

Second Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan

I.	INTRODUCTION.....	2
A.	GENERAL FINDINGS	2
B.	KEY RECOMMENDATIONS.....	3
i.	<i>Ending the culture of impunity throughout Sudan.....</i>	<i>3</i>
ii.	<i>National Security reform.....</i>	<i>4</i>
iii.	<i>Respecting economic, social, and cultural rights.....</i>	<i>4</i>
iv.	<i>A free civil society</i>	<i>4</i>
v.	<i>Making effective use of the national law reform committee</i>	<i>4</i>
II.	POLITICAL CONTEXT	4
III.	BINDING INTERNATIONAL LAW RELATING TO HUMAN RIGHTS IN SUDAN...8	
IV.	VIOLATIONS OF CIVIL AND POLITICAL RIGHTS IN SUDAN.....	10
A.	VIOLATIONS SPECIFIC TO DARFUR.....	10
i.	<i>Large attacks by Government forces in Darfur.....</i>	<i>10</i>
ii.	<i>Sexual and gender based violence by government forces.....</i>	<i>12</i>
iii.	<i>Human rights abuses by armed militia and the government’s failure to protect its population</i>	<i>13</i>
iv.	<i>Violations of international humanitarian law by rebels.....</i>	<i>17</i>
B.	ARREST AND TRIAL IN KHARTOUM AND DARFUR	17
i.	<i>Cases of abuse.....</i>	<i>19</i>
C.	JUSTICE MECHANISMS IN SOUTHERN SUDAN AND ABYEI.....	22
D.	DETENTION CONDITIONS THROUGHOUT SUDAN.....	23
i.	<i>Mentally-ill prisoners.....</i>	<i>25</i>
ii.	<i>Pregnant inmates and mothers in prison with their children</i>	<i>25</i>
E.	DEATH PENALTY	26
V.	IMPUNITY IN SUDAN.....	27
A.	FAILURE OF ACCOUNTABILITY AND INVESTIGATORY MECHANISMS	27
B.	IMPUNITY OF STATE AGENTS	30
C.	IMPUNITY OF MILITIA IN DARFUR	31
VI.	ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN DARFUR, ABYEI, AND SOUTHERN SUDAN.....	33
A.	DARFUR	34
B.	ABYEI AND SOUTHERN SUDAN	36
VII.	INSTITUTIONAL HUMAN RIGHTS FRAMEWORK FOR SUDAN	37
A.	LEGAL REFORM AND OVERSIGHT MECHANISMS	37
B.	REFORMING NATIONAL SECURITY, POLICE, AND MILITARY	39
C.	INDEPENDENT JUDICIARY.....	39
D.	SUPPORTING A STRONG CIVIL SOCIETY.....	39
i.	<i>Ending the culture of impunity throughout Sudan.....</i>	<i>41</i>
ii.	<i>National Security reform.....</i>	<i>42</i>
iii.	<i>Respecting economic, social, and cultural rights.....</i>	<i>42</i>
iv.	<i>A free civil society</i>	<i>42</i>
v.	<i>Making effective use of the national law reform committee</i>	<i>42</i>

I. INTRODUCTION

This report is an overview of the situation of human rights in Sudan during the second half of 2005, and is issued by the Office of the High Commissioner for Human Rights (OHCHR) in cooperation with the United Nations Mission in Sudan (UNMIS). The information was gathered by human rights officers (HROs) working for UNMIS. The findings of the report are mostly based on direct investigations and information collected from victims, witnesses, and Government authorities. Nonetheless, HROs were not able to collect first hand information from several parts of the country due to lack of presence and other factors.

The human rights mandate of UNMIS was derived from two major sources. In Darfur, the Government of Sudan and the United Nations signed a joint communiqué in July 2004 that committed the Government to allow the deployment of human rights monitors. The second source of the mandate was set out in Security Council resolution 1590 (2005), establishing UNMIS and calling upon it to ensure an adequate human rights presence, capacity and expertise to carry out human rights promotion, civilian protection and monitoring activities. In support of the work of HROs, the Special Representative of the Secretary-General (SRSG) for Sudan Mr. Jan Pronk took an active role on human rights issues, including media censorship, violence against women, forced relocations of internally displaced persons, and attacks on civilians in Darfur.

The Human Rights component of UNMIS organized and led human rights training and capacity- and institution-building activities; provided advisory services to civil society, the Government, legal professionals, and the judiciary; and provided reports to and shared information with to the UN Secretary-General, the SRSG, OHCHR, and the broader international community. The Human Rights component of UNMIS also supported to the visits of the Special Rapporteur on the situation of human rights in the Sudan, the Representative of the Secretary-General on the human rights of internally displaced persons, and the Special Advisor on the prevention of genocide.

As of 30 November there were fifty-seven HROs working for UNMIS. The majority of staff were located in the four UNMIS Darfur field offices in El Fasher (North Darfur), El Geneina and Zalingei (both in West Darfur), and Nyala (South Darfur). The headquarters office was located in Khartoum. Offices were also opened and staffed in Juba, Abyei, and Kassala.

A. General Findings

The signing of the Comprehensive Peace Agreement (CPA) on January 2005 and the political and legal reforms that were to follow represented a key opportunity for the Sudanese Government to put an end to a history characterized by widespread human rights abuses and impunity.

To its credit, the Government seized the opportunity to lay the foundation for a strong institutional human rights framework. It adopted an Interim National Constitution which made international human rights treaties an integral part of its Bill of Rights. The constitution called for an independent advisory Human Rights Commission and envisaged reforms that would strip the National Security Service of its broad powers of arrest and detention. A law reform commission was established to harmonize

domestic law with the constitution, including the constitution's human rights provisions. Additionally, in July 2005, the Government put an end to emergency law, in most states, which had been in force since 1999, and released political detainees and relaxed restrictions on the media. In Darfur, the Government established commissions of inquiry and special courts that had the potential to deal with high and low level officials who committed war related crimes. The Government also established committees to combat the persistent problem of sexual and gender-based violence in the region.

Unfortunately, to date efforts to improve the human rights situation on the ground have fallen short of what the CPA and the Interim National Constitution envisaged for the new Sudan. Some efforts, such as law reform, require additional time and will hopefully bring positive change in the near future. Other initiatives have been superficially and inadequately implemented. This was particularly true in Darfur where the CPA, the interim constitution, and other positive political measures were overshadowed by an ineffective judiciary, an ongoing conflict, and widespread human rights abuses. In other parts of Sudan there was also a gap between commitment and implementation. In Khartoum, allegations of torture at the hands of the National Security, Military Intelligence and police officials have been reported. The absence of fair trial guarantees as well as inhuman detention conditions are of serious concern. In Southern Sudan and the transitional areas in particular people have been unable to adequately enjoy their economic, social and cultural rights.

B. Key Recommendations

This report makes five key recommendations, listed below, to assist Sudan in meeting its international and domestic human rights obligations. To effectively implement these recommendations it will be necessary for Sudan to set concrete tasks and timelines for meeting specified goals. The government should also seek assistance and expertise from national and international human rights experts.

i. Ending the culture of impunity throughout Sudan

In areas where peace has taken hold in Sudan, the Government should focus on implementing a new culture of accountability. The judiciary must be adequately financed, reformed, and staffed with professionals. Immunity laws for state agents, regardless of their official status or function, should be revoked. This is particularly true for personnel with powers of arrest and detention such as National Security and police personnel. Law enforcement and military forces in Southern Sudan and the transitional areas should be held accountable for their actions. With regard to Darfur, in addition to ending impunity and reforming the National Security Service, the Government should cease its attacks on civilians, disarm militias, and install an active, professional, well-trained law enforcement system in Darfur with adequate resources.

Those who have not yet been held accountable for the commission of prior crimes, including those relating to the 21-year civil war, should be brought to justice. This should be one of the foundational components of the reconciliation process called for in the CPA. The National Human Rights Commission envisaged in the Interim National Constitution could play an important role in mapping out these crimes and proposing relevant mechanisms for establishing accountability.

The Sudanese Government has made numerous commitments to ending impunity in Darfur and established a variety of accountability and investigatory mechanisms. While these are welcome initiatives, the measures taken to implement them have been highly insufficient and reflect an inability or unwillingness to prosecute perpetrators of human rights abuses and violations of international humanitarian law. The Government should consider working in cooperation with the International Criminal Court (ICC) to bring about justice for crimes related to the conflict that began in 2003. Meanwhile, the Government should start to use its domestic legal system more effectively.

ii. *National Security reform*

The Interim National Constitution envisaged reform of the National Security organs that are critical to improving the situation of human rights in Sudan. The National Security Service should be stripped of its abusive and unchecked powers of arrest and detention. This must include nullifying their immunity protections in domestic law. Similar reform is needed for the police and armed forces.

iii. *Respecting economic, social, and cultural rights*

Sudan must start to progressively realize the economic, social, and cultural rights of its people. Conflict in Sudan was initially sparked in response to practices of marginalization and discriminatory resource allocation. The wars that followed resulted in further devastation to health, education, and living conditions. To remedy this, resource allocation must be fair, transparent, non-discriminatory, and involve the affected communities. The Government should also permit and facilitate the assistance of humanitarian and development assistance, especially where it is unable to provide the required services itself.

iv. *A free civil society*

The Government must allow civil society to function freely. Restrictions on the creation and activities of media outlets and associations, including political parties and unions, should be the exception rather than the rule.

v. *Making effective use of the national law reform committee*

In late October 2005, the Ministry of Justice established a committee for law reform with a mandate to review the compatibility of domestic legislation adopted from 1901 to 2005 with the Interim National Constitution. This process should result in the harmonization of Sudan's domestic legislation with its obligations under international human rights law. For the committee to be successful in this respect, it must rely on the expertise and advice of national and international human rights experts. In addition to reforming the specific laws mentioned in this report, the committee should strengthen, *inter alia*, non-discrimination laws and those pertaining to the rights of women, as envisaged under international human rights treaties.

