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## Consejo de Derechos Humanos

### 15º período de sesiones

Tema 4 de la agenda

Situaciones de derechos humanos que requieren la atención del Consejo

## **Actualización del informe del Experto independiente sobre la situación de los derechos humanos en el Sudán, Sr. Mohammed Chande Othman\***

### **Estado de la aplicación de la compilación de recomendaciones formuladas por el Grupo de Expertos al Gobierno del Sudán para la aplicación de la resolución 4/8 del Consejo de Derechos Humanos, en virtud de las resoluciones 6/34, 6/35, 7/16 y 11/10 del Consejo\*\***

El presente informe se ha elaborado de conformidad con la decisión 14/117 del Consejo de Derechos Humanos, en la que el Consejo, tomando nota de que el Experto independiente sobre la situación de los derechos humanos en el Sudán, a causa de motivos médicos, no había podido presentar su informe en el 14º período de sesiones, decidió proceder a una prórroga técnica del mandato del Experto hasta el final del 15º período de sesiones para poder mantener un diálogo interactivo con él. En la decisión, el Consejo señaló además que se entendía que el Experto independiente continuaría su labor hasta el final del 15º período de sesiones y estaría en condiciones de complementar su informe al respecto, si así lo decidiera, en ese período de sesiones.

### *Resumen*

El presente informe complementa el primero que presentó el Experto independiente sobre el estado de la aplicación de la compilación de recomendaciones formuladas por el Grupo de Expertos al Gobierno del Sudán para la aplicación de la resolución 4/8 del Consejo de Derechos Humanos, en virtud de las resoluciones 6/34, 6/35, 7/16 y 11/10 del Consejo (A/HRC/14/41/Add.1). Se centra en la respuesta enviada por el Gobierno el 17 de mayo de 2010 y en información adicional obtenida posteriormente de otras fuentes, como la Operación Híbrida de la Unión Africana y las Naciones Unidas en Darfur, la Misión de las Naciones Unidas en el Sudán, y organismos, órganos y programas de las Naciones Unidas que tienen competencia operacional en Darfur.

\* Documento presentado con retraso.

\*\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.

En su resolución 11/10, el Consejo pidió al Experto independiente que asumiera el mandato y las obligaciones establecidas por el Consejo en sus resoluciones 6/34, 6/35, 7/16 y 9/17, incluido el seguimiento y el fomento de la aplicación del resto de las recomendaciones de corto y mediano plazo señaladas en el primer informe del Grupo de Expertos (A/HRC/5/6), entablando un diálogo abierto y constructivo con el Gobierno del Sudán, teniendo en cuenta el informe final del Grupo de Expertos (A/HRC/6/19) y las respuestas del Gobierno al respecto, y que incluyera información sobre esta cuestión en el informe que presentara al Consejo en su 14º período de sesiones.

El Experto independiente ha realizado el seguimiento de la aplicación efectiva de las recomendaciones mediante un diálogo con el Gobierno del Sudán. En el presente informe, evalúa las medidas adoptadas por el Gobierno para aplicar las recomendaciones compiladas por el Grupo de Expertos y presenta una descripción y un análisis detallados del estado de la aplicación.

Basándose en la información recibida, el Experto independiente concluye que el Gobierno ha adoptado medidas importantes para aplicar algunas de las recomendaciones, entre otras, la promulgación de leyes clave como la Ley del niño y la Ley de prensa e imprenta. El Gobierno también ha avanzado de manera notable en la colaboración con las Naciones Unidas y otros interesados para poner en marcha programas sostenibles de desarme, desmovilización y reintegración de niños ex combatientes. Sin embargo, todavía no se ha aplicado un grupo importante de recomendaciones, pese a que el plazo para ello venció hace más de dos años. El Experto independiente señala además que, si bien el Gobierno ha adoptado medidas iniciales con respecto a algunas recomendaciones, esas medidas no han tenido suficiente impacto sobre el terreno. Reitera que la prueba decisiva de que el Gobierno ha aplicado las recomendaciones compiladas por el Grupo será la mejora concreta de la situación de los derechos humanos en Darfur.

El Experto independiente alienta al Gobierno del Sudán a adoptar todas las medidas necesarias para aplicar sin más demora las recomendaciones compiladas por el Grupo de Expertos sobre Darfur, mediante un compromiso más constructivo con el Consejo, el sistema de las Naciones Unidas en general y la comunidad internacional. Expresa su gratitud al Gobierno de Suiza por su generosidad al contribuir a la financiación de la asistencia técnica de las Naciones Unidas que se requiera a tal fin.

El Experto independiente recomienda al Consejo que continúe el proceso de examen, sobre la base de los indicadores de aplicación elaborados por el Grupo de Expertos, hasta que se hayan aplicado plenamente todas las recomendaciones. Pese a los esfuerzos del Gobierno para favorecer un proceso de cooperación destinado a fomentar la aplicación efectiva de las recomendaciones, todavía no se han aplicado algunas que son fundamentales. El Consejo tal vez desee estudiar otras medidas necesarias para proteger y promover de manera concreta los derechos humanos de los habitantes de la región de Darfur, en el Sudán.

## Anexo

### **Status of implementation of the compilation of recommendations of the Group of Experts to the Government of the Sudan for the implementation of Human Rights Council resolution 4/8 pursuant to Council resolutions 6/34, 6/35, 7/16 and 11/10**

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## I. Introduction

1. The Human Rights Council adopted, without a vote, on 30 March 2007, resolution 4/8 on the follow-up to its decision S-4/101. In its resolution, the Council decided to convene a group of seven mandate holders to ensure the effective follow-up and to foster the implementation of the resolutions and recommendations on Darfur adopted by the Council, the Commission on Human Rights and other United Nations human rights institutions, as well as to promote the implementation of relevant recommendations of other United Nations human rights mechanisms, taking into account the needs of the Sudan in this regard, to safeguard the consistency of these recommendations and to contribute to the monitoring of the human rights situation on the ground. The group of experts was presided over by the Special Rapporteur on the situation of human rights in the Sudan, and comprised the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the Secretary-General on the human rights of internally displaced persons, and the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment.

2. In its resolution 6/34, the Council requested the Special Rapporteur on the situation of human rights in the Sudan to ensure effective follow-up and to foster the implementation of the remaining short- and medium-term recommendations identified in the first report of the Group of Experts (A/HRC/5/6) through an open and constructive dialogue with the Government of the Sudan, taking into account the final report of the Group of Experts (A/HRC/6/19) and the replies of the Government thereon, and to include information in this regard in her report to the Council at its ninth session.

3. In its resolution 7/16, the Council urged the Government of the Sudan to continue and intensify its efforts to implement the recommendations identified by the Group of Experts, in accordance with the specified time frames and indicators. The Council invited relevant United Nations bodies and agencies, including the Office of the United Nations High Commissioner for Human Rights, to continue to provide support and technical assistance to the Sudan for the implementation of the recommendations of the Group of Experts, and called upon donors to continue to provide financial and technical assistance and required equipment for the improvement of human rights in the Sudan and to continue to provide support for the implementation of the Comprehensive Peace Agreement.

4. The present report is submitted pursuant to resolution 11/10, in which the Council created the mandate of the independent expert and requested him to assume the mandate and responsibilities set out by the Council in its resolutions 6/34, 6/35, 7/16 and 9/17, including following up and fostering the implementation of the remaining recommendations of the Group of Experts through open and constructive dialogue, and to include information thereon in his report. The present report reflects information received from the Government of the Sudan and from other sources, including the African Union-United Nations Hybrid Operation in Darfur (UNAMID), the United Nations Mission in the Sudan (UNMIS) and United Nations agencies, bodies and programmes with operational competence in Darfur.

5. Using the indicators contained in the annex to the Group's report submitted to the Council (A/HRC/5/6), the independent expert provides an assessment of the Government's activities in implementing the recommendations to be achieved in the short- and medium-term, as well as the degree of impact reported on the ground in Darfur. Accordingly, the

present report focuses on developments in Darfur from the adoption of Council resolution 11/10, in June 2009, to April 2010.

## II. Methods of work

6. The independent expert continued to follow the methodology used by the Group of Experts in its work:

- (a) To cooperate and work in a transparent manner with the Government of the Sudan and other relevant partners of the international community;
- (b) To identify obstacles to the implementation of previous recommendations;
- (c) To differentiate short-term from medium-term recommendations with a view to assisting the Government of the Sudan to implement fully the recommendations identified and to keep the victims of past and ongoing human rights violations of human rights and humanitarian law in central focus, with the aim of reducing such violations in the future.

7. In line with the indicators specified, the independent expert focuses on the state of implementation on two levels: on the one hand, he examines the extent to which the Government of the Sudan has undertaken recommended activities. This assessment is based on information provided and documentation submitted by the Government; on the other, he analyses the information received from UNAMID, UNMIS, United Nations agencies and other organizations operational in Darfur with a view to identifying whether and to what extent any tangible impact on the ground is being reported. This methodology permits the independent expert to conclude, in relation to each recommendation, whether (a) it has been fully implemented (i.e., all recommended activities have been carried out and, as a result, the situation on the ground has been reported to have improved accordingly); (b) significant activities have been undertaken and a tangible impact has been reported from the ground; (c) significant activities have been undertaken but little or no practical impact has been reported; (d) initial steps towards implementation have been taken; or (e) there has been no implementation at all. While the report contains a summary of the findings of the independent expert, the appendix sets out in detail the information received from the Government and other sources, as well as the independent expert's assessment of each of the recommendations contained in the first report of the Group of Experts (A/HCR/5/6).

8. The independent expert summarizes the current status of implementation for each of the four main clusters of recommendations identified, namely (a) human rights protection; (b) humanitarian access, including protection of humanitarian workers from harassment and attacks, and facilitating access to civilians, including those displaced; (c) accountability and justice; and (d) monitoring of implementation of recommendations. The report ends with the independent expert's main conclusions and recommendations.

9. The independent expert sought to ensure, as far as possible, that the information was based on first-hand observations, careful verification and, wherever appropriate, inter-agency corroboration. The independent expert is grateful to all those who submitted information on the current status of implementation of recommendations according to the time frame and indicators specified by the Group of Experts on Darfur.

### III. Status of implementation of recommendations

#### A. Protection of the human rights of civilians

##### 1. Protection of the civilian population, including internally displaced persons

10. Regarding the protection of the civilian population, the Group of Experts had proposed that the Government of the Sudan

issue and enforce clear orders to the armed forces and any militias under Government's control that it is prohibited to make civilians or civilian objects (including cultivated land and livestock) the target of attacks or to launch indiscriminate attacks (including burning of villages and aerial bombardments); that such attacks can amount to war crimes and crimes against humanity, that suspects, including bearers of command responsibility, will be investigated and brought to justice, and that any immunities would be waived (recommendation 1.1.1).

