were killed and the SLA took two civilians captive. One of the men killed was reportedly the head of the “Fifth Column,” an armed group of Fur allied with the Government. From 24 December onwards, the “Fifth Column” and Rockero SAF troops looted Rockero and attacked at least seven villages around Rockero. This led to the displacement of the civilian population to Nertiti and SLA-controlled areas north and southwest of Rockero (such as Tibon and Daya). On 23 January 2006, SLA troops attacked an SAF compound in Golo (southwest of Rockero). This violence caused the three INGOs present in Golo to evacuate the next day. Also on 24 January, militia entered Golo and in a concerted action with SAF troops looted the town, including the hospital and the compounds of the three INGOs. As had happened in Rockero, the civilian population fled to SLA-controlled areas south of Golo. In early March 2006, the SLA attacked a SAF post in Sabanga. In apparent retaliation the SAF attacked the areas of Tibon and Daya on 17 March. This attack resulted in reports of approximately 30 civilian deaths.

40. Along the Chad/Sudan border, there was a large build-up of SAF troops, Central Reserve Police, Chadian opposition, and militia in previous months. Many of these contingencies traveled from within Sudan, moving westward through the inner parts of Darfur. They were largely undisciplined and their presence has had a negative impact on the human rights of civilians. In the area of Masteri (southwest of West Darfur), for example, where there was an increased deployment of SAF soldiers in February 2006, the troops have arbitrarily detained and beaten people. Some of these detainees were transferred to the Military Intelligence facility in El Geneina where their abuse continued. In almost all the cases, the detainees were accused of being rebels or having knowledge about rebel activities. The SAF were also responsible for sexual violence in the Masteri area. Out of fear of being harassed, assaulted, and robbed by armed men, the heightened military presence is also made IDPs in some areas grew increasingly reluctant to access markets, collect firewood, and farm.

41. Armed men, including State officials in certain areas near the border, were also extorting money from IDPs and villagers by taxing movement across checkpoints, charging protection fees, and imposing illegal “taxes” on income-generating activities, such as firewood collection. In March 2006, UNMIS Human Rights received information during a mission to Fora Baranga of the presence of four checkpoints on the 10 kilometres of road between Fora Baranga and Kaja, which lies on the Chadian border. The first and third checkpoints were said to be run by the Central Reserve Police and the second and fourth by armed militia. At each checkpoint, the person responsible for the vehicle is reportedly required to pay an exorbitant bribe of 30,000 Sudanese dinars (approximately US\$ 130).

42. Because of insecurity and predictions of cross-border violence, on 5 January 2006, the Special Representative of the Secretary-General noted publicly that the United Nations raised the security level in much of the western part of the West Darfur to a Phase IV designation (emergency life-saving operations). This resulted in a 75 per cent reduction in UN staff in the Phase IV areas, and many NGOs similarly reduced their staff and activities. As a result

humanitarian assistance to IDPs and other civilians was reduced. At this same time new cross-border population movements from Chad into Sudan, notably to Gelu, Tandelti and Habila, was creating additional needs for assistance.

43. In recent months there were numerous reports of movements of white vehicles carrying armed men in military uniforms in the direction of the border with Chad. Human Rights Officers saw such vehicles. This use of white vehicles for military purposes adds to reports of the use of the white Antonov plane in the Joghana attack and reports of the use of white Government helicopters in other attacks. The failure of parties to the conflict to distinguish their vehicles from those of the UN, African Mission in the Sudan (AMIS), and NGOs presents a threat to the security of the staff of all these organizations and raises serious concerns about perfidious means of warfare.

44. In early January 2006 militias launched coordinated attacks against the four villages of Timit, Sugu, Guza, and Ardeba in the Kerenek area. Kerenek is located approximately 50 kilometres east of El Geneina. The attacks were made in apparent retaliation for the killing of two men by a Gimir resident of Timit on 9 January 2006. Witnesses said that large groups of armed nomadic men on horseback and camelback carried out the attacks. Nearly all of the men wore green camouflage, military-style uniforms and had their faces covered. The teams of attackers systematically looted residents' homes, abused and raped residents within their homes, and rounded up groups of residents before separating and gang-raping women and girls. Each village experienced at least two such systematic attacks, characterized by similar patterns of abuse by attackers in similar dress. Within a period of days, the entire populations of the four villages left, most of them heading for Kerenek carrying no belongings. In the immediate aftermath of the attacks, a total of 424 families (an average of 2,015 new IDPs) were registered in Kerenek. Government forces did not attempt to intervene in the attacks, and no measures were taken to protect or relocate villagers during the first days of the attack.

45. Civilians also suffered from fighting between the Mini Minawi and Abdel Wahid-led factions of the SLA in North Darfur. The fighting was the product of an ongoing struggle for power and land. On 19 April 2006, fighters aligned with the Minawi faction of the SLA launched a series of simultaneous attacks on six villages in the area around Tawila, resulting in killings, rapes, and beatings of civilians. There were reports of up to nine people killed and 80 people injured. While some injured and killed were fighters, there were also civilian casualties.

46. According to witness accounts from the different villages, on 19 April 2006, at around 9 a.m., a large number of men drove into the villages in military vehicles loaded with heavy machine guns, AK-47 assault rifles, and other assorted weapons followed by armed men riding on camels and horses. Some of the attackers were wearing uniforms while others were in civilian clothes. People estimated that the number of attackers were between 200 and 400. They surrounded the villages, prevented the people from leaving and at the same time started shooting indiscriminately at civilians they encountered. They then began looting houses, stealing goats and personal belongings, and some of those who resisted were reportedly shot. One witness described how a man was shot and killed while he attempted to flee by jumping over the wall of his house. Another witness described how he was shot in the left ear with the bullet narrowly missing his forehead. Witnesses reported that the assailants targeted mostly male civilians and often asked the women where their husbands were. In many cases the attackers told the villagers to leave and go find somewhere else to live since they were going to occupy the villages.