II. POLITICAL CONTEXT

The Republic of the Sudan is the largest country in Africa (2,505,815 square kilometers). It shares borders with the Central Africa Republic, Chad, the Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Libya and Uganda, and hosts a population of approximately 40,000,000 (July 2005 estimate). In 1956, Sudan ceased

being an Anglo-Egyptian condominium and achieved independence. Since then, the country has enjoyed only approximately a decade of democratically elected civilian rule and three times as many years of military rule in which emergency law was the most frequent framework for governance.

After a 21-year civil war, which resulted in the deaths of an estimated two million people and the displacement of some four million others, the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) signed the Comprehensive Peace Agreement (CPA) in Nairobi on 9 January 2005. The CPA was negotiated over a three-year period under the facilitation of IGAD and consisted of a series of documents: The Machakos Protocol, Power-Sharing Protocol, Wealth-Sharing Protocol, Resolution of the Abyei Conflict, Resolution of the Conflict in South Kordofan and Blue Nile, and Security Arrangements.

The CPA provides operational modalities for a six-year interim period, at the end of which the people of Southern Sudan are to determine through a referendum if they wish to remain part of a united Sudan, under the system of government established in the CPA, or to secede.

Following the signing of the CPA, General Omar Hassan Ahmad Al-Bashir, who had been President of Sudan since the military coup in 1989, was sworn in as President of the Government of National Unity (GNU) on 9 July 2005. Dr. John Garang de Mabior, the Chairman of the SPLM/A was sworn in as First Vice-President of GNU and President of the Government of Southern Sudan (GoSS), and Ali Osman Mohamed Taha, the previous First-Vice President and chief negotiator at the Naivasha peace negotiations, was sworn in as Second Vice-President of GNU. The Interim National Constitution was signed by President Bashir on 9 July 2005, and the state of emergency was lifted in all states except Darfur, Kassala and Red Sea. Human rights provisions figured prominently in the Interim National Constitution, which states that "all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part" of Sudan's Bill of Rights. Restrictions on the media were loosened, and some well-known political prisoners were released.

The implementation of the CPA was put to a severe test when First Vice-President Garang died on 30 July 2005 in a helicopter crash. The days following the announcement of his death were marked by serious violence in Khartoum and several other locations, including Juba and Malakal. The violence resulted in a significant number of deaths, arson and property damage. The SPLM took swift action to confirm Salva Kiir as its new chairman. By the time of Garang's funeral on 6 August, the tense atmosphere had dissipated. Committees were subsequently established to investigate both the helicopter crash and the violence that ensued.

The death of Garang led to delays in the implementation of the CPA. After considerable delays and a dispute over the allocation of the ministerial portfolio of Energy and Mining, the Government of National Unity (GNU) was established on 20 September 2005 and its officials were sworn-in two days later. While southern opposition parties and the National Democratic Alliance were included in the GNU, some northern opposition parties, namely the Umma Party and the Popular National Congress chose not to join and continued to criticize the GNU as non-inclusive.

In the South, the Government of Southern Sudan (GoSS) was established on 22 October 2005 and sworn-in two days later. The Interim Constitution of Southern Sudan was signed into law on 5 December 2005. In addition, the ten governors of the Southern States were appointed and the state governments were established.

After considerable delays, a number of key commissions called for in the CPA were established and staffed. In particular, the Presidency issued decrees to establish the Assessment and Evaluation Commission (AEC), the National Petroleum Commission (NPC), the Fiscal and Financial Allocation and Monitoring Commission (FFAMC), the Technical Ad hoc Border Committee and the National Judicial Services Commission. The Ceasefire Joint Military Commission (CJMC), chaired by UNMIS, was the first of the implementation oversight mechanisms established in the pre-interim period to become operational.

The process of forming the remaining CPA-derived commissions, spanning areas such as human rights and the civil service, continued to progress though the enactment of specific legislation for the bodies was still required. While SPLA and Sudan Armed Forces military leaders were meeting regularly and cooperating on military and Joint/Integrated Unit (JIU) issues, the absence of the Joint Defence Board (JDB) as a formal body was a matter of concern. The CPA charged the JDB with coordinating the two forces and commanding the JIUs. Similarly, the Ceasefire Political Commission (CPC), charged, amongst other things with overseeing ceasefire and security arrangements, moved closer to operation with the appointment of its membership at the start of November 2005, however the parties have yet to call the first meeting.

The Presidency has yet to implement the decision of the Abyei Boundary Commission, thus the situation in the Abyei area remained tense. However, the UN's presence in the area contributed to a slight improvement in the situation. UNMIS has placed a strong emphasis on security and monitoring through the CJMC, while on the ground the civilian team in Abyei has for the first time in decades, successfully promoted direct dialogue between the Ngok Dinka and Misseriya tribes on seasonal migration issues.

The problem of Other Armed Groups (OAGs) remained of crucial importance, especially in Southern Sudan. Following discussions between OAGs leaders and First Vice-President Kiir, at the time of writing, they were being partially absorbed into the executive and legislative structures at the state level in Southern Sudan.

From January to July 2005, an estimated 285,000 people displaced by the 21-year war started to return to their homes.¹ This included North-to-South and South-to-South return movements. These movements continued after July as well and placed considerable strain on the already resource-deficient communities in the South and the transitional areas (i.e., Abyei, Southern Kordofan/Nuba Mountains State and Blue Nile State). The movements also raised serious concerns about security for the returnees in transit and upon their arrival home. In October, the representative of the United Nations Secretary-General on the human rights of internally displaced persons, Professor Walter Kälin visited Sudan and highlighted these concerns. He noted,

¹ The number was provided by the Return, Reintegration, and Recovery (RRR) unit of UNMIS.

“Despite the peace, returnees in many areas fear for their safety due to militia activities, armed civilians and land mines. Some returnees are illegally taxed and looted during their long journeys. When they arrive, many remain without shelter, sufficient food, clean drinking water and access to medical services. Parents whose children attended schools during their displacement in the North fear that youths now remain without education since the few schools in the South are already overburdened. It is predictable that these problems will increase once larger numbers of internally displaced persons return.”²

Since the escalation of the conflict in Darfur in February 2003, many thousands of people have died and around 2 million have been internally displaced. As of August 2005, an estimated 3.4 million people in Darfur were in need of humanitarian assistance due to the effects of drought and famine combined with the violence.³ The number of international aid workers in Darfur providing humanitarian assistance rose from 228 in April 2004 to approximately 13,500 (national and international) in August 2005.⁴

Following intense violence in Darfur late 2003 and early 2004, the Government of Sudan, the SLA/M, and the JEM signed a cease-fire agreement in N’djamen, Chad, on 8 April 2004. The agreement established an international Cease Fire Commission (CFC) to monitor the accord.⁵ The CFC was the precursor to the African Union Mission in Sudan (AMIS), which, as of late October 2005 included 5,583 military personnel (including 699 military observers) and 1,198 civilian police personnel.⁶ On 3 July 2004, the Government of Sudan and the United Nations Secretary-General signed a joint communiqué enabling the deployment of human rights monitors and committing the Government to, *inter alia*, undertake concrete measure to end impunity, disarm the *janjaweed* and other outlaw groups, allow humanitarian workers to conduct their activities, ensure that no militias were present in areas surrounding IDP camps, and deploy a strong, credible and respected police force in all IDP areas as well as in areas susceptible to attacks.

In spite of these commitments, the violence continued. On 29 March 2005, the Security Council passed resolution 1591, that imposed travel and other sanctions on individuals who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities. The resolution also established a panel of experts to assist in the implementation and monitoring of the resolution. On 31 March 2005, the Security Council adopted Resolution 1593, referring the situation in Darfur to the Prosecutor of the International Criminal Court (ICC), to which the Government repeatedly objected. On 7 June 2005, the Chief Justice of Sudan established a Special Criminal Court on the Events in Darfur (SCCED). The cases before the SCCED did not, however,

² United Nations, “Much More Needs to be done to ensure Protection of Internally Displaced of Southern Sudan, Rights Expert Says,” Representative of the United Nations Secretary General on the Human Rights of Internally Displaced Persons, Press Release, 17 October 2005.

³ Office of United Nations Deputy Representative of the UN Secretary-General for Sudan, *Darfur Humanitarian Profile No. 17 (Situation as of 1 August 2005)*.

⁴ United Nations and Partners 2006 Work Plan for Sudan, p. 5.

⁵ A previous cease-fire agreement, which was signed in August-September 2003, did not hold.

⁶ “Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur” (An Occasional Paper by William G. O’Neill and Violette Cassis), The Brookings Institution—University of Bern, November 2005, p. 16.

reflect the major crimes committed during the height of the Darfur conflict in 2003-2004. In addition, only one of the cases included charges brought against a high-ranking official who was later acquitted.

From January to July 2005, Darfur experienced a relatively calm period compared to the violence at the end of 2003 and beginning of 2004. But this relative calm began to fade in late July 2005 with increased armed exchanges involving rebel groups, Government forces and nomadic militia, and an increase in inter-tribal violence. African Union personnel were killed and abducted; civilians in IDP camps and villages were the target of attacks; and humanitarian workers were regularly ambushed and looted. Adding to the tension and complexity was the presence of various armed groups from Chad and splits within the Sudan Liberation Army/Movement (SLM/A) at the highest levels. Additionally, militia and other groups requested to be included in the AU-led peace negotiations in Abuja, Nigeria between the Sudanese Government, the SLM/A, and the Justice and Equality Movement (JEM) that began in August 2004. The splits in the SLA/M posed a particularly strong threat to the peace talks, which entered into a seventh round of discussions in Abuja late in 2005.