11. In spite of the improvement in the security situation in Darfur, military activities continued during the reporting period. However, compared to previous years, very few aerial bombardments and indiscriminate attacks on civilians were documented. United Nations sources indicated that, in September 2009, fighting broke out between Government and Sudan Liberation Army/Abdul Wahid (SLA/AW) forces over territory in Korma, North Darfur, and between two Government security forces in Yarra, South Darfur. Both clashes resulted in civilian casualties, mass displacement of civilians and the destruction of civilian properties. In Mawu, North Darfur, reports were received of airstrikes and ground attacks by the Sudanese Armed Forces (SAF), which appeared to be indiscriminate, failing to distinguish between military and civilian targets. A UNAMID assessment mission reported the dropping of bombs on villages. Reported fighting between the SAF and SLA/AW forces in eastern Jebel Marra in February 2010 also resulted in the displacement of an estimated 2,000 households (recommendation 1.1.1).

12. With regard to controlling and disarming the militia and to controlling and downsizing the Popular Defence Forces (PDF), the Border Intelligence Guard, the Central Reserve Police, the Popular Police and the Nomadic Police, no formal plan was publicly issued to control and disarm the militia. However, on 1 April 2010, the Government of the Sudan concluded a discharge exercise of 900 former combatants in Nyala, South Darfur. Those discharged included 560 members of the signatories of the Declaration of Commitment to the Darfur Peace Agreement and 340 personnel associated with the SAF and its affiliates. UNAMID provided technical assistance and logistical support for the exercise, including security and transport. The ongoing exercise is part of the Government's plan to discharge 5,000 former combatants affiliated with the above-mentioned signatories. The lack of an agreed policy framework on the ongoing exercise remains a challenge. In spite of the effort made by the Government, reports indicate that the militia, the PDF, the Border Intelligence Guards and the Central Reserve Police continue to commit violations and no effective measures have been taken to fully disarm them (recommendation 1.1.2).

13. Despite some action taken by the Government to prevent and protect the civilian population against attacks (recommendation 1.1.3), civilians continued to be attacked by all parties to the conflict, including by non-signatories to the Darfur Peace Agreement, Chadian armed opposition groups, and unknown armed elements. Inter-tribal clashes, particularly in South Darfur, continued to claim a large number of civilian casualties. In March 2010 alone, clashes between the Misseriya and Reizeigat tribes, both of Arab descent, claimed more than a 100 lives and an unknown number of displacements, the highest number of casualties in one month since UNAMID has been in Darfur.

14. The Government has not made any new effort to send regular patrols to protect vulnerable populations. UNAMID conducts regular patrols to most camps for internally displaced persons in Darfur. In some areas in West and South Darfur, UNAMID provides patrols around the clock, seven days a week, where needed. There have been no joint patrols carried out between UNAMID and Sudanese forces (recommendation 1.1.5).

## **2. Protection of women against violence**

15. With regard to the recommendation that it publicly acknowledge and condemn violence against women, the State Government of West Darfur publicly denounced and condemned violence against women on the occasion of the celebration of “16 days of activism against sexual violence” in Fora Baranga, in December 2009. While significant progress has been made towards the protection of women, acts of sexual violence, particularly against internally displaced women and girls, continue to be of concern. In 2009, UNAMID recorded 101 reported cases of sexual violence (49 in North Darfur, 25 in South Darfur and 27 in West Darfur). The majority of the victims were internally displaced girls and women. The incidents took place inside and outside camps for internally displaced persons. These numbers notwithstanding, there is general acknowledgement among stakeholders that reported cases of sexual violence have decreased. This might be because of the Government’s failure to combat impunity, which has resulted in victims failing or refusing to file complaints when attacked. Many victims continue to report their lack of trust in the police. UNAMID reports that the police very often fail to take appropriate action in sexual violence cases unless the alleged perpetrator is named by the victim. The problem has been further compounded by the fear of stigma associated with rape, the lack of police presence in many remote areas in Darfur, reporting fatigue among victims, who rarely benefit from any remedial action by the authorities, and the overall weakness of the justice system to hold perpetrators accountable (recommendation 1.2.2).

16. Significant progress was made in the implementation of State committee workplans. Through the assistance of the technical cooperation project funded by the Government of Switzerland, UNAMID provided training sessions and supported the State committees to finalize their workplans. This training has enhanced the State committees’ involvement in cases of sexual and gender-based violence through coordination with relevant stakeholders, including with police investigators, prosecutors and medical and rape counselling personnel (recommendations 1.2.4 and 1.2.6). Significant progress was made in the deployment of female police in Darfur during the reporting period. In North Darfur, the Government reported the training and deployment of more than 100 female police officers. In South Darfur, however, the deployment of female police officers has been slow. Only one female officer was observed by UNAMID to be working with the family and child protection unit. The presence of women police officers above the rank of lieutenant is extremely limited and, in this regard, further recruitment is needed (recommendation 1.2.7).

## **3. Children and armed conflict**

17. The Child Act 2009 was passed by the National Assembly on 29 December 2009. The new law contains a number of constructive provisions, including the definition of a child as anyone who has not reached the age of 18 years and the revocation of “signs of maturity” as a criterion for defining a child. The Act also raises the age of criminal responsibility from 7 to 12 years, makes child exploitation and abuse a criminal offence, and establishes a comprehensive juvenile justice system; however, it does not criminalize female genital mutilation (recommendation 1.3.2).

18. Much progress was made in the work of the child disarmament, demobilization and reintegration programmes. The national commission responsible for the programmes has established core standards for the release of children, family reunification and reintegration

of children. Monitoring and evaluation tools in line with the integrated standards and the Paris Principles have also been established. Accordingly, a programme for child disarmament, demobilization and reintegration was initiated in Darfur by the relevant North Sudan commission with the support of the United Nations Children's Fund based on an operational plan developed with six armed groups, which were signatories to the Darfur Peace Agreement. They include the Sudan Liberation Army (SLA) Free Will, the SLA/Abu Ghasim/Mother Wing, the Justine and Equality Movement (JEM) Peace Wing, the SLA/Mini Minnawi, the SLA/Peace Wing and the Popular Force for Rights and Democracy. To date, a list of over 2,000 names of children has been submitted by the groups. With participation of all stakeholders, to date 387 children from SLA Free Will and SLA Mother Wing have been disarmed, demobilized and registered for the reintegration programme. The association of children with armed groups, including pro-government militias, remains nonetheless a major concern. Given the scale of alleged association of children with the various armed groups, there is need for the availability of sufficient funds in support of the rehabilitation and reintegration of released children (recommendation 1.3.3).

#### **4. Protection against summary executions, arbitrary detention, disappearances and torture**

19. The Government has not issued new instructions that summary executions, arbitrary detention, enforced or involuntary disappearances and torture are illegal and will not be tolerated, and that they can amount to war crimes and crimes against humanity. Cases of arbitrary detention and ill-treatment of civilians documented by UNAMID during the reporting period continue to show that the National Intelligence and Security Service (NISS) and the Sudanese Military Intelligence are the main governmental authorities most responsible for the violations in Darfur. Detainees are often held without being informed of the reason for their arrest, and sometimes detained without charge for prolonged periods and not brought before a judicial authority. In some instances, detainees are held incommunicado and subjected to torture and other forms of ill-treatment.

20. The 1997 Emergency and Public Safety Act continues to apply in Darfur, where a state of emergency remains in existence. The law grants wide discretionary powers of arrest and detention to the State governors of Darfur without any effective judicial review. In North Darfur, 16 people suspected of involvement in the murder of a local community leader from the Abou Shok camp for internally displaced persons near El Fasher were arrested and detained for more than five months under the Emergency Act without access to lawyers and without being brought before a judicial authority. Six of the detainees remain in detention and have not been charged with an offence; more than eight months have passed since their arrest (recommendations 1.4.1 and 1.4.2).

21. UNAMID Human Rights was denied unfettered access to detention centres and prisons, including the NISS, Military Intelligence and police detention centres for most part of the reporting period. Access to detainees, particularly those held under the emergency law, was extremely difficult. In some instances, limited access was granted on a case-by-case basis, depending on the rapport between human rights monitors and prison officials. United Nations human rights monitors still have no access to places of detention in Khartoum, which is of concern for Darfur-related detainees transferred to the capital (either for trial or interrogation). On 20 December 2009, the National Assembly of the Government of National Unity passed a bill repealing the 1999 National Security Forces Act and reforming the NISS. Under the new law, which came into effect on 28 January 2010, the NISS has powers of arrest and detention for a period of four and a half months without judicial oversight. The new law also grants NISS personnel immunity against criminal prosecution and civil liability (recommendations 1.4.3 and 1.4.4).



22. On a positive note, UNAMID reported that it has had access to all Government operated prisons in Darfur following the signing of a memorandum of understanding between UNAMID and the Government of the Sudan prisons authority on 21 February 2010.

23. The Convention against Torture has not been ratified by the Sudan (recommendation 1.4.5).

## **5. Protection of witnesses and victims**

24. The Government has not taken adequate measures to ensure that human rights monitors have full and unimpeded access to witnesses and victims of human rights violations, and that victims and witnesses are not subject to reprisals or harassment for cooperating with human rights monitors. In addition, no concrete information was provided by the Government on measures taken to protect witnesses and victims against violence, reprisals and harassment by third parties. On the contrary, freedom of movement of human rights monitors and their access to victims and witnesses were impeded by numerous restrictions imposed by Government officials and armed movements. In places like South Darfur, State officials denied access to some places, claiming that they had to be informed in advance of UNAMID movements. Access to certain internally displaced camps was also occasionally denied to UNAMID by Government officials. In addition, the access of human rights monitors to victims and witnesses continues to be affected by the increasing incidence of carjacking and banditry targeting United Nations personnel and assets.

25. On 8 June 2009, the National Assembly passed the Press and Printed Materials Act, which provides that no restrictions should be imposed on press publications unless prescribed by law to protect national security, public order and health. It also provides for the right of access to information in accordance with the law and also prohibits the confiscation and closing down of newspapers. It sets up a national press council in which journalists form the majority of members. In September 2009, the President of the Republic issued a decree lifting pre-censorship of print media. Despite these improvements, concerns remain about the extensive powers conferred on the press supervisory body (recommendation 1.6.2).