47. These attacks followed intra-SLA clashes in mid-March and early April 2006 in Korma (north of Tawila) that led to thousands of people becoming displaced and caused some to

preemptively flee out of fear that their villages might be the sites of future attacks. This earlier violence resulted in two types of displaced persons: People who fled to the surrounding villages and those who fled to the nearest secure IDP camps. In Korma, 150 families were present before the fighting took place on 3 April. According to civilians interviewed on 5 April, the town nearly emptied and the families which had started to return fled again to the westward surrounding area. Seventy-seven of these families (approximately 385 individuals) registered in Abu Shouk camp. There were also two main villages apart from Korma city that were reportedly subjected to attacks: Bandago and Kartam (east of Korma). Before these clashes 85 families populated Bandago. After the 3 April clash, the village became almost empty with reports of only 10 families remaining. Also after the 3 April clash people to the east of Korma preemptively fled from their villages, such as Bilala and Scharg, out of fear that their villages might be the sites of attacks. Bilala, with a reported population of 100 families, was reportedly reduced to 20 families.

48. As the killing of civilians, raping of women and girls, and pillaging of entire villages continued in Darfur, so too did a culture of impunity. Domestic courts and other mechanisms purporting to address gross violations of human rights and international humanitarian law were superficial and inadequate. It appears that the ICC has a critical role to play in Darfur in bringing to justice State officials, and militia and rebel members alike.

49. Despite the establishment of three new special courts in June and November 2005 which have the power to try serious Darfur conflict-related crimes, such crimes were not being seriously investigated or prosecuted. Of the 13 cases that came before the special courts between June 2005 and 15 April 2006, only one case related to an attack that defined the crimes committed during the height of the conflict from 2003 to 2004 and the renewed fighting in the second half of 2005 and 2006. But the men charged in relation to this attack (October 2005 attack on Tama in South Darfur) were found guilty for stealing property at the site of the attack after it took place. No one has been found guilty of being part of the attack. One of the special courts was also to hear cases related to a January 2005 attack on Hamada, but this case was stalled at the time of reporting.

50. Many of the cases that came before the special courts were against civilians involved in criminal activity such as armed robbery, unlawful possession of weapons, and murder. The issue of command responsibility and holding high-ranking officials accountable was effectively ignored. Only one high-ranking official was ever charged and he was acquitted. Six State officials were convicted by the special courts, but they were all low-level officers. The most significant of these, from a human rights perspective, were two cases involving convictions against Military Intelligence officers for the murder of individuals who died as a result of torture while in custody.

51. It is especially important for the courts in Darfur to hold commanders responsible, as they are the ones either ordering the violence or have the power to stop unlawful actions by their subordinates. Under international law, commanders and other superior officers not only must refrain from the commission of war crimes, but must also be held accountable for unlawful actions that they order their subordinates to carry out. Moreover, commanders are criminally liable if they knew or should have known about crimes commissioned by their subordinates and did not take sufficient measures to prevent or punish those crimes. The doctrine of command responsibility thus places a high degree of responsibility and liability on, for example, the heads of the armed forces at the national and state levels, the heads of National Security at the national and state levels, the heads of Military Intelligence at the national and state levels, and militia and rebel movement leaders.

52. In rare cases, regular domestic courts have charged State officials allegedly involved in conflict-related crimes. One notable example was the case of the Central Reserve Police who was

convicted on 3 May 2006 for raping a 10 year-old IDP girl in Mornei on 31 August 2005. But these cases do not outweigh the larger impediments to justice in Darfur. In some localities in Darfur (such as in Wadi Salih, Mukjar, and Jebel Marra) there were no judges and prosecutors, leaving people without any effective remedy, and leaving security and law enforcement officials unsupervised and unrestrained by law. More generally, there still exists in Darfur a lack of political will to pursue justice or prevent attacks, an ill-equipped police force, and legislation that protects State officials from criminal prosecution.

53. The ad hoc investigatory committees established in Darfur are advertised as another means to achieving justice. The Government has established these investigatory committees for attacks on, amongst others, Hamada and Buram (January 2005), Khor Abeche (April 2005), Marla and Labado (December 2004), Aro Sharow and Guzminu (September 2005), Tama (October 2005), and Shearia (March 2006). The findings of some such committees have not been made public and do not appear to be significantly contributing to legal action. In many cases the investigation processes were inadequate and State responsibility was not addressed. The committee established in March 2006 to look into attacks in Shearia has a mandate that focused on describing the incident and listing the losses. There was little emphasis placed on bringing the perpetrators to justice.

54. The committees have other recurring problems. They generally portray the violence they have investigated as inter-tribal disputes despite strong indications of State involvement. The methodologies of most of the committees are unclear and lacked transparency. In some cases, committees did not visit the attacked areas and relied solely on reports from the security agencies. The committees' impartiality and independence were undermined by the membership of armed forces and other security agencies personnel. Additionally, the committees did not have adequate resources to fulfill their mandates.

55. The Government has also portrayed these committees as a means to facilitate the broader tribal reconciliation process in Darfur. While reconciliation processes are critical to minimizing tensions in the region, it is problematic that these processes are viewed by participants as being imposed on them by the Government, while at the same time stalling more formal methods of justice. In December 2005, the Darfur Chief Justice stated that crimes relating to the joint SAF/militia attacks on Hamada in January 2005 will be tried before a national criminal court. Since then, a Government official reported to UNMIS Human Rights that investigations had not moved forward because the Governor of South Darfur favored an ongoing reconciliation process among the affected tribes.

56. This ongoing reconciliation process has, however, been rejected twice by residents of Hamada. Most recently this happened in January 2006 when the people of Hamada criticized the final reconciliation agreement because they said those who signed it were unrepresentative of them and that the compensation amounts they had agreed upon had been reduced. They also rejected the Government's attempt to characterize the attack as a "tribal" issue by inviting other members of the Rizeigat, Tarjum, and Misseriya tribes to sign the agreement. According to them, the agreement needed to be made between the Government (which was thought to be responsible for the attack) and the representatives of Hamada.

57. In addition to a lack of accountability in Darfur, the Government has failed to hold people accountable for crimes related to the 21-year civil war in the North and South. The parties to the CPA agreed only to "initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process." But no steps were taken even to do this. The not yet established National Human Rights Commission could play an important role in

mapping out these crimes and proposing relevant mechanisms for establishing accountability for past crimes.