The situation in Eastern Sudan posed another challenge to peace. There, various political parties and armed movements that have protested their perceived historical marginalization by the central Government have since the mid-1990s begun resorting to violence. The two largest groups of people constituting this movement are approximately 2.4 million Beja who formed the Beja Congress and the Al Rashayidah people who formed the Free Lions. In January 2005 the two merged to create the Eastern Front, both a political party and an armed force. Following skirmishes in Eastern Sudan in March 2005, the UN engaged the Eastern Front in consultations, which resulted in an agreement to suspend hostilities. The UN also helped organize a donor-sponsored capacity-building workshop for the Eastern Front in Asmara in November 2005, which they demanded as a pre-condition for direct talks. Both parties subsequently indicated their willingness to engage in Libyan and Eritrean mediated peace talks to commence in the near future. The SPLA forces present in Eastern Sudan have acted somewhat as a buffer, but were however scheduled to exit in January 2006 in accordance with the CPA.

III. BINDING INTERNATIONAL LAW RELATING TO HUMAN RIGHTS IN SUDAN⁷

Between June and November 2005, the Sudanese Government was bound to a number of international human rights treaties. These included the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all form of Racial Discrimination (CERD), the Convention on the Prevention and Punishment of the Crime of Genocide, and the Slavery Convention of 1926. Sudan was also a party to the African Charter on Human and Peoples' Rights.

⁷ This section is largely based on the section "Relevant Rules of International Law Binding the Government of the Sudan" in, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005, paras. 142-172.

On 26 July 2005, Sudan became a State Party to the optional protocols on the Convention on the Rights of the Child on the involvement of children in armed conflict and the on the sale of children, child prostitution, and child pornography. The protocols came into force for Sudan on 26 August. Sudan was also a signatory to the Statute of the International Criminal Court (ICC) and therefore was bound to refrain from acts which would defeat the object and purpose of the statute. The Sudanese Government was not a State Party to the Convention on the Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), or the Convention on the Elimination of all forms of Discrimination of Women (CEDAW).

International human rights treaties are applicable in times of peace as well as times of war. However, in times of emergency (e.g., civil war), a state is permitted to formally inform the UN that it will derogate from certain rights contained in the ICCPR, such as freedom of association and freedom of expression. According to information available to UNMIS Sudan did not make this formal proclamation of derogation from its ICCPR obligations despite the imposition of emergency law throughout the country from December 1999 to July 2005, and in select parts of the country thereafter. Sudan was, therefore, bound to the entirety of the Covenant.⁸

Moreover, there are certain human rights obligations a member state to the ICCPR can never derogate from. These include the right to life; the prohibition of torture or cruel, inhuman or degrading treatment; the prohibition of slavery, the slave trade and servitude; and freedom of thought, conscience and religion.

In addition to human rights treaties, the Sudanese Government is bound by international humanitarian law, including the four Geneva Conventions of 1949. Sudan was not at the time of writing a State party to the two Additional Protocols of 1977 to the Geneva Conventions.⁹

The rules of the Geneva Conventions come into effect when there is an international or internal armed conflict. During the period under review by this report, Darfur was experiencing a level of violence that appeared to meet the criteria set out for constituting an internal armed conflict. Though the rules for an international armed conflict are considerably broader than under an internal armed conflict, the laws for internal armed conflicts do provide critical protections to people taking no active part in the hostilities. These include prohibitions on murder, torture, hostage taking, and outrages upon personal dignity.

In addition to treaty law, the Sudanese Government was bound by customary rules of international humanitarian law. This included: protecting civilians against violence to life and person; prohibiting deliberate attacks on civilians and civilian objects; prohibiting attacks aimed at terrorizing civilians; taking precautions to minimize incidental loss and damage as a result of attacks; ensuring that when attacking

⁸ In 2004 the International Court of Justice (ICJ) issued an Advisory Opinion that stated, *inter alia*, that Israel was bound to all the obligations of the ICCPR that it did not formally derogate from via a notification to the United Nations Secretary-General. ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, para. 127.

⁹ At the time of writing it appeared that Sudan was taking steps to become a part to the Additional Protocols (I and II) to the Four Geneva Conventions.

military objectives, incidental loss to civilians is not disproportionate to the military gain anticipated, and prohibiting pillage.¹⁰

The importance of international humanitarian law to human rights protection is considerable. Similar to human rights law, international humanitarian law provides basic protections to civilians (as well as persons who are not contributing to the conflict, such as prisoners of war and *hors-de-combat*). Secondly, international humanitarian law is *lex specialis* to international human rights law. Thus, where human rights law conflicts with international humanitarian law, the human rights obligations remain applicable but must be interpreted through international humanitarian law. This is because, in accordance with the concept of *lex specialis*, the latter is more appropriately tailored for the situation under consideration, namely armed conflict. Thirdly, unlike international human rights law, international humanitarian law places obligations on rebels and non-state armed groups who participate in internal armed conflicts.¹¹

Acts of sexual violence, including rape are also prohibited under international law. They have been prosecuted as international crimes by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The courts have reinforced the status of rape as a war crime, as well as a crime against humanity when committed on a widespread or systematic basis. They have also recognized that acts of sexual violence can constitute torture, inhuman treatment and, in certain circumstances, genocide. As set out in the Rome Statute of the ICC, the crime of rape includes situations where the victim provides sex to avoid harm, to obtain the necessities of life, or for other reasons that have effectively deprived them of their ability to consent.¹²

IV. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS IN SUDAN

A. Violations Specific to Darfur

i. *Large attacks by Government forces in Darfur*

Government forces, at times in cooperation with militia forces (often described by witnesses as *janjaweed*), carried out at least eight organized armed attacks from September to November 2005 on over a dozen IDP camps or villages. The attacks left civilians dead, injured, and homes destroyed. Despite statements by Sudanese officials that these attacks were usually in response to rebel activities, in most cases there was strong evidence that civilians and civilian property (as opposed to rebels) were deliberately targeted. The use of force by the Sudanese forces appeared to be indiscriminate and disproportionate to the stated military objective. Thousands of people were displaced by these attacks.

On 18 November 2005, Sudanese Armed Forces (SAF) attacked the Jebel Moon area (West Darfur), which contained an SLA and JEM presence. The government stated

¹⁰ *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005, para. 166.

¹¹ Common Article 3 to the Four Geneva Conventions.

¹² This paragraph is based largely on information provided in the OHCHR report, *Access to Justice for Victims of Sexual Violence*, 29 July 2005, paras. 13 to 15.

that the attack was aimed at Chadian rebels present in the area. According to eye witnesses, soldiers in five trucks and twelve four by four vehicles, accompanied by two military helicopters, approached Jebel Moon from a village in the south east called Folko. Approximately fifty soldiers jumped from the vehicles and ran behind them shooting indiscriminately in and around the village. Gunfire was also fired indiscriminately from the helicopters. Seven civilians and one JEM soldier were injured in the attack. Witnesses stated that the troops looted huts, burnt crops and stole clothes and food. Further casualties were avoided because most of the IDPs fled as a result of having gained prior knowledge of an imminent attack.

Following a number of attacks against Falata tribe members during 2005, allegedly by JEM, the Falata leadership in Tulus (South Darfur) attacked villages surrounding Gereida (South Darfur) from early to mid-November, including the villages of Jamalee, Um Qanturea, Dar Es Salam, Furfo, Um Baloula, Edan 1, Edan 2 and Mungosa, Safay, Hillet Fur, and Garadaya. In some of the attacks there was clear Government involvement. Eyewitnesses in Dar es Salam saw members of the People's Defence Forces (PDF) participating in the attacks. They also saw military vehicles and helicopters dropping off military personnel. In Garadaya, Fufu, and Um Baloula the Falata attackers were seen wearing military and police uniforms. Approximately twenty civilians were reportedly killed during the ten days of fighting and 11,000 to 20,000 people were reportedly displaced. Despite JEM activities in the area surrounding the villages which were attacked, there was no evidence that the attack targeted JEM. On the contrary, civilian facilities were targeted (schools, crops, market, huts) with the apparent intention of destroying whole villages and displacing the population, which was perceived by the attackers to be supporters of the JEM.

Following the SLA attack on Shearia (South Darfur) on 19 September, Birgit tribe members, led by members of government military forces undertook a campaign of collective punishment of the Zaghawa in Shearia who were perceived to be SLA sympathizers. Violations documented against the Zaghawa included targeted beatings, systematic looting, and the closure of schools. The violations resulted in 2,500 Zaghawa being forcibly displaced from the town to an AMIS base and neighboring villages.

On 29 September 2005, Government forces attacked the village of Tawila and Dali IDP camp (North Darfur). Eyewitnesses to the attacks reported that police and military personnel entered the town of Tawila in over forty military trucks and eleven large four-by-four vehicles. Upon entering, the authorities threatened people with guns, fired shots, and looted goods from shop owners. Witnesses saw the same vehicles proceed to Dali IDP camp and saw Government personnel set several shelters and buildings on fire and chase after IDPs who were attempting to escape. HROs confirmed that five civilians were killed and another five injured in the course of the attacks of 29 September.