26. In spite of the recent legislative and institutional reforms, human rights defenders working on Darfur issues continue to be subjected to intimidation and harassment by the NISS, and in some cases arbitrary arrests. Serious concerns remain regarding the tightening of freedom of expression and a backlash against human rights defenders since the indictment of the President of the Sudan by the International Criminal Court in March 2009. As a consequence, there continues to be limited activity among human rights defenders and many activists have remained outside of the Sudan for fear of harassment and arrest should they return. The period immediately leading up to the elections in April 2010 saw an easing of restrictions on the freedom of expression, but those restrictions were tightened again after the elections.

## **B. Humanitarian access**

### **1. Protection of humanitarian workers from harassment and attack**

27. During the reporting period, attacks were persistently made against humanitarian workers and UNAMID staff, and incidents of abduction of international aid workers and armed ambushes against UNAMID peacekeepers were also witnessed. A total of 111 United Nations vehicles were carjacked in 2009. These incidents underscore the extremely difficult and volatile conditions in which UNAMID and other actors on the ground are

carrying out their respective mandates. UNAMID personnel were also targeted by direct attacks on five occasions, resulting in the death of six peacekeepers.

28. In Kutum, North Darfur, two female staff members of international non-governmental organizations were abducted by unidentified gunmen in July 2009, then released in mid-October. In August 2009, two UNAMID international civilian staff members were abducted by unidentified gunmen from their residence in Zalingei, West Darfur. The two were held in captivity for more than 100 days until their release in December 2009. An international employee of the International Committee of the Red Cross was released on 18 March 2010 after being abducted in El Geneina and held in captivity for a total of 147 days. On 15 April 2010, four peacekeepers were forcefully taken from outside their team site in Nyala, South Darfur, by unidentified armed men. The four were released unharmed on 26 April.

29. The Organization of Voluntary and Humanitarian Act of 2006 remains in force and continues to restrict the work of humanitarian groups, including through cumbersome procedural requirements. A positive example of judicial oversight of a decision made by the Humanitarian Aid Commission was, however, witnessed during the reporting period. On 21 April 2010, a court in Khartoum reversed a decision made by the Commission in 2009 to cancel the registration of and dissolve the Sudan Development Organization. The court held that, under the 2006 Act, the authority granted to the Commission was limited to the implementation of the policies and plans of humanitarian work and did not include the power to dissolve an organization.

## **2. Facilitating access to civilians, including those displaced**

30. In the aftermath of the expulsion on 4 March 2009 of 13 non-governmental organizations from Darfur, the Government took positive steps towards facilitating humanitarian assistance in Darfur, including by publicly welcoming the remaining and certain new non-governmental organizations to work in the region. In August 2009, a high-level committee on humanitarian affairs, comprising senior Sudanese officials, representatives of the diplomatic community, the United Nations and regional and non-governmental organizations endorsed the creation of a mechanism to verify the voluntary return of internally displaced persons in accordance with international humanitarian principles. Humanitarian access in Darfur was uneven during the reporting period. Access to urban areas outside the State capitals improved thanks to the presence of UNAMID team sites, while access to other areas, such as Jebel Marra and Jebel Moon, in West Darfur, and Kass, in South Darfur, were restricted owing to renewed fighting between Government and rebel forces and intertribal clashes.

31. On 15 November 2009, the North Darfur State Joint Committee was launched as a branch of the National High-Level Committee. All three Darfur States are required to establish joint State committees to ensure efficiency in the delivery of humanitarian assistance.

## **C. Accountability and justice**

32. The judicial response to serious human rights abuses remained weak during the reporting period. To date, the Government has failed to bring to justice those responsible for the law enforcement operation in Kalma, near Nyala, South Darfur, in August 2008, which resulted in the death of 33 internally displaced persons. Yet again, no one has been charged for the numerous carjackings and attacks on humanitarians that have occurred in Darfur since the beginning of 2008. In South Darfur, where intertribal fighting accounted for most of the civilian deaths in 2009, no criminal investigation is known to have been

initiated for the killing of civilians and other human rights violations committed in the context of those events. The Special Prosecutor appointed by the Government to investigate crimes committed in Darfur since 2003 and thereafter is yet to lay charges against anyone as a result of his investigations. On a positive note, on 9 June 2009, two people, including a member of the PDF, were charged and tried in an El Geneina court in West Darfur for robbing and shooting an aid worker.

33. Immunities continue to exist for law enforcement and security agents under various laws, including the Police and Armed Forces Acts. The new NISS law maintains the provision granting NISS personnel immunity from criminal prosecution and civil liability that can only be lifted by the Director of the Service (recommendation 3.2). The Government has indicated that the immunities are more procedural than substantive, and that, in practice, a person's immunity can be lifted where there is evidence to justify bringing charges against him or her. The law, however, does not make any provision for remedies for victims of human rights violations committed by the NISS.

34. The Government of the Sudan has not cooperated with the International Criminal Court in investigating and prosecuting international crimes committed in Darfur. Indeed, new amendments introduced to the Criminal Procedure Act included a provision that prohibits the institution of criminal proceedings against any Sudanese national for any act that may constitute a violation of international humanitarian law, including war crimes, crimes against humanity and genocide, except "before the Sudanese police, general prosecution and the judiciary" (recommendation 3.3).

35. In the reporting period, the Government made considerable progress in legal reform to ensure the harmonization of national laws in accordance with the Interim National Constitution and with the country's obligations under international human rights law. New laws, such as the Child Act 2009 and the Press and Printed Materials Act 2009, were also passed; however, the reform of other laws, such as the NISS law and the Criminal Procedure Act, failed to meet international human rights standards (recommendation 3.5).

#### **D. Monitoring implementation of recommendations**

36. Human rights forums were held in Khartoum and Darfur, on 2 and 9 February 2010 respectively, to engage the Government in constructive dialogue on human rights. Both forums were attended by representatives of the Government, the United Nations, non-governmental organizations, members of the diplomatic community and the independent expert. Given its composition and terms of reference, as noted by the Human Rights Council in its resolution 11/10, the forum serves as a useful mechanism for the exchange of information and dialogue on human rights concerns.

37. Human rights monitors continued to be denied unfettered access to detention facilities and were not allowed to interview victims and witnesses in private. Monitors were also not granted full access to police records. In spite of the passage of the National Human Rights Commission Act in April 2009, the Commission is not operational because the Government is yet to initiate a process to nominate and select its members (recommendations 4.1, 4.2, 4.3 and 4.7).

38. The Government did not extend a standing invitation to special procedures during the reporting period; however, it approved the request of the independent expert to visit the Sudan and provided full support and assistance to the expert's mission in January 2010. The Government also welcomed and fully facilitated the visit to the Sudan of a four-member delegation from the African Commission on Peoples and Human Rights in late October 2009. The delegation, inter alia, followed up on the Commission's 2004 fact-finding report on the human rights and humanitarian situation in Darfur.

## IV. Conclusions and recommendations

39. The Government of the Sudan has taken some steps to implement the recommendations of the Group of Experts on Darfur. Nonetheless, the independent expert notes that a significant number of the recommendations still remain without implementation in spite of the fact that the time frame for implementation elapsed more than two years ago. He also notes that, while initial steps have been taken by the Government with regard to some recommendations, they have not had a sufficient impact on the ground. The Government needs to take additional measures to improve the human rights situation on the ground in Darfur.

40. The information provided on the human rights situation from UNAMID, United Nations agencies, bodies and programmes with operational competence in Darfur and other relevant sources reflects a situation that requires further action from the Government.

41. In particular, the independent expert assesses the status of implementation of the recommendations contained in the report of the Group of Experts (A/HRC/5/6, annex) as follows (see also the appendix):

(a) Full implementation (i.e. all recommended activities were carried out to lay the framework for improving the situation on the ground): recommendations 1.2.1, 1.2.6, 1.3.1 and 4.1;

(b) Significant activities undertaken and implementation in process: recommendations 1.1.4, 1.2.4, 1.2.7, 1.3.2, 1.3.3, 1.6.2, 3.4, 4.4 and 4.6;

(c) Some activities undertaken or reported, but little or no tangible impact reported on the ground: recommendations 1.1.1, 1.1.2, 1.1.3, 1.1.5, 1.2.2, 1.2.3, 1.2.5, 1.2.8, 1.4.4, 1.5.1, 2.1.1, 2.1.2, 2.1.4, 2.2.1, 2.2.3 and 4.7;

(d) Initial steps towards implementation undertaken: recommendations 2.2.2, 3.1, 3.5, 4.2 and 4.3;

(e) No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground: recommendations 1.2.9, 1.4.1, 1.4.2, 1.4.3, 1.4.5, 1.6.1, 2.1.3, 3.2, 3.3, 4.5 and 4.8.

42. The independent expert, while acknowledging the activities undertaken by the Government of the Sudan, is concerned that reports received from the ground clearly indicate that, with very few exceptions, these efforts still have not yet led to an improvement in the situation of human rights in Darfur.

43. The independent expert acknowledges that full implementation of certain recommendations may be complex and that tangible impact could take time, especially where recommended activities have been undertaken only recently. He notes that, in certain specific instances, the feasibility of full implementation could have been affected by the absence of sufficient resources and technical assistance; however, several recommendations on protection against summary execution, arbitrary detention and torture, which were prioritized as short-term and could have been implemented within a short-term time frame (as they did not require lengthy administrative processes or additional resources) have not yet been implemented. The independent expert reiterates that the lack of resources cannot justify any act of violence against the civilian population or the lack of action to prevent such acts.

44. The independent expert recalls the consensus of the Human Rights Council, welcoming the initial measures taken by the Government to implement the recommendations of the Group of Experts on Darfur and to address human rights

concerns, but noting that a number of recommendations had not yet been implemented.

45. The independent expert recommends that the Council continue the process of reviewing the implementation of recommendations until such time as there is full implementation, or at least significant activities, and tangible impact has been reported from the ground. Recalling the fact that the time frame for implementation of the short- and medium-term recommendations elapsed on 20 June 2008 and that the Government of the Sudan still needs to effectively implement the majority of recommendations requested by the Council, the Council could ask the Government why it has been unable to implement the recommendations, and also consider what further action is required to concretely protect the human rights of people in the Darfur region of the Sudan. The transparent engagement and cooperation of the Government of the Sudan with the Council and other relevant partners of the international community will play an important role in the protection and promotion of human rights on the ground. It will also help to identify obstacles to the implementation of previous recommendations. The Council may also wish to consider what further practical action is required to protect the human rights of people in Darfur.

## Appendix

### Human Rights Council: Group of Experts on Darfur

#### Status of implementation of recommendations for the protection of human rights in Darfur (June 2009–April 2010)

##### 1. Human rights protection

###### 1.1 Protection of the civilian population, including IDPs

1.1.1 Issue and enforce clear orders to the armed forces and any militias under Government's control that it is prohibited to make civilians or civilian objects (including cultivated land and livestock) the target of attacks or to launch indiscriminate attacks (including burning of villages and aerial bombardments); that such attacks can amount to war crimes and crimes against humanity, that suspects, including bearers of command responsibility, will be investigated and brought to justice, and that any immunities would be waived.