#### **IV. SEXUAL AND GENDER-BASED VIOLENCE IN DARFUR**

58. Across Darfur women and girls continue to be sexually assaulted and raped. Most often this happens when they go outside the confines of their IDP camps to collect firewood or hay, fetch water, or farm. In many cases the perpetrators are armed men in military uniform or civilian clothing traveling in groups on horseback or camel. The perpetrators often ridicule the women and tell them they should not be collecting grass because the grass is for grazing their livestock. They also tell the women not to return to the area. These acts not only effect the individual victims, but they effectively terrorize and imprison IDPs by making them fearful of leaving their homes, thereby obstructing them from accessing income-generating items and items necessary to their livelihood. Acts of sexual abuse are also occurring during larger attacks on villages by militia or joint militia-Government operations.

59. From late February to March 2006, UNMIS Human Rights documented five separate incidents of sexual abuse involving at least 25 IDPs in an area outside a single West Darfur IDP camp (Ardamata) by small groups of armed men from nomadic tribes. In Kalma camp in South Darfur, UNMIS Human Rights learned of three women and two girls who were raped in March. UNMIS Human Rights confirmed that in late January and February in Manawashi (South Darfur), at least 12 IDP women were raped. The women had come to Manawashi after fleeing violence carried out by militia with police support in Mershing (South Darfur) in mid-January. Human Rights Officers also spoke with nine women who were the victims of gender-based violence during the mid-January violence in Mershing. In early January 2006 when armed militias attacked four villages in West Darfur, UNMIS Human Rights documented 25 victims of rape, at least five of whom were children. Most victims were subjected to beatings and gang-rape.

60. The Government has taken some positive rudimentary steps towards addressing the problem of sexual violence in Darfur. The absolute denial by the authorities of the existence of rape in Darfur has receded. In November 2005, during the national campaign against violence against women (25 November to 10 December 2005), the Government held a press conference in Khartoum admitting that rape was a problem in Darfur and stated that they were committed to addressing it. It presented a National Action Plan to end violence against women in Darfur with time-bound targets and activities. An inter-ministerial technical committee was created in Khartoum to oversee the implementation of the action plan, and workshops were held in all three states for local authorities. State committees to combat violence against women were created in South, North, and West Darfur. In December 2005, the Government created a new unit to combat violence against women and children under the Minister of Justice to institutionalize and coordinate the Government's response to the problem.

61. Government representatives have also conducted joint assessment missions with UNMIS Human Rights, which demonstrates a degree of willingness to engage in the issue. One was to Mornei (West Darfur) in December 2005, prompted by allegations that members of the Central Police Reserve were involved in committing serious violations including rape. Other visits took place in Nyala (South Darfur) in March 2006 to assess the work of the South Darfur Committee to Combat Violence against Women and to make proposals for strengthening its effectiveness in dealing with sexual and gender-based violence. In March, UNMIS Human Rights was informed that additional Government funds were being sought to support the South Darfur Committee and the Government has promised to involve civil society.

62. Prior to these steps, the Minister of Justice issued a decree in October 2005, known as the Rules of Application for Criminal Circular 2. The rules confirmed that victims of rape could obtain medical treatment without first notifying the police, as had been the practice. The rules also stated that health-care providers would not face negative repercussions or harassment for providing treatment to victims. The Government has committed itself to disseminate the new rules to police and health care providers and take action in cases of non-compliance. On 13 March 2006, UNMIS Human Rights was informed that the Ministry of Interior had sent letters to police stations in Darfur informing them of Criminal Circular 2 and requesting the distribution of Form 8 to the authorized clinics.

63. Despite all these steps, the above-mentioned cases of violence against women and girls demonstrate that far more needs to be done by the Government to combat sexual violence. Factors contributing to a lack of improvement include a poorly resourced law enforcement system that is not sufficiently supported by the Ministry of Interior, failure on the part of the police to properly investigate complaints, and social stigmatization and fear of reprisals that blocks victims from reporting the incidents to the police. In a positive contrast to this, incidents of sexual and gender-based violence in the area outside of Ardamata IDP camp in West Darfur dramatically decreased in March. Many concerned accredit this to the combined positive affects of increased Government and AMIS Civpol patrols and to the opening of a new police post in the area on 12 March.

64. The mechanisms and initiatives put in place to address sexual and gender-based violence could have a positive impact through their mandate to monitor and help facilitate proper police response and medical attention for victims. But they could be more active and could be receiving more support from State authorities. The National Action Plan continually missed its target dates for various goals. While some workshops have been held in Darfur to raise awareness of local authorities on the issue of sexual violence and Form 8 compliance, more is needed to be done on this front, especially in areas outside towns. In eastern West Darfur, women are still obliged to report to the police and obtain a Form 8 before getting medical treatment. In other locations in West Darfur, police and Ministry of Health healthcare providers are unfamiliar with the Rules of Application for Criminal Circular 2; the Rules have not been circulated to many rural areas; some officials continue to insist that victims visit police before seeking medical treatment; and some healthcare providers continue to express fear of possible repercussions.

65. In late January 2006, UNMIS Human Rights documented two cases (one in West Darfur and one in South Darfur) where medical staff failed to abide by the Rules of Application for Criminal Circular 2 by refusing to provide medical services to abused women who did not present them with the Form 8 from the police. In one of these cases, a medical exam was eventually conducted, but the final medical report displayed the ignorance of the examiner, which stated: “she had been beaten seriously on her back, there are marks showing the beatings but there was no indication of rape, her hymen was torn a long time before”.

66. In South Darfur, where the State Committee is more active than in the other states, UNMIS Human Rights accompanied members of the Committee on 21 March 2006 to Mershing and Manawashi police stations to investigate the implementation of policies to combat sexual violence. The team observed that there were no proper procedures for registering sexual and gender-based violence cases at police stations; there was no presence of female police in the police stations; in Mershing there were no sexual and gender-based violence cases reported or registered. However, the Officer in Charge admitted that such cases were happening. In Manawashi, the police admitted that a few cases had been reported and registered but they did not know how many. In both areas the IDP community has little confidence in the police; the police

stations lack friendly space for survivors to report in a confidential manner; and the police stations have no vehicle or radio allocated for logistical support.