Sudanese Government forces also appeared to have engaged in coordinated attacks with armed militia on the village of Toray on 24 September 2005 (South Darfur), on villages in the areas of Tarny and Thabit on 18 and 19 September (North Darfur), and on villages in the area of Shangil Tobiya on 11 and 12 September (North Darfur) of that same year. Thirty-nine confirmed deaths resulted from these attacks and an estimated 7,000 to 10,000 people were displaced. According to eyewitnesses of the

attack on Toray, the attack was carried out by a large number of militia on camel and horseback, supported by Sudanese soldiers in four wheel drive vehicles—of the type commonly used by the military. Eyewitnesses to the attacks that occurred from 11 to 19 September similarly reported that men in khaki uniforms carrying assault rifles and riding horses and camels carried out the attacks with the support of Sudanese ground troops.

On 9 September 2005, in immediate response to a man who threw a live grenade at a Central Reserve Police official, Government forces carried out an attack on hundreds of people in and around a mosque in Tawila village (North Darfur). Aside from the initial grenade attack, HROs found no evidence that the crowd inside the mosque provoked the violence, was armed, or fired weapons at anytime prior to or after the attack. The Government forces proceeded to pillage the town and shoot at civilians. In total, five civilians were killed and twenty-nine others were injured. Thirty houses and stores were burned down resulting in the displacement of thirty families.

ii. Sexual and gender based violence by government forces

Sudanese Government personnel in Darfur were also accused of rape, attempted rape, and committing other forms of sexual and gender-based violence against women and girls. The abuses documented were however significantly lower than those committed by armed militia. Some illustrative cases include:

In North Darfur, women reported being raped by military and police personnel in a pre-fabricated container-building close to the Um Hashaba Government checkpoint as well as in abandoned houses of the surrounding villages. The victims similarly stated that groups of armed military and/or police would approach them while collecting firewood, attending to their fields, or on their way back home. The men would provide various excuses as to why the women should accompany them to another location. The women would initially resist but were then physically forced to leave with their captors and eventually raped. In addition to these abuses, women and girls informed HROs that officials at the Um Hashaba checkpoint would insult, humiliate, threaten, and beat them when they passed through the checkpoint. When HROs asked why they crossed alone without protection from male community members, the women reported there was a high risk for males to be arrested, detained, tortured, and killed, always under the general accusation of being part of the rebel movement.¹³

In a camp in El Geneina (West Darfur), a woman witnessed three armed Government soldiers abduct a 25 year-old women from her house on 14 September 2005. The victim, who was eventually released by the perpetrators, reported to a UN agency that the soldiers took her outside the confines of the camp and raped her. Just prior to this incident, individuals reported seeing the same soldiers attempt to abduct another young girl. The girl was apparently released unharmed after her mother paid a bribe to the soldiers. The acting head of West Darfur State Police informed HROs that the perpetrators appeared to be Government soldiers.

In Zalingei (West Darfur), a 37 year-old IDP woman informed HROs that she had been raped by two members of the military in July 2005. The victim was collecting hay in the early morning when she was approached by three armed military men on

¹³ Other human rights concerns at the Um Hashaba checkpoint are discussed below in the section *Arrest and trial in Khartoum and Darfur*.

foot. She was slapped in the face, kicked in the stomach, and accused of being a rebel. She was then raped by two of the men. The assault was interrupted when the perpetrators saw a group of people approaching them.

On 24 October 2005, the Minister of Justice signed the Rules of Application of the Criminal Circular No. 2. The Rules of Application explained that victims of violence and other serious injuries, including rape victims, could obtain medical treatment without the requirement of Form 8.¹⁴ Form 8 is a standard form for recording evidence of physical assault provided by the police. The Rules also stated that health care providers shall face no negative repercussions or harassment for providing treatment to victims. If properly implemented and explained at the local level, the circular will create a more conducive environment for victims of assault to seek and receive medical attention and will better enable humanitarian organizations to provide care to patients without the fear of reprisals.

As this report was being finalized the South Darfur State Committee on Violence against Women released a plan of action (nine months after the committee was established). This is a positive step in light of the ongoing and widespread abuse. However, since its creation there have been no notable achievements in the prevention of violence against women nor in the improvement of the response of local authorities in Darfur. On 28 November 2005, the Government also launched a separate action plan to eliminate violence against women in Darfur. The public acknowledgement of the problem of violence against women by the Government and its parallel commitment to corrective measures is a significant step forward.

iii. Human rights abuses by armed militia and the government's failure to protect its population

The human rights situation for Darfurians was made worse by the failure of the Government to prevent and protect the internally displaced and villagers from being killed, assaulted, and raped by armed militias. The attackers were most often armed men riding horses or camels who wore military uniforms (described as “khaki” or “camouflage” uniforms), *jallabiya*, or civilian clothes. Sometimes the perpetrators had their faces covered with a scarf. The perpetrators usually traveled in groups. The majority of the attacks occurred outside the close confines of villages and IDP camps. During attacks it was common for perpetrators to make racially or ethnically derogatory remarks. Victims and witnesses reported that attackers said: “kill all the Nuba”; “we have killed all the slaves”; “fur are slaves”; and “we will be back and we will sexually assault you and so you will have Arab blood.” Solely with regard to acts of violence against women and girls, HROs documented over 60 incidents (involving over 130 victims) perpetrated by members of armed militia between June and November 2005—a number which HROs estimate is significantly lower than the reality on the ground.

The increase in large attacks on civilians by Government forces likely encouraged the militia to execute other abuses with impunity. Seasonal factors also contributed. June to November 2005 coincided with the migration, planting, and harvesting seasons.

¹⁴ Sudanese law requires the completion of a standardized medical evidence form (Form 8) by a registered doctor in cases of rape and other serious violent crimes such as murder and physical assault. Such a form was intended to ensure that standard elements of evidence is collected during the investigation. For further discussion on Form 8, see *Impunity of Militia in Darfur*, below.

This meant that nomadic groups, whose armed members were most often the alleged perpetrators, were crossing vast stretches of land to allow their livestock to graze while IDPs and villagers were moving outside of their homes to carry out activities such as tilling land and planting crops, collecting firewood or grass, and harvesting crops.

It is widely believed that the funding and resources previously provided by the Government to the militias was likely used by the latter to commit human rights abuses between June and November. However, it remains unclear whether the armed militias that attacked IDPs and villagers had direct ongoing links to the Government. Thus victims of human rights abuses were often uncertain if their perpetrators were working for the Government despite often being dressed in military uniforms.

If the Government was involved—either by way of Government agents taking direct part in the attacks or militias as *de facto* state organs—then the acts perpetrated incur state responsibility.¹⁵ In other attacks, where Government involvement is not evident, the Sudanese Government has nevertheless failed in its obligations to protect the people of Sudan from violence perpetrated by third parties.¹⁶ It has also failed to bring perpetrators of human rights abuses to justice—which serves as a critical deterrent to future abuses.

A typical example of police inaction in response to a violent crime is the case of a 27 year-old man who, on 28 June at around 11:00 a.m., was attacked by around twenty

¹⁵ See *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005, paras. 123 and 125. The test for state responsibility arising from entities operating as *de facto* state organs was articulated in *Tadic (Appeal)* at paras. 98-145.

¹⁶ General Comment 31 by the Human Rights Committee explained that States parties have such positive obligations under ICCPR article 2 that arise from the state's commitment to "ensure" the rights of the Covenant. The Comment noted: for "States parties to ensure Covenant rights will only be fully discharged if individuals protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities." It elaborated, "There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities." Human Rights Committee, *General Comment 31 (nature of the general legal obligation imposed on States Parties to the Covenant)*, para. 8.

The responsibility to "ensure" also exists under international humanitarian law. Article 1 of the Geneva Conventions reads, "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." The ICRC Commentary to the Geneva Conventions stated that the words "and to ensure respect for" were "intended to emphasize the responsibility of the Contracting Parties... It would not, for example, be enough for a State to give orders or directions to a few civilian or military authorities, leaving it to them to arrange as they pleased for their detailed execution. It is for the State to supervise the execution of the orders it gives. Furthermore, if it is to fulfil the solemn undertaking it has given, the State must of necessity prepare in advance, that is to say in peacetime, the legal, material or other means of ensuring the faithful enforcement of the Convention when the occasion arises." International Committee of the Red Cross (ICRC), J. Pictet, et al., eds., *Commentary on the Geneva Conventions of 12 August 1949: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Commentary Geneva IV)* (Geneva, ICRC 1958), p. 16.

While articulating the problem in Darfur as a "failure to protect" might send the message that the Government *may* not have been involved in the abuses, it triggers discussions about finding a more sustainable solution to the abuses by way of pointing out that the Government must have in place a stable system that protects individuals rather than simply calling on state agents to refrain from the commission of abuses.

armed men in khaki uniforms about seven kilometers outside Silea IDP camp (West Darfur) while he was collecting hay. He was physically beaten and accused of being a rebel. The incident was reported to police by the victim's young nephew who had managed to escape, but the police refused to travel to the scene of crime.

The Government was also delinquent in responding to large attacks launched by armed militia on IDPs and villagers. The Government established committees of inquiry to investigate some of these types of incidents, but such committees have proven to be ineffective tools for justice.¹⁷

One such attack occurred on 28 September 2005 in Aro Sharow IDP camp and Guzminu village in West Darfur. People exposed to the attacks expressed concerns that despite the military presence 2 kilometers from Aro Sharow camp and 300 meters away from Guzminu, no action was taken to protect them.

Witnesses reported that at approximately 2:00 p.m. on 28 September, around 350 heavily armed men wearing military uniforms raided the market in Aro Sharow IDP camp. The militia members who were on camel and horseback chased and shot at people, and looted the property and livestock of IDPs. HROs confirmed that at least 27 people were killed as a result of the attack. After the attack in Aro Sharow, the same group traveled two kilometers south to Guzminu village.