Short-term/accepted by GoS

- Orders issued and widely disseminated
- Number of such attacks reported that are attributable to Government forces, any allied militia and SLA/MM

Air and land attacks against civilians

On 29 September 2009, GoS forces launched an air offensive in the area of Mawu, North Darfur. According to reports, two GoS Antonov planes dropped several bombs on the western part of Mawu. Following the bombings, SAF soldiers accompanied by armed militias riding in land cruiser vehicles entered the village and started shooting. Eye-witnesses reported looting and burning of houses and the local market. An UNAMID assessment team visited the area on 8 October and documented the destruction of more than 30 houses, including a UN agency office, a health clinic belonging to an INGO and two water wells.

Some activities were undertaken but little or no impact has been reported from the ground.

In South Darfur, several houses in Chawa village were reportedly burned when members of the Sudan Armed Forces (SAF) attacked the village on 11 October 2009 in an apparent retaliation for an earlier ambush on a Government police convoy by unknown armed men. Exact number of casualties could not be confirmed.

UNAMID documented serious human rights violations within the context of clashes between members of the Popular Defense Forces (PDF) and members of the Border Intelligence Guards (BIG) in Yarra, and surrounding villages (Sayiengo, Amar Jadid, and Dogi),

40 km north of Nyala South Darfur. The fighting broke out on 15 September 2009 following the arrest of a PDF member by BIG soldiers. The fighting reportedly resulted in the displacement of the civilian population and killing of civilians.

In Korma, North Darfur, UNAMID received information on an SAF attack on SLA/AW controlled areas in Western Korma. On 7 September 2009 GoS forces in collaboration with militia groups attacked the positions of SLA/AW in the area. UNAMID could not confirm the exact number of casualties as it was denied access to the area by the Government due to the intensity of the fighting. However, it is believed that at least five people including civilians were killed in the fighting.

In South Darfur, Government aerial bombardment of SLA/Abdul Wahid controlled areas in East Jebel Marra, including Kidingir, Kara, Deribat, Fena, Kutur, Alaradeb and Alashara at the beginning of January 2010 reportedly led to displacement and killing of civilians. Exact figures could not be confirmed due to UNAMID's limited access to the area.

In 2007, the Government adopted the Armed Forces Act which penalizes violations of international humanitarian and human rights law. Amendments to the Criminal act adopted in May 2009 also made new provisions on war crimes, crimes against humanity and genocide.

#### **Response of the Government of Sudan**

**The Government notes the promulgation of the 2007 Armed Forces Act which contains a chapter on protection of civilians and civilian installation. It also makes reference to a declaration on the rules of conduct for armed forces personnel in conflict zones which was widely circulated to all units of the SAF**

1.1.2 Start to implement, in cooperation with the UN and AMIS, a plan to control and disarm the militia. Action should also be taken to control and downsize security forces such as the Popular Defense Forces (PDF), Border Intelligence Guard, Central Reserve Police, Popular Police or Nomadic Police. Ensure that members of these institutions are vetted to exclude members who have committed serious human rights violations and bring them to justice.

#### **Short-term**

- Plan published
- Action taken to control and disarm the militia and to control and downsize the PDF, Border Intelligence Guard, Central Reserve Police, Popular Police or Nomadic Police

No plan has been published by the Government.

On 1 April 2010, the Government concluded a discharge exercise of 900 former combatants in Nyala (South Darfur). Those discharged included 560 members of the signatories of the Declaration of Commitment (DoC) to the Darfur Peace Agreement and 340 personnel associated with Sudanese Armed Forces and its affiliates. UNAMID provided technical assistance and logistical support for the exercise, including security and transport. The ongoing exercise is part of the Government's plan to discharge 5,000 former combatants affiliated with DoC signatories.

Some activities were undertaken but little or no impact has been reported from the ground.

#### **Response of the Government of Sudan**

**The Government mentions two framework agreements with ceasefire provisions signed between the Government and the Liberation and Justice Movement of Darfur. It also mentions disarmament of 23,670 combatants in North and South Sudan, reintegration of 2690 individuals in South Kordofan, 2780 in Blue Nile and 1177 in the Eastern states. In the addition, the Darfur Disarmament, Demobilization and Disarmament programme in Darfur demobilized 787 combatants in El Fasher and El Geneina.**

1.1.3 Take all necessary measures to avert the threat of and prevent attacks on civilians and intervene to protect populations under attack in all areas under Government control.

#### **Short-term**

- Number of attacks on civilians or civilian objects in areas under Government control
- Effective action taken to avert the threat of and prevent attacks on civilians and to protect populations under attack

Despite some action taken by the Government to prevent and protect the civilian population against attacks in areas under its control, civilians in some parts of Darfur continue to remain unprotected. A significant number of attacks against civilians continued to be perpetuated by non-signatories to the Darfur Peace Agreement, Chadian Armed Opposition Groups, and unknown armed elements. Throughout 2009, IDP camps (all mostly in Government controlled areas) remained in a highly insecure state with incidents of night shootings routinely reported by camp residents and several fatalities inside the camps. In addition several cases of sexual and gender-based violence (SGBV) were also documented. From November 2009 through April 2010, UNAMID recorded more than 60 incidents of attacks on IDPs inside the camps.

Some activities were undertaken but little or no impact has been reported from the ground.

On intertribal clashes, although the Government initiated reconciliation measures among feuding tribes, there were



more clashes between tribes especially in South Darfur. From August 2009 to March 2010, more than 288 deaths were recorded in tribal-related clashes:

- In Shangil Tobayi, North Darfur, ongoing fighting between members of the Birgid and Zaghawa tribes from September to October 2009 resulted in more than 20 civilian deaths, among them women and children
- In the Kass locality of South Darfur, dozens of people were killed when fighting broke out on 20 and 25 March 2010 between the Rezeigat Abala and the Misseriya Baggarat Arab tribes
- In Al Ban Jadid, north of Nyala, over 50 civilians were killed and dozens wounded in renewed clashes between two nomad tribes, the Rezeigat and Al-Saada tribes

Military offensives by Government forces, clashes among rebel factions and intertribal clashes continued to cause mass displacements of civilians in Darfur. During the reporting period UNAMID recorded six waves of displacements of civilians totalling more than 13,000 people which were the result of some of the following incidents:

- Attacks on civilians by GoS forces in Kornoi (17 September 2009) and Mawa (on 29 September 2009) in North Darfur
- Intertribal clashes in mid-October 2009 between Birgit and Zaghawa tribes which lead to displacements in the Shangil Tobayi and Daresalaam areas in North Darfur
- Bombardments in mid-February 2010 by GoS forces in east Jebel Marra targeting SLA/AW and JEM troops
- Bombardments by GoS aircrafts near Umdaraba village, West Darfur on 2 January 2010, allegedly to stop the advancement of JEM troops towards Silea town
- Attack by SLA M/M forces based in Jebeletin, Gudu and Kalaka on SLA/PW forces in Negeaha village on the border between North and South Darfur between 6 and 7 January 2010

**Response of the Government of Sudan**

**The Government refers to an awareness raising workshop on national and international principles on protection of civilians and children held in El Fasher in July 2008**

1.1.4 Enforce the prohibition on the enforced and voluntary recruitment of children into armed groups. Register and follow-up on all reported cases.

Short-term

- Number of reported cases

A presidential pardon provided for the release, family reunification and reintegration of over 119 children associated with JEM forces who were arrested following the May 2008 attack on Omdurman. All the children were released and provided with pardon through four Presidential Decrees issued for this purpose during 2008 and 2009. The Government with the support of UNICEF and ICRC reunified the children with their families in Sudan and in Chad and is supporting the children with reintegration opportunities in West Darfur through the North Sudan DDR Commission.

Significant activities were undertaken and implementation is in process.

**Response of the Government of Sudan**

**The Government mentions the Armed Forces Act of 2007 and the Child Act 2009 which prohibit the recruitment of persons under the age of eighteen and their involvement in armed conflicts.**

1.1.5 Set up effective regular police patrols to protect vulnerable populations in Darfur, supported by AMIS, including around IDP camps and villages. The needs assessment to decide on priorities should be done with the involvement of the community concerned to decide and agree on the most effective strategy of protection in those areas.

Mid-term

- Number of IDP camps and other vulnerable populations benefiting from regular and effective patrols
- Reduction in number of attacks in areas patrolled

According to the information received by UNAMID, there are no patrols conducted by the Government of Sudan. Most patrols are carried out by UNAMID Protection Force.

Some activities were undertaken but little or no impact has been reported from the ground.

From June 2009 to April 2010, UNAMID police patrols conducted a total of 28,581 patrols out of which 14,533 were conducted inside the IDP camps and through Community Policing Centers (CPC). In addition, from June 2009 to April 2010, UNAMID Military conducted more than 21,000 patrols to villages and IDP camps.

UNAMID gender officers worked in close consultation with women groups and leaders in the camps on the issue of firewood patrols. In spite of UNAMID's 24/7 patrols, security in the camps remains volatile. Incidents of night shooting and sexual violence are still reported in the camps. Women and girls from the camps continued to be attacked and assaulted when they ventured outside.

The Government claims to have established 150 model villages for returnees. UNAMID has not been able to verify this assertion due to limited access. The figures provided by the Government on the return model villages have varied from time to time.

### **Response of the Government of Sudan**

**The Government mentions increase in the police force in Darfur to 2300 in North Darfur, 2500 in South Darfur and 2600 in West Darfur. According to the Government, the police force in these areas continue to patrol the IDP camps and accompany women and girls when they go out in search of water and firewood.**

## **1.2 Protection of women against violence**

1.2.1 Make the National Action Plan on Combating Violence against Women publicly available. Report on implementation.

Short-term

- Plan published
- Level of implementation

The National Action Plan on Combating Violence Against Women has been published and widely implemented.

Full implementation (i.e. all recommended activities were carried out to lay the framework for improving the situation on the ground).

1.2.2 Publicly acknowledge and condemn violence against women and reaffirm that there will be zero tolerance for such crimes, and swift action to investigate, identify and prosecute perpetrators and compensate victims will be taken.

Short-term

- Public statements and no subsequent retractions
- Number of reported cases, followed by appropriate action which demonstrates the sincerity of the Government to combat impunity through investigation, prosecution of perpetrators and compensation

In West Darfur, during a Forum held in Foro Baranga for the celebration of “16 days of activism Against Sexual Violence”, the State Government publicly denounced and condemned violence against women.