67. In Kass (South Darfur), a judge informed Human Rights Officers that seven cases of sexual violence, including rape, were tried in the last year, with six convictions. The conviction of rape offenders is crucial to ending sexual violence in Darfur, regardless who is the victim or perpetrator. However, in Kass none of the cases dealt with crimes against IDPs. Yet, UNMIS Human Rights documented 12 IDPs from Kass who were raped between 15 February and 15 March 2006. This reflects the pattern of police inaction towards crimes against IDPs, as well as reluctance on the part of IDPs to report incidents.

## **V. VOICING HUMAN RIGHTS CONCERNS IN SUDAN**

68. In Khartoum, Darfur, and Eastern Sudan, people are being harassed, arrested, detained and physically abused for voicing their human rights concerns. Victims include members of NGOs, journalists, politicians, people who file complaints with the police or other Government officials, and people who discuss human rights issues with members of the international community. Nongovernmental organizations and fora that discuss human rights issues, as well as rule of law, conflict resolution and peace-building, have had their meetings shut-down.

69. As a result of the Government's response to people who voice their human rights concerns, people are less willing to discuss human rights issues or file complaints. In Zalingei, IDPs cancelled a demonstration planned for 24 March in protest of the Government's failure to protect IDPs, out of fear of reprisals. UNMIS Human Rights is increasingly concerned about the welfare of the victims and witnesses they speak with.

70. Sudan's security apparatus is largely responsible for the human rights violations against people who voice their human rights concerns. This indicates that the Government has yet to truly appreciate the value of human rights and instead considers advocating the exercise of such rights a threat to its national security. Oftentimes, and without foundation, the Government confronts human rights proponents as being enemies of the State. This attitude is antithetical to commitments the Government made in the CPA and to democracy.

71. On 9 March 2006, the West Darfur HAC Commissioner issued a letter to a prominent national NGO that engages in, amongst other activities, protection and human rights work; it was ordered to suspend its activities in West Darfur. This letter, which was copied to National Security and Military Intelligence, followed a series of threats and harassment of the NGO's staff members by security officials in West Darfur. The NGO's El Geneina office was reopened on 4 April 2006 after receiving a letter from the State's Ministry of Social Affairs and Information on 28 March stating that it could resume its activities in El Geneina. However, on 4 April the El Geneina director of the NGO requested a letter from HAC confirming that it could resume its activities. The acting HAC Commissioner for West Darfur State stated that he would not provide such a letter until the NGO had presented its new annual registration certificate. The NGO's annual certificate expired in March 2006, and according to the organization's director in Khartoum, it is in the process of re-registering in accordance with procedures of the new Organization of Voluntary and Humanitarian Work Act of 2006, which came into force on 16 March 2006. The request by HAC appears, however, to be inconsistent with the Act, which gives NGOs 90 days from the time the Act comes into force to re-register.

72. On 23 January 2006, a Government delegation from El Geneina visited Kerenek (West Darfur) to investigate an attack on four adjacent villages that took place in January. Three sheikhs

spoke to the delegation about assaults and torture of civilians, theft of livestock, and the rape of 36 women. They also told the delegation that soon after the attacks the police refused to open a file for the incidents. Three sheikhs were arrested the next day by police who alleged that they made false allegations. One of the sheikhs said that after he was arrested he was beaten with a stick for 15 minutes by a police officer outside the police station. On 25 February 2006, the three sheikhs were released by a guarantor.

73. On 5 December 2005, police and National Security officers arrested a sheikh from an IDP camp in South Darfur and detained him for 14 days. He was accused of “speaking to foreigners”. He was beaten on the head during police questioning and had death threats made against him. He was told, “we will make an example of you to all the sheikhs”.

74. The restrictions imposed on people and organizations who voice human rights concerns are not limited to Darfur. On 21 February 2006, parliament approved the national Organization of Voluntary and Humanitarian Work Act of 2006. The Act came into force on 16 March 2006. It prescribes values and goals to the work of civil society organizations and it appears to allow the Government to rely on, and organize, civil society operations to address humanitarian crises and other issues without their consent. The Act allows the Government to reject and revoke an NGO’s registration without adequate judicial review and it grants broad powers to the Registrar and the Commissioner of the Humanitarian Aid Commission that leave a potential for abuse. The Act also establishes burdensome procedural requirements that could impede the work of civil society actors. (Amendments provided for judicial review by the Committee of Humanitarian Affairs did not survive the final vote.)

75. On 22 January 2006, National Security officers raided an NGO Forum meeting in Khartoum around the time of the African Union Summit, detaining briefly for a few hours all participants, including European diplomats, members of the foreign press, a member of the National Assembly of Sudan and a Human Rights Officer. The raid happened just before 6 p.m., as the meeting was drawing to a close and a final communiqué was to be adopted criticizing the Government’s human rights abuses. All detainees were eventually released.

76. In Khartoum on 30 December 2005, National Security arrested a journalist for writing an article critical of the President. The interrogating officer stated that the words were humiliating to the President and undermined the Presidency. He was formally arrested on the charge of inciting hatred against the State under article 30 of the National Security Act. He was released on bail on 2 January. Upon release, he was informed that he was going to be charged with joint criminal responsibility with the editor-in-chief and for contravening the values and rules of the journalist. The article 30 charge was withdrawn. It was a welcome event when formal censorship ended with the lifting of the state of emergency in 2005, but this case demonstrates that other applicable laws can be used to achieve the same goal.

77. In Kassala, in Eastern Sudan, National Security officers arrested five members of the Kassala Beja Congress between 3 and 4 April. It appears that the group arrested in April was arrested in relation to a peaceful sit-in the Beja Congress organized on 27 March in front of UNMIS in Kassala to protest against the continued detention of their three colleagues and the general harassment they face from security officials in Kassala. The authorities were apparently unhappy at the attempts of the Beja Congress to involve UNMIS and believe such involvement is an infringement of sovereignty. He was released on 6 April.