Guzminu village was located approximately 300 meters from an army camp. Yet throughout the attack the military remained inside the barracks. Witnesses stated that a total of seven men were killed on the day of the attack and one woman died on 30 September after she returned from a hideout where she had sought refuge after being shot two days earlier. Witnesses also stated that when the attackers approached the area, people started running away towards the military camp and were pursued by the attackers. When the soldiers saw the people approaching, they began shooting at the crowd to repel them. This prompted the attackers to retreat back to Guzminu village where they looted property and burned houses.

A second such attack occurred in Tama village (25 kilometers North West of Nyala town) on 23 October 2005. The authorities were slow to ensure the withdrawal of the militia from Tama and the capture of other perpetrators, who until 3 November 2005 were still in the village looting property and destroying the crops of the inhabitants.

The attack on Tama resulted in the deaths of at least twenty-seven civilians (with reports ranging as high as forty-two deaths). Two females were stripped and beaten, and thirty individuals were wounded. The village was partially destroyed and the entire population (around 1,000 villagers) fled to the neighboring village of Amasakara. According to a witness, around 350 armed militias on camel and horseback coming from different directions entered the village, followed by four vehicles, which were parked inside the village and used during the attack to load the property which was being looted. Those on camel and horseback were described as wearing civilian clothing, khaki uniforms and *jallabiya*, whilst those in cars were reportedly dressed in military khaki and beige uniforms. Armed militias set numerous huts on fire and looted various properties. At a mosque where nine people sought

¹⁷ See section, *Impunity in Sudan*, below.

refugee, a group of the attackers went inside and shot five of them at close range, killing two men and one woman.

Government officials have provided a multitude of reasons for their failure to protect the human rights of people in Darfur. When people went to local police stations to report a crime the police have stated that they could not get to the scene of the crime as they had not been given orders to leave their station. The police have also stated that they were unable to effectively confront the militia or patrol areas in or around IDP camps because they were outnumbered or lacked the required resources, such as sufficient numbers of functioning vehicles or fuel. In Mornei IDP camp (West Darfur) Central Reserve Police required residents of the camp to provide fuel for police cars so the police could patrol outlying farm land. During the rainy season the police claimed they could not access certain camps and villages because of seasonal rivers (*wadi*). Police also stated that they could not confront armed men during the commission of a crime as it would result in an exchange of fire that would breach the cease-fire agreement.

These incidents demonstrate that the protection problem spanned local, regional and national levels. Lack of instructions to local law enforcement may have provided local agents an excuse not to carryout their duties, but it did not justify the failure of regional offices to properly instruct and permit the *ad hoc* movement of police when necessary. Lack of resources may have been a reasonable justification for local and regional law enforcement agents not to carryout their duties, but this does not excuse Khartoum from its obligation to provide an adequately resourced and trained police force.

The overwhelming number of cases of inaction is a symptom of a larger problem, the lack of political will. Khartoum sent strong policing forces to Darfur for certain security related issues. A similar response was not however given to ensuring the rights of Darfurians who were under constant attack in camps and villages. The link between the failure to protect the civilian population and the lack of political will was further evidenced in El Fasher. There the presence of a new military commander who asserted greater control over his troops led to an improvement in the human rights situation. Furthermore, on a number of occasions the presence of AMIS demonstrated that a poor human rights situation was not irresolvable. In the middle of 2005, AMIS deployed a standing patrol at the Um Hashaba checkpoint in North Darfur. Subsequently, internally displaced persons reported a significant decrease in incidents at the checkpoint.¹⁸ In July 2005, AMIS set up a camp site in Mukjar (Zalingei area of West Darfur). According to the population, the number of violations also decreased considerably.

The government's failure to adequately protect its population is also linked to its failure to investigate, make arrests, prosecute, and convict human rights abusers, thus fueling impunity. Although these issues are discussed in the *Impunity in Sudan* section below, it is important to remember that consistently holding human rights violators to account is a proven deterrent to systemic human rights abuses.

¹⁸ It was unfortunate however that when AMIS decided to leave its post after one week the problems there re-emerged.

The failure of the Government to protect the human rights of Darfurians left a damaging legacy. There was a breakdown in trust and confidence between law enforcement agents and the communities they intended to serve. This led many victims of human rights abuses to refuse to file complaints with the police.¹⁹ As a result of this dynamic, the police were in many cases unaware of crimes that might otherwise have been punished had they been reported. Such punishment would have provided a strong deterrent to the commission of other crimes.

This breakdown in trust between police and IDPs also led to a disregard for the role of police as a source of protection, as illustrated by violence which broke out on 19 and 20 May 2005 in Kalma IDP camp (South Darfur). Due to violence and lack of confidence in the police, IDPs refused to allow police into the camp. Thus, the approximately 90,000 residents of the camp lived in a law enforcement vacuum, with the exception of an AMIS Civilian Police (CivPol) post inside the camp. The withdrawal of Government forces from the camp brought an end to police violence and the arbitrary detention of IDPs inside the camp, which had been consistently documented prior to 20 May. But other problems emerged, such as vigilantism by IDPs and an increase in general crime, including armed robberies of INGO compounds. Similarly, in the Zalingei area of West Darfur, IDPs opposed an AMIS proposal to involve Government police in AMIS firewood patrols.²⁰ To the IDPs it did not make sense that those responsible for ongoing human rights abuses, as well as abuses in the past, were to provide them with security.

iv. Violations of international humanitarian law by rebels

Despite the limited access of HROs to rebel controlled areas, there was evidence that rebels groups (i.e., SLA and JEM) violated their obligations under international humanitarian law. The limited number of violations that were documented or reported included inhuman detention conditions, taking of hostages—including humanitarian aid workers, and the killing of civilians.

B. Arrest and trial in Khartoum and Darfur

People arrested, detained, and tried in Darfur and Khartoum were regularly subjected to human rights abuses. They were subjected to tortured or other ill-treatment upon arrest, during interrogation, and in pre-trial detention. Arresting authorities routinely failed to notify detainees for the reason of arrest upon arrest. Detainees were held for unlawfully prolonged periods of time and denied the right to meet with lawyers. Upon release they were often harassed and intimidated in order to ensure that they would not to speak to the international community concerning their detention.

The majority of arrest and detention-related abuses that HROs documented were linked to operations that targeted anti-government activities or public disturbances. In Khartoum, the Government cracked-down on students who were critical of the Government and used heavy handed tactics to quell the Khartoum riots that followed

¹⁹ People were also reluctant to file complaints because they saw the police as perpetrators or complicit to the crimes as they feared retaliation by police. This is discussed below in the section *Impunity in Sudan*.

²⁰ The patrols were meant to provide protection to IDPs, and women in particular, who go outside the confines of the camps to gather firewood.

Dr. Garang's death and the Soba Aradi riots.²¹ In Darfur, people were regularly accused of being rebels or having rebel links or sympathies and physically abused as a result. Local lawyers and activists in both locations who participated in civil society functions that were seen as being subversive—such as attending legal trainings or post-conflict workshops—were subjected to harassment. Law enforcement personnel carrying out traditional law enforcement activities were also involved in the perpetration of human rights abuses upon arrest and during detention.

These abuses, however, should be understood in the political contexts within which when they took place. In Darfur (especially in North and South Darfur where there is a more pronounced rebel presence), people who were unlawfully detained and abused were often accused of being rebels and often called “tora bora” by arresting authorities, whereas this was not the case in Khartoum. Unique to Darfur was also the racial/ethnic dimension of the conflict that was either used as a justification for, or accompanied by, the abuse. This is not to say that the issue of race and ethnicity did not play a role in the human rights situation in other parts of the country, but based on information gathered by HROs these issues were more regularly and explicitly present in Darfur.

The source of these abuses lies largely in domestic legislation which granted authorities exceptionally broad powers of arbitrary arrest and detention that were safeguarded from judicial oversight. For example, the Emergency and Public Safety Protection Act of 1997, which was in force in Darfur but lifted in other parts of Sudan in 2005, allowed the President of the Republic, the governor, or anyone delegated by the governor powers to enter any premises or search places and individuals, ban or organize movement of individuals, and arrest individuals suspected of involvement of a crime in connection with the declaration of emergency.²² It also provided: “any other powers which the President of the Republic may deem necessary.”²³

The powers of the Emergency and Public Safety Protection Act were limited to some extent by the fact that it was to be read in conjunction with provisions of the Criminal Act of 1991 that pertain to violations of the emergency law. But the procedural laws of the Criminal Act (found in the Criminal Procedures Act of 1991) also fell short of international human rights standards. For example, there were a multitude of offences in the Criminal Procedures Act that did not require police to inform persons upon arrest of the reason for their arrest.

The National Security Forces Act of 1999, which was in force throughout Sudan from June to November, was also problematic because it relied on vague terms to execute arrests and justify long periods of pre-trial detentions. Article 30(e) permitted the director of National Security, with notification to a competent prosecuting attorney, to

²¹ Violence erupted between police and residents from Soba Aradi (Khartoum State) on 18 May 2005 during an attempted state led relocation operation. According to the Sudanese Government the violence resulted in the deaths of fifteen policemen and at least four civilians.

²² The powers of the Emergency and Public Safety Protection Act were limited to some extent by the fact that it was to be read in conjunction with provisions of the Criminal Act of 1991 that pertain to violations of the emergency law. But the procedural laws of the Criminal Act (found in the Criminal Procedures Act of 1991), as well as other peacetime laws, also fell short of international human rights standards.