Some activities were undertaken but little or no impact has been reported from the ground.

Acts of sexual violence, particularly against internally displaced women and girls continue to occur in Darfur. In 2009, UNAMID recorded 101 reported cases of sexual violence (49 in North Darfur, 25 in South Darfur and 27 in West Darfur). The majority of the victims were internally displaced girls and women.

Of the several cases of SGBV documented by UNAMID in 2009, only 7 cases have successfully been prosecuted. UNAMID recorded 9 incidents where police acted upon a SGBV report and 17 cases where police failed to act even though they were presented with all the facts. Below are few examples:

#### Examples of police action

In Kabkabiya, North Darfur, police arrested two military personnel accused of raping two 16-year-old girls on 15 May 2009. The police reported that the two have been placed in military detention, pending the arrival of a judge to start judicial proceedings.

In Zalingei, West Darfur two Government police officers accused of raping a 50-year-old IDP woman on 31 October 2009 have been dismissed from the police service and are awaiting trial in a civilian court. The alleged perpetrators were arrested on 1 November, and found guilty by a police court on 3 November. On 5 November, relatives of the suspects submitted a request for their retrial in an ordinary court. The suspects were released on bail and are reportedly awaiting trial in a civilian court.

#### Examples of police's inaction

In Mornei, West Darfur, UNAMID investigated a case in which two members of the Central Reserve Police accused of raping two girls, ages 13 and 15, on 18 July 2009, were released from jail on the orders of the Mornei police commander. The police commander informed UNAMID that the men were released because the girls consented to the intercourse. Further, the commander stated that the victims Form 8 indicated that they were not virgins at the time of the incident.

In El Geneina, West Darfur, police have failed to arrest one of its members accused of raping an 11-year-old girl on 11 September 2009. On 3 November, UNAMID was in court to monitor proceedings at the El Geneina Special Court where the case is being tried. The hearing was adjourned due to the failure of the defendant to appear. The defendant continues to perform his duties as a police officer in spite of a court warrant issued for his arrest.

1.2.3 Work in consultation with community members, including females, to set up or resume firewood patrols for IDP camps and villages.

Short-term

- Number of IDP camps benefiting from regular and effective firewood patrols
- Reduction in number of reported attacks on women in areas patrolled

There were no firewood patrols conducted by the Government during the reporting period. The only firewood patrols carried out were done by UNAMID Protection Force.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

There continues to exist a great deal of mistrust between IDPs and Sudanese security forces. In some camps including Otash and Alsalaam, in South Darfur, the police are stationed in the camp, and make regular patrols within the camps, but lack the capacity to investigate cases in and outside the camps. In other camps like Kalma in South Darfur and Hamidiya and Hassa Hissa in Zalingei, West Darfur, GoS forces are not allowed inside the camps.

1.2.4 Make workplans for the State Committees to Combat Violence against Women with clear objectives, targets and time frames available to the public.

Short-term

- State committee workplans publicly available

Workplans of the North and South Darfur State Committees to Combat Violence Against Women have been published and expected to be widely disseminated.

Significant activities were undertaken and implementation is in process.

#### **Response of the Government of Sudan**

**The Government mentions a workshop held in January 2009 on the work plan of the State Committees for Combating Violence Against Women which addressed issues like protection, health and psychotherapy for victims.**

1.2.5 Issue and immediately enforce clear instructions to all authorities, including the armed forces, and any militia under the Government's control that rape and other forms of sexual violence are prohibited; that they may amount to war crimes and crimes against humanity; that suspects, including bearers of command responsibility, will be investigated and brought to justice and that any immunities would be waived. Publish and widely disseminate these instructions.

#### Short-term

- Instructions issued and widely disseminated
- Number of incidents attributable to Government authorities or any militia under Government's control

Under the 2007 Armed Forces Act, serious violations of international humanitarian law and human rights law, including rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or perversion when committed as part of widespread and systematic attack against the civilian population may constitute a crime against humanity.

Some activities were undertaken but little or no impact has been reported from the ground.

Between June 2009 and April 2010, UNAMID documented 51 cases of sexual and gender-based violence in which victims described their assailants as either armed men dressed in military uniforms or as police/military officers from the regular security forces.

1.2.6 Ensure that women who experienced sexual violence have access to medical care regardless of whether they choose to report their case to the police or not. Disseminate and promote compliance with Rules of Application to Criminal Circular No. 2 that removes this requirement. Entrust State Committees with the task of monitoring compliance and publicly reporting on it.

#### Ongoing

- Number of instances of non-compliance with Rules of Application to Criminal Circular No. 2

UNAMID has organized workshops as a result of which members of the State Committees for Combating Violence Against Women and Children have become more involved in sexual and gender-based violence cases through coordination with medical staff and other stakeholders such as the prosecutor's office and police investigators. A training workshop on SGBV was organized from 4–6 October 2009 in North Darfur for 30 female IDP leaders from Rwanda IDP camp in Tawila on strategies for combating SGBV including referral pathways.

Full implementation (i.e. all recommended activities were carried out to lay the framework for improving the situation on the ground).

In South Darfur, authorities have made significant efforts to disseminate and promote compliance with the rules for implementation of Criminal Circular No. 2, and the State Committee members are also involved in monitoring compliance as well. However, dissemination and promotion has not taken place in remote areas of the region.

In West Darfur on the other hand, there is a general lack of awareness of the rules of application of Criminal Circular No. 2 which informs about the right of women to medical care irrespective of whether or not they carry a Form 8.

### **Response of the Government of Sudan**

**The Government mentions two awareness raising workshops on legal procedures for Criminal Circular 2 organized by the Unit for Combating Violence Against Women and Children in El Fasher and El Tina localities**

1.2.7 Deploy women police officers to Darfur specially trained to deal with victims of sexual violence and other forms of violence against women. Ensure that all investigating officers at least receive training on how to deal with VAW cases.

Mid-term

- Number of trained women police officers deployed in IDP camps

In North Darfur, the Government reported the training and deployment of 150 female police officers. However, in South Darfur deployment of female Police officers has been slow. Only one female police officer was observed to be working at the Family and Child Protection Unit. More female police officers and junior ranked women need to be recruited and deployed in the State particularly in the rural areas and IDP camps.

Significant activities were undertaken and implementation is in process.

### **Response of the Government of Sudan**

**The Government mentions an increase in female police officers in IDP camps and the establishment of Family and Child Protection Units (FCPU) in the three Darfur states. The Government states there are 35 female police officers deployed in IDP camps and FCPUs in North Darfur, with another 33 deployed in South Darfur IDP camps.**

1.2.8 Review the current legal framework to address deficiencies and ensure its effectiveness in the prevention and prosecution of crimes of sexual violence. Amend the definition of rape in article 149 of Criminal Act 1991 in a way ensuring that no links to the substantive or evidentiary requirements of adultery or sodomy exist.

Mid-term

- Reform law of criminal evidence to ensure that it is legally inadmissible to regard victim's allegation of rape as a confession of adultery (article 145 of Criminal Act 1991)
- Criminal Act of 1991 and other relevant legislation reformed
- Number of prosecutions of rape, appropriate sentences for perpetrators and reparation for victims

Amendments to the Criminal Act passed in May 2009 makes provisions on war crimes, crimes against humanity and genocide including prohibition of acts of sexual violence.

Some activities were undertaken but little or no impact has been reported from the ground.

Of the several cases of SGBV documented in 2009, only 7 cases were successfully prosecuted. UNAMID recorded 9 incidents where police acted upon a SGBV report and 17 cases where police failed to act even though they were presented with all the facts.

UNAMID followed up four cases of rape in which both victims and offenders were minors. Two of the offenders were acquitted for lack of evidence and two were convicted. In one case, a 14-year-old boy was sentenced to 60 lashes and three years imprisonment. In another case, a 16-year-old boy was sentenced to three years imprisonment.

#### **Response of the Government of Sudan**

**The Government makes reference to two workshops held on amending the section on rape in the Criminal Act 1991 with the view to removing the discrepancies in the definition of "rape and adultery".**

1.2.9 Ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Mid-term

- CEDAW and Protocol ratified

CEDAW and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa have not been ratified by Sudan.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

#### **Response of the Government of Sudan**

**The Government refers to the CEDAW committee's rejection of the sovereign right of states to make a reservation to the treaty before acceding to it**



### 1.3 Children and armed conflict

1.3.1 Establish and provide sufficient resources to Gender and Child Units within the national police in Darfur as a matter of priority.

Short-term

- Gender and Child Units within the national police established and fully resourced

The police in collaboration with the National Council for Child Welfare and with support from UNICEF have established the Family and Child Protection Units in the three Darfur States with the aim to strengthen systems for protecting children in contact with the law, including child offenders, victims or witnesses at the different stages of justice. The Units provide specialist and professional services to manage cases of different types of violence, abuse and exploitation against children and women with emphasis on child-friendly and gender-sensitive procedures. Efforts to establish child courts and prosecutors' offices for children have also started. These efforts have involved a wide range of partners, including the Ministry of Justice, Ministry of Social Welfare, the Police, the State Councils for Child Welfare as well as UNAMID, UNDP, UNFPA, UNICEF and NGOs.

Full implementation (i.e. all recommended activities were carried out to lay the framework for improving the situation on the ground).

UNAMID continues to train investigative officers working with the Family and Child Units on how to deal with children involved in armed conflict

#### **Response of the Government of Sudan**

#### **The Government makes reference to the establishment of Family and Child Protection Units in as part of the police force in Sudan**

1.3.2 Undertake timely adoption of national legislation for the protection of children and ensure the implementation of this legislation.

Ensure the rigorous and systematic investigation and prosecution of violations against children to address the prevailing sense of impunity for such violations.

Mid-term

- Adoption of national legislation for the protection of children
- Number of cases of violations against children investigated and prosecuted

The Child Act was passed by the National Assembly on 29 December 2009. It prohibits the recruitment of children below 18 years of age. The law contains a number of constructive provisions including the definition of a child as anyone who has not reached the age of 18 and the revocation of "signs of maturity" as a criterion for defining a child. The Act also raises the age of criminal responsibility from 7

Significant activities were undertaken and implementation is in process.

to 12 years, makes child exploitation and abuse a criminal offence and establishes a comprehensive juvenile justice system.

#### **Response of the Government of Sudan**

**The Government cites the Child Act 2009 which makes provision for the establishment of special offices for prosecuting cases involving children. Three of these offices have been established in Darfur. The Act also imposes harsh sentences including the death penalty for serious crimes committed against children**

1.3.3 Ensure that DDR Commissions have adequate child protection expertise, and ensure effective communication with relevant line ministries such as the Ministry of Social Welfare, Women and Children's Affairs. The National DDR Coordination Council should facilitate the inclusion of all relevant stakeholders.