78. Throughout the Sudan, Government officials have, on various occasions, also obstructed the work of UNMIS Human Rights. This included authorities intimidating or physically abusing

individuals to deter them from speaking to Human Rights Officers; the uninvited and often surreptitious presence of State authorities at meetings between IDPs and Human Rights Officers; denying UNMIS Human Rights access to various detention facilities in Darfur and Khartoum, and certain IDP camps in Darfur and Kassala; Humanitarian Aid Commission (HAC) requiring Human Rights Officers to inform them of their presence upon arriving in Darfur IDP camps, implying that HAC or National Security will monitor their activities; and prohibiting UNMIS Human Rights from traveling to certain areas in Abyei.

79. The harassment, arrests, detentions, and physical abuse of people who voice their human rights concerns is in stark contrast to the initiatives Sudan took to allow civil society to operate freely. The Government relaxed media restrictions in Khartoum immediately after the adoption of the Interim National Constitution in July 2005. It did not interfere with many of the community-based activities surrounding the international campaign of 16 Days of Activism against Gender Violence that started on 25 November 2005. The Government has, on various occasions, allowed national organizations and the international community to carry out civil society human rights training and capacity-building activities in Khartoum, Southern Sudan, Eastern Sudan, the transitional areas, and Darfur, including the training of independent journalists and human rights trainings for human rights activists, lawyers, and community leaders.

80. The Government's intolerance towards people who voice their human rights concerns is also a significant threat to the larger CPA implementation process. Actions by the Government that place restrictions on freedoms of expression and association of civil society and political actors hamper the Government's commitments in the CPA to promote political participation in anticipation of the local, state, and national elections, as well as the referendum on Southern Sudan in 2011.

## **VI. UNMIS ACCESS TO NATIONAL SECURITY, MILITARY INTELLIGENCE AND DARFUR REBEL DETENTION FACILITIES**

81. As noted in this report and the second periodic report, National Security and Military Intelligence officers have committed acts of torture, subjected people to cruel, inhuman or degrading treatment, detained people for prolonged periods of time, and committed other human rights violations. The ability of UNMIS Human Rights to access detention facilities is critical to assessing the treatment of detainees and provides a degree of oversight that is otherwise lacking and creates incentives for maltreatment. Opening detention facilities to Human Rights Officers also assists UNMIS Human Rights in monitoring the progress of the reforms the Government needs to make in its security apparatus.

82. In accordance with its mandate, UNMIS Human Rights has sought from the Government free and unfettered access to all detention facilities in Sudan. It has made the same request to the SLA rebel movement. Free and unfettered access should, in particular, include speaking to detainees in private and granting detention visits without prior notice. Private meetings permit detainees to speak more openly with Human Rights Officers. Unannounced visits allow Human Rights Officers to more accurately observe prison conditions, monitor the health of detainees, and to conduct follow-up interviews.

83. Since August 2005, representatives of the Government in Khartoum have agreed to provide UNMIS Human Rights with free and unfettered access to all detention facilities in Sudan, including National Security and Military Intelligence facilities. UNMIS Human Rights has developed a strong working relationship with these Government representatives in Khartoum, but the degree to which this agreement has been realized at the local level has varied. In El Geneina,

the Ardamata prison director informed UNMIS Human Rights that he received instructions on 9 March 2005 from the Minister of the Interior not to allow UNMIS and other agencies and organizations to visit prisons unless the Minister authorizes the visit. UNMIS Human Rights faced a similar experience in North Darfur and Zalingei. In South Darfur access to detention facilities was increasingly blocked since late February 2006.

84. UNMIS Human Rights has repeatedly asked the Government to put in writing its commitment to allow UNMIS Human Rights access to detention facilities. This is a key step that would help to ensure the Government has a consistent access policy for UNMIS Human Rights. This had not happened by the time of reporting.

#### **A. National Security**

85. Prior to March, National Security officials in South Darfur were relatively open and cooperative to allowing UNMIS Human Rights access to detainees in their custody. Access to the main detention facility had been granted since 12 October 2005 and Human Rights Officers had conducted five visits to the facility. Between October and March, they carried out supervised inspections of prison cells, detention centre facilities, and were allowed to conduct private interviews with detainees. Authorities also gave UNMIS Human Rights access to a list of current detainees, alleged dates of arrest, and the reason why detainees were being investigated. The state's Director of National Security also requested regular follow up meetings with Human Rights Officers so that human rights concerns arising during visits could be discussed.

86. In contrast to this cooperation, National Security in South Darfur refused to allow UNMIS Human Rights access to their detention facilities throughout March 2006. Even prior to March, access outside the state capital of Nyala was generally more limited, although Human Rights Officers had been able to visit National Security offices and detaining cells in El Deain town and Tulus. Also, visits were only permitted if a written request to South Darfur National Security officials was submitted one week before the visit. Reports suggested that prior to visits the detention facility was cleared of equipment allegedly used to mistreat detainees and that individuals were transferred or released to reduce levels of overcrowding. Some detainees also reported that individuals were temporarily removed from their cells and concealed from Human Rights Officers during their visits. UNMIS Human Rights also learned that some detainees were questioned about their interviews and some of those who were released were instructed not to speak to Human Rights Officers. In El Geneina, authorities allowed Human Rights Officers to access the National Security detention facility but it was never found to be holding any detainees. National Security told Human Rights Officers that it does not detain persons in El Geneina and converted its detention facilities into storage space. This contradicts information obtained by UNMIS Human Rights.

87. In North Darfur, National Security officers have insisted that Human Rights Officers must provide a letter from the El Fasher, North Darfur, National Security office granting access on a specific date. At the same time, National Security officials have maintained that their detention cells in North Darfur have not held detainees since the signing of the N'Djamena Peace Accords in 2004. They have insisted that all detainees held under emergency and national security laws are kept at the Shalla detention centre, the largest prison facility in North Darfur. On 31 October 2005 the director of the El Fasher National Security Office showed Human Rights Officers around one empty detention facility adjacent to their El Fasher office to prove his point. Nevertheless, UNMIS Human Rights continues to receive reports, the most recent being from 3 March 2006, of people being arrested and detained at various locations in El Fasher run and controlled by National Security.