²³ National Assembly, Emergency and Public Safety Protection Act, 1997 (Act No. 1, 1998), 24 December 1997, art. 5.

detain people for general interrogation and inquiry for up to thirty-three days.²⁴ Article 30(f) gave the director the discretion, with notification to a competent prosecuting attorney, to detain people up to thirty days “where there has been established against him indications, evidence or suspicions of committing an act against the state.”²⁵ The National Security Council had the unconditional power to extend detention under articles 30(e) or 30(f) for two months provided that the detainee is thereafter released.²⁶ Article 31 of the Act allowed for detention of up to three months, with a possible additional three month extension, if it related to “terrorizing the society and endangering the security and safety of citizens, by practice or armed robbery, religious, or racial sedition.”²⁷ Of all of these provisions for detention, only article 31 provided a right to the detainee to submit a grievance to a magistrate following his initial three month detention.

i. Cases of abuse

Information gathered by HROs from inmates at Kassala and Gederef prisons in Eastern Sudan who were arrested for alleged involvement in the Khartoum riots (following the death of Dr. John Garang) in early August 2005 is illustrative of the pervasive human rights abuses that individuals in Khartoum and Darfur experienced upon arrest and while in the custody of the state. Over 70 individuals who were separately interviewed, gave accounts of beatings with sticks and plastic hoses upon arrest as well as in pre-trial detention at the hands of police and military. Some of the men who were taken to Mudarat military camp in Khartoum for two to three days said they were given very little food and water and had to sit outside in the sun all day. Fourteen men who were held in Mudarat military camp prior to their trial stated they had witnessed soldiers beat eight prisoners to death.

Each one of the defendants came before a court in either Khartoum or Omdurman locality. Nearly all described similar accounts of being forcibly marched into court and summarily tried in groups of ten or more. Allegedly they had not been given an opportunity to speak during the brief proceedings, aside from stating their name; they also said they had not been informed of the nature and cause of the charges nor given access to legal counsel. Some of the defendants were unable to speak Arabic and alleged they therefore did not understand the details of their arrest or summary trials. The judges handed down sentences of imprisonment and lashes. As is regular practice in Sudan, the lashes were carried out immediately after the sentencing without allowing the defendant an opportunity to appeal the sentence.

The judges at all of the courts denied the allegations of unfair trials. One of the judges said the defendants were tried in a speedy manner because they all confessed to the allegations against them. Doubt was cast on this testimony when HROs accessed one of the police files showing that the defendants did not confess.

²⁴ National Security Forces Act of 1999, art. 30(d). The “competent prosecuting attorney” is a special appointment made by the minister of justice. The person appointed is tasked to “continuously inspect custodies of detained persons, to insure abidance by the safeguards of detention, and receive any complaints, from a detained person, in this respect.”

²⁵ National Security Forces Act of 1999, art. 30(e).

²⁶ National Security Forces Act of 1999, art. 30(f).

²⁷ National Security Forces Act of 1999, art. 31.

In Darfur, HROs documented nearly 100 cases of people arrested or in detention during the second half of 2005. The cases revealed a regular occurrence of a number of human rights violations. In South Darfur, HROs spoke with eighteen people who reported being tortured, subjected to humiliating or degrading treatment, or otherwise physically mistreated by National Security. Authorities accused all the detainees of being rebels, providing material, logistical or other support to rebels, passing information to foreigners, or mobilizing support for the rebels amongst students or IDPs. Reported abuses included beatings with electric wire, wooden sticks, and hose pipes, punching, kicking and whipping with plastic whips, being forced to lift 25 kilogram stones, being hanged upside down from a metal bar with one's hands and legs tied whilst being beaten with electric wire, having sand forced into one's eyes, death threats at gun point, being left in the sun for eight hours without water, burns with cigarettes, and forced consumption of large volumes of water. HROs also spoke to seven people who reported being subjected to physical abuse in the hands of Military Intelligence in South Darfur, such as hanging a detainee from a tree with his hands and feet tied together for two days, whipping a detainee with an electric cable or plastic whip, beating him with sticks on his bare back, and subjecting detainees to ethnic slurs and threats such as "Hey Zaghawa, we have the right to kill you and loot your cattle." In Zalingei (West Darfur) as well HROs documented cases of ill-treatment at the hands of National Security and Military Intelligence personnel.

The Um Hashaba Government checkpoint and the surrounding area in North Darfur was a particularly notorious site where members of Sudanese Armed Forces and police physically abused, intimidated, and robbed IDPs and villagers. As noted above, the soldiers of Um Hashaba were the same who were alleged to have committed several rapes and attempted rapes in the area surrounding the checkpoint. The checkpoint was located 13 kilometers south of Zam Zam IDP camp and 50 meters from a frequently traveled road to the town of El Fasher. It was placed in an area with a strong SLA presence and was manned by approximately 30 to 40 Government personnel.

In numerous documented cases, abuses at the checkpoint followed a similar pattern. When a vehicle carrying IDPs or villagers reached the checkpoint, the soldiers made the passengers leave the vehicle and questioned them about their place of origin. If the people were from "rebel areas" they would be singled out and accused of "being a rebel" or of having links with rebels. This would be followed by the soldiers beating the individuals with a stick, their fists, or the butt of their rifle. Victims and witnesses also stated to HROs that the soldiers regularly searched peoples' personal effects and took money or other valuable items.

Detainees in National Security or Military Intelligence detention facilities interviewed by HROs often had no access to legal representation. According to local lawyers in South Darfur, National Security always denied their requests for access to their clients in National Security custody. On the other hand, lawyers for people in police custody and prison in South Darfur were permitted to make unsupervised visits at Nyala police stations and Kuria prison and some prisoners had been able to speak to lawyers before attending court. However, few detainees in police custody reported having a legal representative. The lack of legal representation for people in police custody and for prison inmates was a chronic problem throughout Darfur.

Allegedly, detainees were rarely informed upon arrest of the reasons for their arrest. National Security detainees regularly said they were first informed of the reason for their arrest during their interrogation. In the few cases documented where a reason for arrest was given, they were told they were being arrested for supporting rebel activities, for being a rebel, or because they were of a particular tribe (for example, Zaghawa). The people interviewed who were in the custody of Military Intelligence stated that they were not told why they were detained upon arrest, but were only later accused of being rebels during interrogation. The majority of people interviewed who were arrested by police stated that were not informed why they were being arrested upon arrest, but were only informed after having arrived at the police station.

People were also subjected to lengthy detentions that sometimes went beyond the already wide perimeters of domestic law. Individuals were detained for up to nine and ten months in Nyala. Two people who were transferred from Nyala to Khartoum were detained for eleven and fifteen months before being released without formal charge. After several weeks in Nyala, they were taken by plane to Khartoum. Both detainees were then taken first to the National Security section of Kober Prison, then Abu Ghraib “ghost house,” then back to Kober Prison, and finally to Dabak Prison.

While it was difficult to assess whether or not people were detained for legitimate periods of time and for legitimate reasons, a degree of arbitrariness was revealed by the fact that of 29 people who were arrested by National Security in South Darfur and interviewed by HROs only five were referred to the police for investigations and none of the cases resulted in prosecution. The chief prosecutor for South Darfur confirmed that the vast majority of National Security detainees referred to the police were released without formal charge after investigation.

The problem of prolonged detention was aggravated by the fact that domestic law did not appear to provide a mechanism such as *habeas corpus* or *amparo* to allow a person to challenge the lawfulness of his or her deprivation of liberty. Moreover, when oversight was available it was not always operational. None of the National Security detainees HROs spoke to in Nyala reported seeing a prosecutor or judge visit the prison. Domestic law provides that a specially appointed prosecutor (different to prosecutors from South Darfur’s Prosecutor’s Office) should inspect National Security detention facilities and be informed of individuals held in National Security detention.²⁸ However, according to the chief prosecutor for South Darfur no such prosecutor had been appointed to supervise the custody of those detained in National Security in that region.

The lack judges also contributed to the problem of prolonged detention. In Garsila (Zalingei area of West Darfur) there was no judge for over four months starting on 25 June 2005. (There was also no prosecutor for two years.) Individuals detained at the Garsila police station were, in turn, being held without any judicial evaluation of the lawfulness of their detention. HROs knew of two men who were detained for two months without judicial review.

National Security detainees who HROs spoke with also reported not being able to inform their family of their arrest or subsequently being refused contact with their

²⁸ National Security Forces Act 1999, art. 32(5)

family.²⁹ While visits were granted on an *ad hoc* basis to some prisoners and families were sometimes able to bring detainees food, the families of several detainees reported being completely refused access despite persistent requests, or told that they could not see their family member as National Security investigations were still underway. According to some families, National Security officials also refused to confirm whether individuals were held in the prison. If visits were permitted they were always extremely brief and under supervision of National Security officials. Family access was worsened when detainees were transferred without notice. In cases where prisoners were transferred to Khartoum they report losing contact completely with their families, except through occasional messages passed *via* detainees who had been released.

The use of Rural Courts, which were usually presided over by people who were not trained judges, was another source of violations of the right to a fair trial. The Criminal Procedures Act of 1991 permitted these courts to hear cases involving crimes that did not exceed a penalty of one year imprisonment, eighty lashes, or the sentence of destruction or compensation and care and reform measures.³⁰ This thereby excluded the crimes of adultery, rape, armed robbery, capital theft, and murder. Nevertheless, it was common for the courts to hear serious crimes outside their jurisdiction.

The case of two women from an IDP camp in West Darfur charged before a Rural Court for spreading false information illustrated the shortcomings of these Courts. In this case, a medical INGO in July had determined that the women were victims of rape. The victims were subsequently confronted by the police who directed them to a public clinic where the attending doctor indicated on Criminal Form 8 (a standard form for recording evidence of physical assault) that the alleged beatings and rapes did not occur. The two women were then charged by the police with giving false testimony and fabricating false evidence (art. 104(1)) under the Criminal Act of 1991. The police subsequently referred the cases to the Rural Court. According to the chief of police at the IDP camp, the victims did not appear before the court in person when they were sentenced to six months probation. In turn, they were not permitted to hear the evidence against them nor to defend themselves.