#### **Mid-term**

- Adequate child protection expertise within the DDR Commissions

The National DDR Commission made significant progress in the Child DDR programme through the establishment of core standards for the release, family reunification and reintegration of children. It also developed a management information system and monitoring and evaluation tools in line with integrated DDR standards and the Paris principles. Collaboration between the Darfur States ministries of Social Welfare, Ministry of Education, Health, and the North Sudan Commission was strengthened during the reporting period. Furthermore, an arrangement was reached between the North Sudan Commission and the Security Arrangement Commission of the Transitional Darfur Regional Authority on the Child DDR process to work out a modality for the release and reintegration of children associated with armed forces or armed groups in Darfur.

Significant activities were undertaken and implementation is in process.

With the support of UNICEF, the Commission has initiated the development of a Child DDR programme in North Darfur which is based on an operational plan developed with six armed groups, signatories to the DPA, including the SLA/Free Will, SLA Abu Ghasim/Mother Wing, JEM Peace/Wing, SLA/Mini Minnawi, SLA/Peace Wing and the Popular Force for Rights and Democracy. A list of over 2,000 names of children has been submitted so far by these groups. As of February 2010, 387 children from SLA/Free Will and SLA/Mother Wing had been disarmed, demobilized and registered for the reintegration programme.

## Response of the Government of Sudan

**The Government reports that 535 children have been registered in the DDR program in South Darfur and 250 in West Darfur. In addition, 54 children who took part in the JEM attack on Omdurman in 2008 have been pardoned by the President**

### 1.4 Protection against summary executions, arbitrary detention, disappearances, torture

1.4.1 Issue and enforce clear instructions to the law enforcement agencies, the armed forces and any militias under the Government's control that summary executions, arbitrary detention, enforced or involuntary disappearances and torture are illegal and will not be tolerated; that they can amount to war crimes and crimes against humanity, that suspects will be investigated and brought to justice and any immunities would be waived.

#### Short-term

- Instructions issued and widely disseminated
- Number of reported incidents attributable to the Government

No instructions were issued or widely disseminated.

Between January 2009 and January 2010, UNAMID documented 68 cases of arbitrary arrests and detentions involving 120 civilians in Nyala, South Darfur alone.

In North Darfur, 16 people suspected of involvement in the murder of a local community leader were arrested and detained under the 1997 Emergency and Safety Act for more than five months without access to lawyers and without being brought before a judicial authority. Six of the detainees remain in detention and have not been charged with an offense, more than eight months after their arrest.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

On 20 July, 2009, UNAMID in Nyala, South Darfur, interviewed five people arrested and detained in the custody of Military Intelligence. The men were held for close to a month on suspicion of being affiliated with the SLA/AW but were never charged with an offence nor brought before a judicial authority.

In El Geneina, West Darfur, UNAMID interviewed a man who was arrested and detained by the NISS for more than two months on suspicion of being involved in criminal activities. The man was arrested on 20 September 2009 and released on 5 December but was not charged with an offence nor transferred to police custody for investigation.

#### **Response of the Government of Sudan**

**The Government cites awareness raising workshops conducted on the Armed Forces Act 2007 and the Criminal Act (Amendment 1991). It also makes reference to instances where immunities for accused soldiers and policemen have been lifted**

1.4.2 Refrain from detaining anyone incommunicado. Close all unofficial places of detention. Ensure that all persons, including any civilians held by Military Intelligence and National Security are promptly brought before a judicial arrest following arrest and regularly thereafter. Ensure that accessible, complete, accurate and fully up-to-date lists of detainees are kept, and shared with families of the detainees. Refrain from detaining civilians in military installations.

#### **Short-term**

- No instances of secret or incommunicado detention reported
- Up-to-date lists of detainees available

Arbitrary arrests and detention continued during the reporting period. Based on UNAMID reports, the NISS and Military Intelligence continue to arbitrarily arrest and detain individuals, mostly on suspicion of collaborating or being involved with rebel groups. Detainees were very often held without being informed of the reason for their arrest and sometimes detained without charges for prolonged periods and not brought before a judicial authority. From January to April 2010, UNAMID documented a total of 36 incidents of harassments by National Security personnel involving 90 victims in Darfur.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

#### **Response of the Government of Sudan**

**Government states that UNAMID Human Rights Section has been regularly visiting places of detention in Darfur and that the Independent Expert was also given access to visit places of detention during his visit to Sudan in January/February 2010**

1.4.3 Issue and enforce clear instructions that detainees must be provided all guarantees provided for under international law to ensure they are being lawfully detained and have access to fair trial. This includes notification of reasons for arrest upon arrest, immediate access to a lawyer upon arrest, access to family members, and being presented promptly before a judicial authority.

#### Short-term

- Instructions issued and widely disseminated
- Number of incidents of denial of such guarantees

No instructions were issued or widely disseminated.

As reported above, arbitrary arrests and detentions of civilians continued during the reporting period. Based on UNAMID reports, the NISS and Military Intelligence continue to arbitrarily arrest and detain individuals mostly on suspicion of collaborating or being involved with rebel groups. Detainees were very often held without being informed of the reason for their arrest and sometimes detained without charges for prolonged periods and not brought before a judicial authority. From January to April 2010, UNAMID documented a total of 36 incidents of harassments by National Security personnel involving 90 victims in Darfur.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

#### Response of the Government of Sudan

**The Government states that the detainees from the Justice and Equality Movement who participated in the 2008 attack on Omdurman were given access to legal counsel and medical care while under investigation and during the trial stages.**

1.4.4 Ensure institutional and legislative reform of the National Security Service in accordance with the CPA and Interim National Constitution. In particular, broad powers of arrest and detention should be reformed (art. 31 and art. 33 of the National Security Act) and judicial oversight mechanism established.

Emergency laws should not grant security agencies broad powers to arrest and to restrict freedom of movement, assembly and expression.

#### Mid-term

- National Security reformed in accordance with CPA
- Emergency laws repealed

Number of incidents of harassment, arrests and detention by National Security.

A new National Security Act was passed in 2010, which repeals the 1999 National Security Forces Act and reforms the Sudanese National Intelligence and Security Services (NISS). Under the new law, the NISS will be able to search and confiscate property and has powers of arrest and

Some activities were undertaken but little or no impact has been reported from the ground.

detention for a period of four and a half months without judicial oversight. The new law also grants NISS personnel immunity against criminal prosecution and civil liability. The new reforms are not in line with the Interim National Constitution and the CPA which envisioned information gathering and advisory roles for the National Security Service.

The Emergency and Safety Act 1997 continues to apply in Darfur. Under this law, the State governors have the power to authorise searches without warrants as well as order arrests and detention of individuals.

#### **Response of the Government of Sudan**

**The Government states that the National Security Act of 2010 reduces the period of detention by security agencies to one month, and also provides safeguards for detainees including notification of reasons for arrest and allowing access to lawyers and family members**

#### 1.4.5 Ratify Convention against Torture

Mid-term

- Ratification of CAT

The Convention Against Torture has not been ratified.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

### **1.5 Protection of witnesses and victims**

1.5.1 Ensure that human rights monitors have full and unimpeded access to witnesses and victims of human rights violations, that witnesses and victims are not subjected to any violence, reprisals or harassment due to their cooperation with human rights monitors; and that all necessary and feasible measures are taken to protect witnesses and victims against violence, reprisals and harassment by third parties.

Short-term

- Number of reported incidents of non-compliance

In South Darfur, UNAMID received reports from witnesses and victims who failed to file complaints because of fear of intimidation. In one case involving the killing of a man in Dereig IDP camp, South Darfur (23 June 2009), witnesses and relatives told UNAMID that they did not follow up the case with the police for fear of being arrested themselves by authorities.

Some activities were undertaken but little or no impact has been reported from the ground.

In West Darfur, a female witness to an alleged attempted rape was detained by NISS on 2 October 2009. A male Fur IDP from an IDP camp had attempted to rape an Arab woman. In retaliation, a group of Arab tribesmen inside the camp kidnapped another Fur male IDP. To secure the release of the man, the Furs and the Arabs living in the camp agreed that the Fur woman who apparently had witnessed the incident and the leader of the kidnappers would be detained in custody until the real perpetrator was handed over to the police. UNAMID HRS was denied access to the detainees.

### **Response of the Government of Sudan**

**The Government notes that there have been no reports of human rights monitors being denied access to victims or of reprisals or harassment of victims due to their cooperation with monitors**

## **1.6 Protection of human rights defenders**

1.6.1 Do not subject human rights defenders to arbitrary detentions, physical abuse and harassment as a tool for silencing their criticisms of human rights violations in the Darfur region and for providing legal assistance to victims.

Short-term

- Number of reported cases

There continues to be reports on human rights defenders working on Darfur issues being subjected to harassment by the NISS and sometimes arrests. Serious concerns remain regarding the tightening of freedom of expression and a backlash against human rights defenders since the indictment of the President of the Sudan by the International Criminal Court in March 2009. As a consequence, there continues to be limited activity among human rights defenders and many activists have remained outside of Sudan for fear of harassment and arrest should they return. The period immediately leading up to the elections in April 2010 saw an easing of restrictions on the freedom of expression, but these restrictions were again tightened following the elections.

In August 2009, a Darfurian man employed by the Khartoum office of the Darfur Transitional Authority was arrested by the NISS and detained until 16 January 2010 for monitoring the human rights situation in Darfur. He was again arrested on 28 March 2010 and detained for several hours.

On 25 October 2009, the chairperson of the Darfur Students Association of Khartoum University was arrested and allegedly tortured by the NISS. On the

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

same day, NISS personnel reportedly entered the university and beat his wife, also a student of the university.

On 22 February 2010, the Director of an INGO in Nyala, South Darfur was arrested by the NISS. He was released two days later but was threatened with re-arrest if he revealed his experience in NISS custody. He was also instructed to furnish the intelligence service with information on activities of all of the INGOs operating in Nyala.

In late April 2010, three students affiliated with the United Popular Front, a student group linked with the Sudan Liberation Movement Abdul Wahid faction, were arrested by the NISS. They were released on 16 May 2010. The reasons for their arrest remain unclear but it was likely due to their political activities in the Sudanese universities. There has been a wave of arrests of UPF students since April 2009 when the group expressed support for the indictment of the President by the ICC.

#### **Response of the Government of Sudan**

**The Government reports of no cases of human rights defenders being subjected to arbitrary detention, harassment or physical abuse. It mentions that NGOs have continued their work without any interference or harassment from the Government.**

1.6.2 Remove restrictions in the National Press Laws that can be used to threaten the work and independence of journalists acting as human rights defenders and bring them into line with the Interim Constitution, the International Covenant on Civil and Political Rights and other applicable international standards.