88. At the time of reporting, UNMIS Human Rights in Zalingei had never been permitted to visit a detainee in the custody of National Security. Since December 2005 the head of National Security in Zalingei has changed three times and, without a written agreement from the Government permitting UNMIS Human Rights detention access, this has created a significant obstacle. With each new head, UNMIS Human Rights had to explain its mandate and re-start negotiations. Access has, however, been granted in principle. On 14 December 2005, National Security said it would grant access to detainees. When Human Rights Officers followed up on this access, they were informed that the detainees had been moved to a Military Intelligence facility. On proceeding to the facility on 14 and 15 December 2005, Human Rights Officers were informed that the detainees had been transferred back to National Security. On returning to National Security, the head was absent and other National Security staff refused access. On 2 February, UNMIS Human Rights was denied access to National Security detention facilities in Nertiti. The head of National Security in Nertiti informed them that access would only be granted upon presentation of the written agreement.

89. In Khartoum, UNMIS Human Rights has not been allowed access to National Security detention facilities. At Kober and Dabak prisons the directors informed Human Rights Officers that National Security detainees did not fall under their jurisdiction and they had no authority to grant access.

### **B. Military Intelligence**

90. In Khartoum, UNMIS Human Rights has never requested access to Military Intelligence detention facilities. In eastern West Darfur, Military Intelligence was comparatively more cooperative than in other locations in Darfur. UNMIS Human Rights sought access to Military Intelligence detention facilities in December 2005 (described above), and in January and February 2006 in Zalingei. On 24 January, the head of Military Intelligence in Zalingei was away from the office and on 26 January access was refused. Access was granted on 27 January, when Human Rights Officers were permitted to speak to three of six detainees they asked to meet. On 1 February, Human Rights Officers were granted access to the remaining three detainees. On both occasions, the head of Military Intelligence insisted on being present during the interviews. Human Rights Officers were also granted access to Military Intelligence facilities in Nertiti on 2 February 2006. On 9 February 2006 they were, after initially being refused, permitted to enter the Military Intelligence compound in Golo where the detention facilities are located. In Nertiti and Golo it appeared that no detainees were being held at the time of the visits.

91. In El Geneina (West Darfur), the head of Military Intelligence has recently agreed in principle to allow Human Rights Officers to visit specified detainees, although he refused general access to the Military Intelligence detention facility. He also allowed Human Rights Officers to visit a detainee who was being held in El Geneina hospital. Access to Military Intelligence was first requested in September 2005 and Human Rights Officers were permitted to interview a detainee at this time. This was done under severe limitations, including the vetting of questions before-hand and being surrounded by eight Military Intelligence personnel during the interview. Human Rights Officers conducted two further visits under similar conditions prior to their access being withdrawn on 20 September 2005 purportedly due to instructions from Military Intelligence Headquarters in El Fasher “not to allow foreigners in military installations.”

92. In Nyala (South Darfur), where Human Rights Officers have twice requested access since December, the Director of Military Intelligence has consistently refused, claiming to lack any knowledge of the UNMIS Human Rights mandate to monitor detention facilities. The Director

has further stated that military detention facilities in Nyala only hold members of the SAF whom are not subject to United Nations monitoring. In North Darfur, where UNMIS Human Rights has not sought access since 21 November, Military Intelligence has maintained that it does not have prison facilities, but has what it describes as “temporary holding cells” where detainees are kept for very short periods while investigations are pending. Notwithstanding these assertions, the team continues to receive numerous reports of people being arrested and detained under inhumane conditions in various facilities within the El Fasher locality believed to be run and controlled by Military Intelligence.

### **C. SLA detention facilities in Darfur**

93. The SLA granted UNMIS Human Rights access to their detention facilities on various occasions in several locations. In some cases, Human Rights Officers were not given a private venue to interview detainees. In other cases they were. In two locations in South Darfur, Human Rights Officers were granted full access and allowed to conduct unsupervised interviews with detainees. In eastern West Darfur, SLA granted UNMIS Human Rights access to two detained persons on 19 January in Tibon with the presence of guards in close proximity. The SLA also allowed UNMIS Human Rights to interview a person in Daya on 19 January 2006 in the absence of SLA personnel. In North Darfur, members of the SLA have shown Human Rights Officers around their detention facilities in Thabit. Human Rights Officers were allowed to interview four male detainees, including two minors, in the presence of SLA commanders and soldiers. During both visits, Human Rights Officers were granted access to a detention register which provided records about the detainees including their addresses, occupations, and the crimes committed.

## **VII. REFORMING SUDAN’S SECURITY APPARATUS**

94. Sudan’s security apparatus is supported formally and informally by variety of institutions. They include the National Intelligence and Security Service, Military Intelligence, Border Intelligence, the Sudanese Armed Forces, the Popular Defense Forces, and the Central Reserve Police. Members of the security apparatus in Sudan have arrested, detained, and resorted to lethal force. In a number of cases the arrests were arbitrary, the use of force was excessive, and people detained were denied fair trial guarantees, held for unlawfully prolonged periods of time, and subjected to physical and psychological abuse. The security apparatus also been responsible for restricting individuals’ rights to freedom of association and expression. These abuses were documented in Darfur, Khartoum, and Eastern Sudan. These violations are detailed in this report and in the *second periodic report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan* which was issued in January 2006.

95. There is an urgent need for legal and institutional reform of the security apparatus in the Sudan. Legislation governing these agencies provides officers broad powers of arrest and detention with little effective judicial oversight mechanisms to hold perpetrators of human rights abuses accountable. If respect for human rights, rule of law, and democracy promised by the CPA are to become a reality in the Sudan, the Government has to drastically rethink the powers and purposes of its security forces.

96. On 26 April, the Special Court in Bahri, North Khartoum, delivered a verdict that acquitted 10 men whose confessions were obtained under torture at the hands of National Security officers. The men were accused of plotting a military coup in September 2004. This is a commendable verdict that is in line with international human rights standards, which prohibit a court from relying on evidence gained through torture. This case should be an example to be applied throughout all of Sudan.