C. Justice mechanisms in Southern Sudan and Abyei

UNMIS Human Rights only recently deployed its staff to Southern Sudan and Abyei. Therefore extensive information was not available for this report. Nonetheless, HROs observed a general lack of judicial infrastructure that resulted in the obstruction of justice. While some of the problems can be linked to a lack of resources, others also were the result of a lack of political will and the failure of the Government to live up to its responsibilities. Citizens and state officials were permitted to take the law into their own hands and to act without consequences. The absence of formal courts

²⁹ Article 32(2) of the National Security Forces Act of 1999 provided for a detained person the right to inform his family of his detention and to communicate with his family, where the same does not prejudice the process of interrogation or investigation. The Human Rights Committee held that while a state can restrict contact between detainees and family, “the degree of restriction must be consistent with the standard of humane treatment of detained persons required by article 10(1) of the Covenant. In particular, prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving visits.” Human Rights Committee, Communication no. 74/1980, *Angel Estrella v Uruguay*, para. 9.2.

³⁰ Criminal Procedures Act of 1991, art. 13 in conjunction with art. 10(2).

resulted in the use of traditional courts. These court, like the Rural Courts in Darfur, were run by untrained local tribal leaders and were intended to regulate minor incidents. As a result of Government inaction, they were left to deal with serious crimes outside their intended jurisdiction. They also presided over trials concerning crimes such as abduction and rape that required serious investigative and prosecutorial attention but were not regarded as “criminal” according to local traditions.

In Rumbek, where formal courts were available, the SPLM/A failed to pay the judiciary or other court officials. The salaries of staff came from court fines and, as a result, the officials had on occasion increased the fines and kept cases pending for longer periods of time to ensure that they were paid. In Abyei, which was in a transitional territory whose status as part of either the north or the south had not been decided, citizens were in legal limbo as state officials were unclear as to which law was applicable. Moreover, the Government was reluctant to institute development projects upon the justification that the status of the territory was unclear. This left state institutions such as courts and law enforcement agencies without resources, almost non-existent, and in a worse position than that of the other resource deficient areas.

D. Detention conditions throughout Sudan

Between June and November 2005, HROs visited detention facilities in all three Darfur states, Khartoum State, Eastern Sudan, Southern Sudan, and in Abyei. In total they spoke to detainees in over twenty facilities, primarily prisons and police detention centers.³¹ Very limited access was granted to people in the custody of National Security and Military Intelligence.

International human rights law requires Sudan to treat detainees with humanity and with respect for the inherent dignity of the human person.³² The Human Rights Committee has noted that “persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, *inter alia*, the Standard Minimum Rules for the Treatment of Prisoners (1957).”³³ These standards include guidelines for, amongst others, accommodation, personal hygiene, clothing and bedding, food, exercise and sport, medical services, books and religion.³⁴

People in detention facilities throughout Sudan suffered from overcrowding, poor sanitation and hygiene facilities, and dilapidated infrastructure. Corporal punishment for disciplinary infractions was administered to detainees. In short their detention often amounted to cruel, inhuman or degrading treatment. Death penalty prisoners

³¹ Visits in Khartoum included: Kober Prison, Dar el Thoba Prison, Omdurman Men’s Prison, Omdurman Women’s prison, Dabak Prison, and juvenile rehabilitation centers (Al Jereif and Bahri); in Darfur: El Geneina Prison, Big prison (Zalingei), Kuria Prison (Nyala), El Daein Prison (El Daein), National Security Detention (Nyala), Shalla prison (El Fasher), and National Security Detention (El Fasher); in Eastern Sudan: Kassala Prison, Gedaref prison, and Port Sudan Prison; and in Southern Sudan: Juba Federal Prison, Rumbek State Prison, Torit County Prison, Yambio Central Prison, and Yei County Prison.

³² ICCPR, art. 10(1).

³³ Human Rights Committee, Communication no. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*.

³⁴ For specific cases, see Human Rights Committee, Communication no. 1096/2002, *Safarmo Kurbanova on behalf of her son, Abduali Ismatovich Kurbanov, v. Tajikistan* and Human Rights Committee, Communication no. 720/1996, *Leroy Morgan and Samuel Williams v. Jamaica*.

were generally subjected to living conditions worse than those of other inmates. At many of the prisons they were shackled at all times, received lower quality food, and suffered severe restrictions on their movement.

In Darfur, at Kuria Prison (Nyala), the state of cleanliness inside the cells was generally poor and in some cells there was a strong smell of urine coming from the toilet areas. Two prisoners there described small punishment cells, called the *zanazeen*, where prisoners are held in solitary confinement for up to a month for disciplinary infractions. They described the room as being dirty and full of mosquitoes. The deputy director of the prison stated they were no longer in regular use, but used only in exceptional circumstances. Several of the prisoners there also complained of being whipped and having had their wounds rubbed with salt water following disciplinary infractions.

At the El Geneina Prison, detainees had limited access to potable water and health care at the time of the visit. Individual mosquito nets were available but had not been distributed because there were no beds for prisoners. At least ten inmates were suffering from malaria.

In Juba Federal Prison, inmates were also whipped as a means for maintaining order and were only fed once a day. They slept on floor-mats in otherwise empty rooms that held on average no less than fifty inmates. Many of these prisoners were forced to sleep directly next to toilets due to the lack of space. There was a nurse but there were no prison doctors. The nurse stated that malaria and diarrhea were common and that cases of TB and meningitis had occurred. One official at the prison stated that the establishment was unable to meet even the minimum health requirements of the inmates.

In Yei Prison, inmates were not fed. They were responsible for getting their own food by working during the day. Officials stated that they normally managed to eat once a day, but not everyday. Some of the shelters for inmates had no roofs, thereby forcing them to crowd into roofed shelters. There was no health assistance at the prison.

In Abyei, the police detention center consisted of one cell measuring 3 by 5 meters which held five detainees serving sentences from nine to forty-five days when HROs made their visit. There was little room for the detainees to move within the cell. The cell gate did not protect the inmates from the elements of weather—which allowed the cell to get very hot during the day and very cold at night. Inmates appeared to sleep on very basic bedding (mattresses or mats) which occupied nearly all the space inside the cell.

In Gederef Prison in Eastern Sudan, prisoners sentenced to ten or more years were kept in two cells with floor space of approximately 150 square meters. The inmates stated that the two rooms held 80 to 120 people in extremely overcrowded conditions. The prisoners were not permitted to leave their cells after 2:00 p.m. or before 8:00 a.m., during which time they had to utilize open-air make-shift plastic toilets inside the cell. Prisoners at Gederef Prison also complained of hard labor on farms between 6:00 a.m. to 6:00 p.m., where they were regularly beaten. Prisoners informed HROs that inmates could spend up to three months living and working on the farms during

which time they were given little food and only had the opportunity to bathe once a fortnight.

Port Sudan Prison had a holding capacity of 500, yet there were 870 people being detained in the facility at the time of the visit. At Omdurman's Women Prison three communal cells intended to hold forty people per cell were holding a total of 720 at the time of the visit. In the mid-western block of Kober Prison in Khartoum, cell conditions were filthy and inmates slept on dirty mattresses on the ground. Twenty-nine of the Soba Aradi detainees were overcrowded into cells with seven to nine people each.

i. Mentally-ill prisoners

Many of the prisons that HROs visited were detaining people who prison authorities labeled as "lunatics" or "mentally-ill." As of 16 October 2005, 17 detainees described as mentally-ill by the authorities were incarcerated for security reasons in Shalla Prison in El Fasher (North Darfur). At El Geneina Prison on 17 October 2005, HROs observed two prisoners classified by authorities as mentally-ill chained and tied to a tree in the prison courtyard. According to a guard, one of the prisoners was tied to the tree 24-hours a day. The other prisoner was tied irregularly according to his mental condition. As of 10 November 2005, the prison in Yei held two individuals who authorities classified as mentally-ill. They were receiving no special treatment compared to the other inmates. As of 28 October 2005, in Juba Federal Prison there were 48 such detainees. At the police station detention area in Juba, HROs saw a male adult lying on the bare floor, totally naked, covered in feces and urine. The police officer accompanying the HROs explained that the detainee was a "lunatic."

At the time of writing, extensive information had not been gathered on how the mental status of these detainees was determined or what treatment policies and practices were in place. As alluded to above, some of these detainees were, however, subjected to inhuman treatment which was an affront to their dignity. The Standard Minimum Rules for the Treatment of Prisoners provides guidance regarding the treatment of mentally-ill prisoners in particular. This requires a proper diagnosis of their condition and special supervision, care, facilities, and treatment.

ii. Pregnant inmates and mothers in prison with their children

In a number of prisons, women were found detained while pregnant or with their children. As of 28 September 2005, the Women's Prison in Omdurman was holding 210 children under 5 years old (93 boys and 117 girls) who were either born in prison or arrived with their mothers. However, on 4 October the High Court released 765 women and 217 of their dependant children. The release was part of a general amnesty for inmates who had been sentenced to short-term confinement for minor crimes.

As of 14 November, Kuria Prison was holding 23 women one with two children of 6 months and 5 years of age respectively. In El Geneina Prison the child of a prisoner who had given birth four years prior while imprisoned continued to live with her in the prison. In Juba Federal Prison, nine women who were serving prison sentences had their children with them. All nine were under 2 years old. No special medical attention was being provided to the mothers or children and they received no dietary supplements. Yei Prison was holding four children, all under 3 years old, who

belonged to mothers serving sentences. At the detention facility at Northern Police Station in Juba, one detainee was pregnant and another was with her eighteen month old child.