#### **Short-term**

- Reformed in accordance with the Interim Constitution, the International Covenant on Civil and Political Rights and other applicable international standards

The Press and Printed Materials Act were passed on 8 June 2009. The new Act provides among other things for no restrictions to be imposed on press publications unless prescribed by law to protect national security, public order and health. It also allows for the right of access to information in accordance with the law. It also sets up a National Press Council in which journalists form the majority of members.

Significant activities were undertaken and implementation is in process.

In September 2009, the President of the Republic issued a decree lifting pre-censorship of the print media.



## **Response of the Government of Sudan**

**The Government makes reference to the passage of the 2009 Press and Printed Materials Act and cites many provisions under the Act which ensure press freedom**

## **2. Humanitarian access**

### **2.1 Protection of humanitarian workers from harassment and attack**

2.1.1 Publicly express support for the role of humanitarian workers in providing life-saving assistance to populations at risk.

Short-term

- Public declaration made; no subsequent retraction

No public declaration was made during the reporting period.

Some activities were undertaken but little or no impact has been reported from the ground.

The Humanitarian Aid Commission (HAC) has continued to grant licences to new NGOs both Sudanese and non-Sudanese.

## **Response of the Government of Sudan**

**The Government mentions the inauguration of the Annual Volunteers day in 2007 and a speech made by the President of Sudan commending the work of volunteers in Sudan**

2.1.2 Assist aid organizations and workers who have been forced to suspend their work to return to their work areas and ensure their security on return.

Short-term

- Number of aid workers allowed to return

In June 2009, the UN humanitarian Coordinator announced that 4 of the 13 aid agencies (CARE International, Save the Children, Mercy Corps and Padco) expelled from the country following the indictment of President Bashir by the ICC will be allowed to return. However, this statement was refuted by the Government. The Government clarified that the four organizations would only be allowed back after applying for new registrations.

Some activities were undertaken but little or no impact has been reported from the ground.

On 22 January 2010, the Government revoked the licences of 26 relief groups operating in Darfur while warning 13 others that they must conform to the country's laws within 30 days or face the same fate. The decision followed an assessment done by the Government on the activities of the

organizations which concluded that the affected organizations were not carrying out any humanitarian activities and had failed to renew their annual permits or submit required reports.

#### **Response of the Government of Sudan**

**The Government makes reference to actions it had taken to secure the release of abducted aid workers and retrieve stolen humanitarian assets.**

2.1.3 Do not use any vehicle or aircraft markings that might blur the line between humanitarian operations and government military operations.

Short-term

- No such incidents reported

In Al-Geneina, West Darfur, Military Intelligence and National Intelligence and Security Services continue to use white vehicles, which might confuse humanitarian operations and government military operations. Though the numbers of such vehicles are few, they are still in use. In South Darfur, UNAMID has observed the use of white pickup land cruisers by NISS and MI.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

#### **Response of the Government of Sudan**

##### **No incidents reported**

2.1.4 Do not subject humanitarian workers to arbitrary detentions, physical abuse, sexual assaults and harassment. Issue clear written instructions to instruct authorities at all levels, including military, and any militias under the Government's control in this regard. Publish and widely disseminate these instructions.

Short-term

- Instructions issued and widely disseminated
- Number of reported incidents of harassment or attacks on humanitarian workers

No instructions issued or widely disseminated.

During the period under review, UNAMID recorded nine incidents where the delivery or distribution of humanitarian assistance was obstructed and two attacks on humanitarian workers and/or transport vehicles. The reporting period also witnessed persistent attacks against humanitarian workers and UNAMID staff including incidents of abductions of international aid workers and armed ambushes against UNAMID peacekeepers. A total of 111 UN vehicles were carjacked in 2009.

Some activities were undertaken but little or no impact has been reported from the ground.

Two UNAMID international civilian staff members were abducted from their residence in Zalingei, West Darfur, in August 2009, by unidentified gunmen and released in late November. Two INGO staff were also abducted in Kutum, North Darfur, in July 2009 and released in mid-October. An international employee of

the ICRC was abducted and held in captivity for 147 days before being released. On 15 April 2010, four UNAMID peacekeepers were forcefully taken outside their team site in Nyala, South Darfur, by unidentified gunmen.

Government has made significant efforts in retrieving hijacked vehicles. Twenty-four out of about 70 vehicles lost to carjacking in 2009 were retrieved largely through prompt action taken by GoS police. In accordance with a decision of the Government/UN High-Level Committee on Humanitarian Assistance, in late 2009, the Government established a State-level subcommittee on security in North Darfur where UN agencies, NGOs and GoS would meet to discuss and coordinate their activities on security and humanitarian access.

#### **Response of the Government of Sudan**

**No incidents of harassment or attacks on humanitarians were reported. Sudan's army and police force have provided escort services to humanitarian organizations**

## **2.2 Facilitating access to civilians, including those displaced**

2.2.1 Respect and fully implement the Status of Forces Agreement (SOFA), the Moratorium on Restrictions of Humanitarian Work in Darfur, agreed with the United Nations in 2004, and the Joint Communiqué between the Government of the Sudan and the Deputy SRSR on Facilitation of Humanitarian Activities in Darfur 2007.

Short- and mid-term

- Number of instances of non-compliance with the commitments made therein

Although the Government has facilitated the deployment of UNAMID troops, resulting in more troops on the ground, there are still violations of the SOFA including restrictions on the movement of UNAMID, attacks on UNAMID convoys in Government-controlled areas and restriction on the UNAMID mandate on the use of force to protect civilians. Between June 2009 and March 2010, UNAMID recorded a total of 93 incidents of restrictions in movements and denial of access.

Some activities were undertaken but little or no impact has been reported from the ground.

#### **Response of the Government of Sudan**

**The Government makes reference to an order issued by the Director General of the Sudanese police force which helps facilitates the work of humanitarians**

2.2.2 Ensure that aid workers have access to people not only in camps but in remote villages that have been cut off from aid supplies by fighting.

## Mid-term

- Percentage of areas under Government limit for international humanitarian organizations control being off

In West Darfur, UNAMID has not been able to access the northern corridor of the region since February 2010

Initial steps towards implementation were undertaken.

**Response of the Government of Sudan**

**The Government states that joint mechanisms between the Government and humanitarian organizations have been established at state and local levels to assess the humanitarian situation on the ground**

2.2.3 Reform the Organization of Voluntary and Humanitarian Work Act of 2006 so as not to restrict the work of groups through unnecessary procedural requirements or confined definitions of what humanitarian organizations should do, and lack of judicial oversight of decisions by Ministry of Humanitarian Affairs and HAC.

## Mid-term

- Reformed in accordance with the Interim Constitution, the United Nations Declaration on Human Rights Defenders and other relevant international standards

The Organisation of Voluntary and Humanitarian Act of 2006 remains in force and no efforts have been made by the Government to reform it. Nevertheless, the reporting period witnessed a positive example of judicial oversight of a decision made by the Humanitarian Aid Commission, (HAC). On 21 April 2010, a court in Khartoum reversed a HAC decision in 2009 to cancel the registration of and dissolve the Sudan Development Organization (SUDO). The court held that under the 2006 Act, the authority granted to HAC was limited to the implementation of the policies and plans of humanitarian work and does not include the power to dissolve an organization.

Some activities undertaken or reported but little or no tangible impact reported on the ground.

**Response of the Government of Sudan**

**The Government reports that no complaints were made by the humanitarian organizations as to restrictions in their work. The number of registered aid organizations went up in 2009 and the number of foreign aid workers in Sudan also doubled**

### 3. Accountability and justice

#### 3.1 Carry out thorough investigations, in accordance with relevant international standards, into all reported cases of human rights abuses and breaches of international humanitarian law, including allegations of torture, violence against women, arbitrary detentions and killings, including incidents which have been reported publicly by the Office of the High Commissioner for Human Rights, in particular in the following cases:

- Attacks in Bulbul area, South Darfur, in January–March 2007 with involvement of Border Intelligence Guards and other government forces
- Attacks on the village of Deribat and eight other villages along the road from Kutur to Deribat in late December 2006 with involvement of government forces and allied militia
- Killing of civilians in the area of Buram, South Darfur, in October 2006
- Arrests of at least 19 Massalit men in Gereida, South Darfur, in September 2006 by soldiers of the Special Presidential Assistant and Chairman of the Transitional Darfur Regional Authority Minni Minnawi
- Attacks on villages around Jebel Moon area on 29 October 2006 and the failure of the Sudanese Armed Forces to prevent the attack or protect the population during the attacks
- Law enforcement operation on NGO compounds on 19 January 2007 in Nyala with 20 United Nations, NGO and AMIS staff arrested, physically and verbally abused, including two cases of sexual assault
- Attack on four NGO compounds in Gereida by SLD/Minni Minnawi forces on 18 December 2006 with 12 vehicles stolen and allegedly seven aid workers raped

Provide information on thorough and transparent investigations undertaken into the allegations of torture brought to the Government's attention by the Special Rapporteur on torture, in particular those contained in the reports E/CN.4/2006/6/Add.1 and A/HRC/4/33/Add.1. In cases where investigation committees were established, make public their findings. Take legal action against the perpetrators and especially against those with command responsibility. Immunities should be waived in such cases. Take appropriate disciplinary action against police and other officials who fail in their primary responsibility to protect civilians. Compensate and rehabilitate victims.

Short-term/accepted

- Number of investigations
- Number of prosecutions
- Number of convictions
- Number of perpetrators, especially those with command responsibility prosecuted
- Findings of investigation committees made public
- Number of compensated and rehabilitated victims

In South Darfur, UNAMID monitored four trials involving the prosecution of low-ranking military and police officials accused of criminal offences in the State. On 1 September 2009, the Nyala General Court sentenced a corporal from the Central Reserve

Initial steps towards implementation were undertaken.

Police (CRP) to one-year imprisonment for negligently causing the death of a 9-year-old girl. On 12 October 2009, the Nyala General Court sentenced an SAF soldier to death for murder. UNAMID HR continues to monitor another case involving a corporal from the CRP also accused of murder.

The outcome of the Commission of Inquiry into the 2008 Kalma IDP camp incident has not been made public. There has been no prosecution of those responsible for the attack which resulted in the death of 33 residents of the camp.

The Government has established a Commission of Inquiry to investigate the 9 February 2010 militia attack on Kass IDP Camps.