97. This case and reforms that the Interim National Constitution envisages for National Security are a crucial starting point. The Interim National Constitution orders that the new National Security Service to focus on “advice, information gathering and analysis,” rather than arrests and detentions. It also requires its officers to be representative of the people of the Sudan and professional. The number of Southern Sudanese working for National Security is increasing. These reforms must also be read in conjunction with the general spirit of the Constitution, which places a premium on respecting human rights. A new National Security Act is being prepared and is scheduled to be submitted for the Parliament’s approval by the end of 2006.

98. Unfortunately, the Act that was in place prior to the adoption of the new Constitution almost 11 months ago remains in place.<sup>10</sup> The Act effectively removes detainees from the legal system for long periods of time. In contravention of Sudan’s human rights obligations, it authorizes detention by the Director of National Security of up to six months without judicial review and it does not provide the right to access to counsel. The Act also does not provide adequate oversight mechanisms for National Security activities. It promotes impunity by providing officers with immunity against ordinary civil or criminal proceedings for any act connected with “official” duties. Cases can only be brought with the approval of the Director-General of National Security; and the Act provides for officers to be tried by special Security Courts, which lack independence and transparency. The human rights shortcomings of National Security legislation are made worse when provisions in the Act that aim to protect an individual’s rights are not implemented. UNMIS Human Rights documented cases (see above) where the rights provided for detained persons (such as protections from inhumane treatment and notification of charges) were not respected.

99. It is critical for the Sudan to take a holistic approach to security reform. The abusive powers of National Security must not be relocated into another agency. For example, immunity provisions should be struck from the Police Act and People’s Armed Forces Act. Emergency laws, which broaden already excessive powers of State officials, also need attention. The 1997 Emergency and Public Safety Protection Act provides the President of the Republic, the governor, or anyone delegated by the governor, apparent *carte blanche* powers to enter any premises or search places and individuals, ban organized movement of individuals, and arrest individuals suspected of involvement of a crime in connection with the declaration of emergency. It also provides “any other powers which the President of the Republic may deem necessary”.

100. The International Covenant on Civil and Political Rights (ICCPR) allows States to derogate from certain rights in times of emergency. However, the emergency laws are overreaching in application, ill-defined, and arbitrary to the point of being inconsistent with Sudan’s obligations under international human rights law. In accordance with the ICCPR, any derogation must be in response to a public emergency that “threatens the life of the nation”. The National Emergency Act of 1997 can be invoked in times that could fall short of this requirement, such as in times of “disruption of work or public utilities”, or “criminal acts of mutiny or riot”. Moreover, the ICCPR requires that derogations do not extend beyond what is “strictly required by the exigencies of the situation”. This means a derogation cannot extinguish an entire right and it must be proportionate to the stated purpose of the limitation.

101. Non-derogable rights under the ICCPR include, amongst others, the right to life; the prohibition on torture or cruel, inhuman or degrading treatment or punishment; the prohibition on slavery; and the right to be recognized everywhere as a person before the law. Under the Interim National Constitution, the State cannot derogate from, amongst others, the right to life, prohibition on slavery and torture, the right to litigation, and the right to a fair trial.

## VIII. SOUTHERN SUDAN: INTEGRATION OF OTHER ARMED GROUPS

102. Two decades of war, in addition to drought and famine, has left millions of people in Southern Sudan and the three Transitional Areas dead and millions more living in destitute poverty, suffering from poor health and inadequate shelter and education. The remnants of war include the existence of former SPLA and former Government-aligned militia groups (hereafter referred to as Other Armed Groups (OAGs)) who continue to operate in Southern Sudan and the three Transitional Areas. During the war and after its end, they have harassed and assaulted civilians, occupied land, and operated with little accountability. In addition to bringing resources, development projects, and competent and transparent Government institutions to the south of Sudan, the Government must address the problem of OAGs.

103. On 8 March 2006, members of a Government-aligned militia opened fire on a convoy of unarmed members of a SPLA-aligned militia and their families. Over a dozen people were killed and dozens more were injured. The militia groups involved were the SAF-aligned South Sudan Defense Forces (SSDF) and the SPLA-aligned SSDF. The attack was the first of its kind since the CPA was signed in January 2005. It occurred at a time when Sudan's military forces were being reorganized and OAGs were being integrated into formal armed forces with the potential of coming under new command structures and leadership. As a political solution to dealing with the Government- and SPLA-aligned militia once involved in the 21-year civil war, the CPA required that militias must chose to join the SPLA forces or the Government forces, or else they would be operating illegally. On 8 January 2006, First Vice-President Salva Kiir and the leader of the SSDF, Major-General Paulino Matip, signed the "Juba Declaration", which was an agreement to facilitate the integration of the SSDF into the SPLA. By February 2006, most former SSDF commanders had officially declared their allegiance to the SPLA, while a minority had decided to align with to the SAF.

104. On 4 March 2006, Major General Matip sent from Khartoum the first convoy of his troops to the South to integrate into the SPLA. The convoy appeared to have been unarmed and was carrying hundreds of people, one third of whom were women and children. On 8 March 2006, at 11 p.m., the convoy reached a checkpoint manned by SAF soldiers at Balom, which is near Abyei. The movement was not authorized in accordance with the CPA as it had not been communicated in due time. A two-hour discussion ensued between the SAF and the members of the convoy.

105. At approximately 1 a.m. 35 SAF-aligned SSDF forces who had entrenched themselves along the side of the road launched an attack using rocket-propelled grenades and gunfire. Victims and witnesses reported that no warning was given. Eyewitnesses reported being shot at randomly. A number of people who attempted to escape from the convoy vehicles into the bush were pursued and shot at close-range. The attack resulted in the deaths of at least 13 people: 10 men, two children, and one woman. Dozens were injured and 27 received medical treatment.

106. The men who participated in the attack were allegedly under the command of Lieutenant Colonel Thomas Thiel and his deputy, Major Barnaba. Lieutenant Colonel Thiel was a member of the attacking militia and was in the process of being integrated into the SAF, but the integration procedures were not completed at the time of the attack. Thiel was seen leaving the scene of the attack immediately before it began. Deputy Major Barnaba was identified at the scene of the attack. Lieutenant Colonel Thiel's forces had entrenched themselves in an ambush position next to the SAF checkpoint at least two hours before the SPLA-aligned SSDF convoy was attacked.