#### **Response of the Government of Sudan**

**The Government states that the courts in Darfur continue to try cases of killings, abductions and violence against women. It has submitted two lists of armed forces and security personnel tried and convicted by courts in the three Darfur states**

- 3.2 Ensure that there are no laws that provide legal immunities for State agents for human rights violations; in particular, repeal article 33 of the National Security Forces Act of 1999 (criminal and civil immunity), and article 46 of the 1999 Police Forces Act (immunity for police on official duty). As long as immunity laws are in force, the responsible authorities should issue a blanket waiver for immunities for war crimes and crimes involving torture, violence against women, arbitrary detention, enforced and arbitrary disappearances and extrajudicial killings in Darfur or in relation to the situation in Darfur.**

Short-term

- Legal immunities for armed State agents abolished
- Blanket waiver issued

Various laws in Sudan continue to provide immunities which in practice have prevented prosecution in the regular courts of security personnel, police and soldiers who may have perpetrated crimes in Darfur. Article 34 (2) of the Armed Forces Act 2007 provides immunity for military personnel from criminal prosecution for any offence committed in the discharge of their official duties or in compliance with lawful superior orders. Article 45 (1) of the Police Act 2007 states that criminal procedures and trial may not be initiated against any policeman who committed an act deemed to be a crime during his official duties, except with permission issued by the Minister of Interior. Article 33 of the National Security Forces Act of 1999 grants immunity to members of the security forces against

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

ordinary civil or criminal proceedings for any act connected with their official duties. Article 52 (3) of the new NISS Act of 2010 states that no civil or criminal proceedings may be brought against a member or associate of the NISS unless upon the approval of the Director of the Service.

#### **Response of the Government of Sudan**

**The Government submits that immunities granted state agents are merely procedural and can be lifted where a prima facie case has been established against an individual**

### **3.3 Fully cooperate with the International Criminal Court mandated by the Security Council to investigate and prosecute international crimes committed in Darfur.**

Short-term

- Number of alleged perpetrators of international crimes committed in Darfur handed over to the International Criminal Court

New amendments to the Criminal Procedure Act includes a provision that prohibits the institution of criminal proceedings against any Sudanese national for any act which may constitute a violation of international humanitarian law including war crimes, crimes against humanity, and genocide except before “the Sudanese Police, General Prosecution and Judiciary”.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

#### **Response of the Government of Sudan**

**The Government rejects the jurisdiction of the International Criminal Court**

### **3.4 Start to review the compatibility of domestic legislation with the interim national constitution and bill of rights, and harmonize laws with Sudan’s obligations under international human rights law. Undertake legal reform to include, especially, National Security Act, Police Act, Emergency Laws, and Armed Forces Act.**

Short-term/mid-term

- Number of laws reformed in accordance with international human rights law

The Child Act contains constructive provisions including the definition of a child as anyone who has not reached the age of 18, raises the age of criminal responsibility from 7 to 12 years and makes child exploitation and abuse a criminal offence. The Press and Printed Materials Act of 2009 provides for no restrictions on press publications unless prescribed by law to protect national security, public order and health. It also provides for the right of access to information in accordance with the law and also

Significant activities were undertaken and implementation is in process.

prohibits the confiscation and closing down of newspapers.

The NISS Act on the other hand maintains arrest and detention powers of the NISS contrary to the Interim National Constitution and the CPA which envisioned information gathering and advisory roles for the National Security Service. Amendments to the Criminal Procedure Act grant State governors and commissioners powers to issue orders to ban public meetings and gatherings. The 1997 Emergency and Public Safety Act, which grants wide discretionary powers of arrest to the State governors, has not been reformed.

#### **Response of the Government of Sudan**

**The Government makes reference to Sudan's ratification of the two Optional Protocols on the 1949 Geneva Convention on the Protection of Civilians in International Conflicts and the International Convention on the Rights of Persons with Disabilities. Reference is also made to relevant legislations passed by the national legislature including the Armed Forces Act 2007, the Police Act 2008, the Criminal Act 1991 (Amendment), the National Security Act 2009, the Child Act 2009, the Press and Printed Material Act 2009, the Southern Sudan Referendum Act 2009, the Abyei Referendum Act 2009, the Popular Consultation for Southern Kordofan and Blue Nile Act 2009 and the National Human Rights Commission Act 2009.**

- 3.5 Ensure the effective functioning of judicial and legislative oversight mechanisms. Ensure there are sufficient numbers of resourced and trained prosecutors to meet the demands of justice in all three Darfur States. Ensure that the law enforcement and the judiciary in Darfur is adequately financed, reformed in accordance with international standards and staffed with professionals.**

#### **Mid-term**

- Judicial and oversight mechanisms in place. Number of resourced and trained prosecutors in the three Darfur States.
- Number of resourced and trained police in Darfur.
- Action taken to reform law enforcement and the judiciary in accordance with international standards.



In North Darfur, out of 14 geographic localities, 10 do not have any formal court system and there are no judges and prosecutors in three localities. Local authorities have resorted to establishing mobile courts to fill the gap created by the absence of the judiciary.

Initial steps towards implementation were undertaken.

In West Darfur, prosecutors and judges are present in only two localities. Five localities do not have prosecutors and judges.

#### **Response of the Government of Sudan**

**The Government points to the establishment of a judicial services commission tasked with assessing the needs of judges. It refers to a well equipped judiciary in Darfur consisting of 19 district attorneys and 3 prosecutors for children. In addition, judges have received training in international humanitarian principles on child protection, war crimes and violence against women.**

## **4. Monitoring of implementation of recommendations**

### **4.1 Establish a national human rights forum where relevant members of the international community, including the United Nations, and the Government can openly discuss human rights issues, concerns, trends, recommendations, and actions taken by the Government on specific cases and more generally to improve the human rights situation in Darfur**

#### **Short-term**

- National human rights forum established and functioning

Human rights forums have been successfully established and are fully operational in Khartoum and Darfur. Both forums provide platforms for dialogue and follow-up on human rights issues between the Government, the UN and other stakeholders with donor countries participating as observers. In Darfur, sub-forums have been established in North and West Darfur in order to enhance the participation of local authorities as well as strengthen the linkages between central and local authorities.

Full implementation (i.e., all recommended activities were carried out to lay the framework for improving the situation on the ground).

### Response of the Government of Sudan

The Government refers to the establishment of two Human Rights Forums in Sudan. The Darfur Human Rights Forum is tasked with overseeing human rights issues in Darfur. In addition, sub forums have been established in the three Darfur states to ensure local participation and regular meetings to deal with specific human rights concerns affecting each state.

#### 4.2 Give the United Nations human rights monitors full access to the investigation records, allow them to interview victims in private and brief them on at least a monthly basis on progress made in each investigation

##### Short-term

- UN human rights monitors granted full access to the investigation records, allowed to interview victims in private, and provided monthly reports on progress made in each case

UN monitors do not have access to police records and requests to interview victims in private are very often declined by the authorities. Further, monitors are not provided with monthly reports on progress made on cases investigated by the police.

Initial steps towards implementation were undertaken.

#### 4.3 Grant the United Nations human rights monitors full and unimpeded access to all those detained in Darfur or in other parts of the Sudan in relation to the Darfur conflict, including national security installations and military bases. Make a public declaration that full and unimpeded access has been granted and send a written order to all authorities to grant access.

##### Short-term

- Number of reported incidents of non-access

UNAMID human rights monitors do not have unfettered access to detention centres. Access to NISS detention centres remain a challenge while access to the prisons is granted on an ad hoc basis.

Initial steps towards implementation were undertaken.

##### Access to State-run prisons

Human rights monitors have been granted limited access to the largest prison facility in Darfur (Shalla Prison, North Darfur) since February 2010 when the independent expert for situation of human rights in Sudan visited Darfur.

##### Access to National Security, Military Intelligence and police detention centres

No unfettered access has been granted to places of detention controlled by the NISS and MI especially access to persons held under emergency laws. In North

Darfur, in August 2009, human rights monitors were denied access to eight people arrested on 2 August 2009 in connection with murder of a local community leader and his wife. Sixteen people were arrested under the 1997 Emergency and Public Safety Act and held in pretrial detention with no access to their relatives and lawyers. However, in South Darfur, human rights monitors were granted access and allowed to interview in private members of the PCP and SPLM detained by the NISS in August 2009.

Access to SLA/MM controlled zones

Access to SLA/MM detention facilities has been granted to human rights monitors.

UNAMID reports that following the signing of a memorandum of understanding between UNAMID and the Government of Sudan prison authority on 21 February, UNAMID has had access to all Government operated prisons.

**4.4 Issue a standing invitation to all human rights mechanisms (whether standing or ad hoc) of the United Nations and the African Union to investigate the situation in Darfur and give these mechanisms full and unimpeded access to the Darfur region. Respond to all communications regarding cases addressed to the Government by special procedures of the United Nations.**

Short-term

- Standing invitation extended, no subsequent obstructions of full and unimpeded access
- Number of responses received

The Government did not issue any standing invitation to UN Special Procedures.

Significant activities were undertaken and implementation is in process.

On 9 December 2009, the Government approved the visit of the independent expert to Sudan.

A four-member delegation from the African Commission on Human and Peoples' Rights (ACPHR) conducted a three-day mission to Sudan between 28 October and 1 November 2009.

**Response of the Government of Sudan**

**The Government facilitated the visit of the Independent Expert in January/February this year by arranging meetings with officials and granting him access to detention facilities including prison facilities of the NISS.**

**4.5 Set up systems for documentation and recording of violations of human rights and ensuring access for human rights defenders to this information. Ensure the effective functioning of documentation centres within the human rights units of the Ministries of the Interior, Defence, Welfare and others.**

Mid-term

- Systems in place and documentation centres functioning effectively

No information made available.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

**4.6 Evaluate, together with the United Nations, the functioning of the State Committees to Combat Violence against Women, the implementation of their workplans as well as the implementation of the National Action Plan**

Mid-term

- Evaluation conducted and made public

See recommendation 1.2.4.

Significant activities were undertaken and implementation is in process.

**4.7 Establish an independent national human rights commission in accordance with the Paris Principles and with a dedicated mandate, resources and capacity to address the situation in Darfur**

Short-term

- NHRC in accordance with Paris Principles established

The National Human Rights Commission Act has been passed. However, the Government has not taken any steps towards the establishment of the Commission through a transparent and inclusive process for the selection of the members.

Some activities were undertaken but little or no impact has been reported from the ground.

**Response of the Government of Sudan**

**A bill establishing an independent 15-member Human Rights Commission with an independent budget was passed in 2009. The CPA parties are yet to agree on the procedure for nominating members to the Commission.**

**4.8 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Mid-term

- OP-CAT ratified

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has not been ratified.

No implementation at all, which has direct bearing on concretely improving the human rights situation on the ground.

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