SAF soldiers stationed at the checkpoint did not appear to take adequate measures to prevent the attack or respond to protect those were fired upon.

107. There are thousands more militia members who have not yet been integrated into the SPLA and SAF. The attack near Abyei should not be considered an isolated problem. It is an example of what can happen during the ongoing integration process. If attacks similar to the one that took place near Abyei repeat themselves, they could throw the peace into jeopardy, with the multitude of armed entities fighting each other. It is imperative for the Government to learn from this attack and to take steps to ensure that a situation like this does not reoccur. Its response will set an example for what can be expected if similar incidents occur in the future.

108. The Government must establish a command structure that allows it to take real control and responsibility over the militias. Integration of militias is ineffective if Government control is not imposed. The Government also has a responsibility to ensure a thorough, transparent, and impartial investigation into the incident at Balom checkpoint and to hold anyone at fault accountable no matter what their rank or political affiliation. It would also be beneficial for the SAF and SPLA to move militia out of their traditional areas of operation to avoid a continuation of any harassment and abuse of the civilian populations that has occurred in the past.

## **IX. EASTERN SUDAN: EMERGING HUMAN RIGHTS ISSUES**

109. In Eastern Sudan, various political parties and armed movements have protested against their perceived historical marginalization by the central Government and, starting in the mid-1990s, periodically resorted to violence. The two largest parties that constitute this movement are the Beja Congress, whose membership is derived from the approximately 2.4 million Beja people, and the Free Lions, whose membership is derived primarily from the Rashayidah tribe. The two eventually merged, along with other smaller parties, to create the Eastern Front, which is a political party coalition with an armed branch. To the detriment of human rights in the area, tensions have escalated in recent months between the Government and these groups.

110. In early March 2006, three Kassala Beja Congress members were arrested by National Security from their homes. At the time of reporting their place of detention was not known by UNMIS and they appeared to be being held incommunicado. This is in violation of Sudan's obligations under international human rights law. The location of the men should have been revealed and they should be either charged and fairly tried or released. As noted above in this report, five other Beja Congress members were arrested between 3 and 4 April and were released on 6 April. It appears that the group arrested in April was arrested in relation to a peaceful sit-in the Beja Congress organized on 27 March in front of UNMIS in Kassala to protest against the continued detention of their three colleagues and the general harassment they face from security officials in Kassala. The authorities appeared to have been displeased by the attempts of the Beja Congress to involve UNMIS and believe such involvement is an infringement of sovereignty.

111. Also in March, the anti-smuggling police undertook a campaign in certain Rashayidah areas (mainly towns on the highway between Kassala and Gadaref) allegedly aimed at curbing illegal cross-border trafficking and smuggling of goods between Eastern Sudan and Western Eritrea. The methods used to curb and address illegal cross-border trafficking and smuggling led to physical assaults and excessive use of force in contravention of international human rights law. The reported abuses appear to have been unleashed with the arrival of a force of about 400 anti-smuggling police which was deployed at the border between Kassala and Eritrea in March 2006. UNMIS Human Rights documented several incidents of abuses committed by the anti-smuggling

police between March and April 2006. During raids in two villages, people were severely beaten and harassed and shops were destroyed and personal property was taken.

112. In February, a group of students from Kassala University held a sit-in demonstration following an administrative argument with the University. The demonstration was peaceful but turned violent when the police and National Security officials used tear gas and then resorted to force (beating with sticks) to disperse the crowd. A number of students were detained for up to three days and four had to be hospitalized. This incident draws attention to the state of emergency in place across Eastern Sudan which limits the organization of peaceful demonstrations and the students' possibility to exercise their freedom of speech and of association in accordance with the Interim National Constitution and allows authorities to use wide ranging means to disperse the crowds and arrest whom it feels like.

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<sup>1</sup> This report preceded the mission of the High Commissioner for Human Rights to the Sudan from 30 April to 6 May 2006. The information included in this report served as a basis for the High Commissioner's mission.

<sup>2</sup> OHCHR report, *Second Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan*, 27 January 2006 and OHCHR report, *Access to Justice for Victims of Sexual Violence*, 29 July 2005.

<sup>3</sup> UNMIS, *The CPA Monitor: Monthly Report on the Implementation of the CPA*, February 2006; UNMIS, *The CPA Monitor: Monthly Report on the Implementation of the CPA*, March 2006.

<sup>4</sup> UNMIS, *The CPA Monitor: Monthly Report on the Implementation of the CPA*, February 2006; UNMIS, *The CPA Monitor: Monthly Report on the Implementation of the CPA*, March 2006.

<sup>5</sup> Following intense violence in Darfur late 2003 and early 2004, the Government of Sudan, the SLA/M, and the Justice and Equality Movement (JEM) signed a cease-fire agreement in N'djamena, Chad, on 8 April 2004. A previous cease-fire agreement was also signed in August-September 2003.

<sup>6</sup> AU-led peace negotiations in Abuja, Nigeria between the Sudanese Government, the SLM/A, and the JEM began in August 2004 and are ongoing.

<sup>7</sup> The cease-fire agreement signed in N'djamena, Chad, on 8 April 2004 established an international Cease Fire Commission (CFC) to monitor the accord. The CFC was the precursor to the African Union Mission in Sudan (AMIS), which as of 10 March 2006 had a total strength of 7,031 personnel (4,915 Protection Force members, 726 Military Observers, and 1,390 civilian police personnel) out of 7,731 provided for in the decision of the AU Peace and Security Council of 28 April 2005. African Union, PSC/MIN/2(XLVI), 10 March 2006.

<sup>8</sup> Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Co-ordinator, *Darfur Humanitarian Profile No. 22 – Situation as of 1 January 2006*.

<sup>9</sup> Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Co-ordinator, *Darfur Humanitarian Profile No. 22 – Situation as of 1 January 2006*.

<sup>10</sup> National Security Forces Act of 1999.

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