International human rights standards and Sudanese domestic law address the issue of the rights of pregnant individuals and children of inmates in detention in the same general manner. Both place an emphasis on the well-being of pregnant women and the best interests of children. The 1992 Prison Organization and Treatment of Inmates Act provided that “Pregnant inmates are to be guaranteed special treatment and care in punitive institutions and arrangements are to be made to allow them to give birth in a hospital as much as possible; and should a baby be born in prison, it is prohibited to mention so in the official birth register, and the baby is to be provided with means of care.”³⁵ It also provided that, “No child may be kept with their inmate-mothers after attaining two years of age. They must be handed over to those who legally have the right to custody. Should a physician decide that the child’s health condition does not allow so, or in cases of absence of guardian, the child must be handed over to the authority in charge of a childcare home; unless the director permits their stay in with their mothers in consideration of the interest of the child, provided that appropriate care and custody are guaranteed for the child.”³⁶

While some detention facilities, such as Kober Prison, had resources and services for pregnant, delivering, and nursing mothers, by and large detention conditions and treatment at prisons nonetheless regularly fell short of the requirements set out in both legal systems.

E. Death penalty

The Government stated that as of 18 September 2005 there were 479 persons in Sudan sentenced to death and awaiting execution. The death penalty is not prohibited under international law nor under Sudan’s domestic law *per se*, but the Human Rights Committee has placed limitations on the application of the death penalty and has interpreted the ICCPR as indicating that the abolition of the death penalty is desirable.³⁷

The ICCPR requires states to ensure that a person sentenced to death has been afforded his or her fair trial guarantees.³⁸ The lack of fair trial guarantees documented in this report raise doubts as to whether Sudan was abiding by the obligation. This was also the case with two individuals executed on 31 August 2005, in Khartoum at Kober Prison, who were reported by their relatives to have been less than 18 years old when they committed their capital offences. The ICCRP, as well as the CRC, proscribe sentencing someone to death if he or she was less than 18 years old when the offense was committed.³⁹ The Interim National Constitution made these conventions an integral part of the Bill of Rights and article 32(5) reaffirms that the state shall “protect the rights of the child as provided in the international and regional conventions ratified by Sudan.” Nonetheless, article 36(3) of the Interim National Constitution permits the death penalty to be imposed on persons who committed a

³⁵ Prison Organization and Treatment of Inmates Act of 1992, art. 11.

³⁶ Prison Organization and Treatment of Inmates Act of 1992, art. 22.

³⁷ Human Rights Committee, *General Comment 6 (right to life)*, para. 6.

³⁸ Human Rights Committee, *General Comment 6 (right to life)*, para. 7.

³⁹ ICCPR, art. 6(5) and Convention on the Rights of the Child (CRC), art. 37(a).

capital offense while under 18 years old if the sentence is imposed when the convicted person is 18 years old or older. It also allowed, in contravention of its obligations under international law, for the imposition of the death penalty for people under 18 years old in cases of “retribution” or “*hudud*.”⁴⁰

The ICCPR also limits the application of the death penalty to only the “most serious crimes.” The Interim National Constitution, and the previous constitution of 1998, similarly limits the death penalty to “extremely serious offences.”⁴¹ However, these phrases are not synonymous. The Human Rights Committee has generally taken the view that crimes that do not cause, or attempt to cause, intentional loss of life and perhaps grievous bodily harm, are not within the definition of “most serious crimes” in article 6(2) of the Covenant.⁴² In its 1997 Concluding Observations on Sudan, the committee objected to the application of the death penalty for the crimes of apostasy and committing a “third” homosexual act.⁴³ The committee has also objected to the death penalty being applied for the crime of adultery, which was permissible under article 146 of the Criminal Act of 1991.⁴⁴

V. IMPUNITY IN SUDAN

A. Failure of accountability and investigatory mechanisms

A significant portion of the human rights abuses committed during the Darfur conflict, the civil war in Southern Sudan, and the violence in Eastern Sudan continued to go unpunished. With regard to the former, the parties to the CPA agreed only to “initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process.”⁴⁵ While there is an inextricable link between peace and justice, at the time of writing the government had not made serious commitments to this end. In Darfur, the Government stood in constant opposition to the Security Council’s referral of the situation in Darfur to the ICC, claiming that Sudan was able and willing to bring to justice perpetrators of human rights abuses and international humanitarian law. But the plethora of mechanisms in place to help bring about accountability for crimes committed during the conflict have largely failed and demonstrate the continued necessity of the ICC. This is especially true with respect to

⁴⁰ A crime that prescribes retribution (*qisas*) is a crime that allows the offender to receive the same punishment as to the offence he committed. *Hudud* offences, are offences of drinking alcohol, apostasy (*ridda*), adultery (*zina*), defamation of unchastity (*quazf*), armed robbery (*hiraba*), and capital theft and not all of them are subject to death penalty..

⁴¹ Interim National Constitution, art. 36(2) and Constitution of the Republic of the Sudan (1998), art. 33(1).

⁴² S. Joseph, J. Schultz, and M. Castan, “The International Covenant on Civil and Political Rights; Cases, Materials, and Commentary” (2nd ed.) (Oxford University Press: Oxford, 2005), para. 8.22

⁴³ Concluding Observations on Sudan, (1997) UN Doc. CCPR/C/79/Add. 85, para. 8. The Criminal Act of Sudan specifically permits the death penalty to be imposed only after a “third” homosexual act. It should not be assumed that the committee believes it appropriate for the death penalty to be imposed for a crime of one or two homosexual acts.

⁴⁴ Concluding Observations on the Islamic Republic of Iran, (1995) UN Doc. CCPR/C/79/Add. 25, para. 8.

⁴⁵ CPA, Chapter II, 1.7.

the failure on the part of domestic courts to bring to justice high ranking officials responsible for the most serious crimes related to the conflict.⁴⁶

The most prominent accountability mechanism in Darfur was the Special Criminal Court on the Events in Darfur (the SCCED), which the Chief Justice of Sudan established by decree on 7 June 2005. Its wide jurisdiction covered crimes in the Sudanese penal code, violations cited in the report of the National Commission of Inquiry, and charges pursuant to any other law, as determined by the chief justice.⁴⁷ It was originally a roaming court that was scheduled to pass through all three states in Darfur. A number of public statements by the Sudanese Government indicated that the SCCED was established to deal with major criminal offences which had occurred in those states and which could be characterized as war crimes or crimes against humanity. On 10 November, the Chief Justice issued a decree amending the subject matter jurisdiction of the Court to explicitly include crimes under international humanitarian law. The court was also permanently located in El Fasher, while two separate decrees established sister courts with the same subject matter jurisdiction in Nyala and El Geneina.

As of 30 November 2005, the cases prosecuted before the SCCED did not, however, reflect the major crimes committed during the height of the Darfur conflict in 2003-2004. All except one out of the six cases involved incidents from 2005. Furthermore, only one of the cases included charges brought against a high ranking official—who was acquitted. Thus, the court failed to address command responsibility issues or to convict high ranking officials directly involved in human rights abuses and violations of international humanitarian law. The court was also inadequately staffed and resourced. In Nyala, the court had no administrative officer, registrar, or clerk to assist the court or to provide information and assistance to the public.

On 18 September 2005, the Minister of Justice issued a decree that established a Specialized Prosecution for Crimes against Humanity. He was tasked with exercising the powers provided for in the Criminal Procedures Act of 1991, international humanitarian law, the international conventions to which the Sudan was party and “any other relevant law, in relation to crimes against humanity and any other crime stated in any other law and which infringes upon (constitutes a threat to) the security and safety of humanity. Its jurisdiction was to cover the entire Sudan and the headquarters shall be in Khartoum State.”⁴⁸ At the time of writing, this mechanism had not initiated any substantive work and its role was unclear.

Prior to the SCCED and the specialized prosecution, an 8 May 2004 presidential decree established an investigation commission concerning the alleged violation of human rights by armed groups in Darfur. The commission was not permitted to submit to any court of law, whether civil or criminal, any statements made to it. The commission was charged with collecting facts and information on allegations of human rights violations by armed groups in Darfur; finding facts on all claims against

⁴⁶ The following paragraphs do not attempt to comment on every mechanism that could have dealt with conflict related crimes in Darfur. For further reading, see, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005, paras. 456-464.

⁴⁷ This was the commission established by Presidential Decree No. 97 mentioned below.

⁴⁸ Minister of Justice Decree, “Establishment of a Specialized Prosecution for Crimes against Humanity, 2005,” 18 September 2005.

the armed groups in Darfur and the destruction of lives and property that may have resulted from their actions; discovering the reasons that led to the violations and damages if verified; submitting regular reports to the President of the Republic on the outcome of its work; and soliciting assistance from persons that it sees fit to undertake its responsibilities.⁴⁹

The commission issued a report with a variety of findings and conclusions, one of which was that independent judicial investigations into specific events should be conducted.⁵⁰ It rejected accusations that genocide or crimes against humanity occurred but conceded that serious human rights violations were committed in all three states in Darfur and that all parties, to varying degrees, were involved. The findings of the commission were perhaps the most revealing source of information produced by the Government to date, but as the International Commission of Inquiry on Darfur noted, the report was “insufficient and inappropriate to address the gravity of the situation” and was more a justification of events rather than a tool for establishing accountability.⁵¹

In addition to the 2004 investigation commission, the Governor of South Darfur established various investigation committees that have been presented to the international community as swift governmental response to alleged violations of human rights and humanitarian law committed by Government armed forces and allied Government militias. Such committees were established for attacks in Hamada and Buram (January 2005), Khor Abeche (April 2005), and Marla and Labado (December 2004). The committees were often presided over by a representative of the state prosecution and were required to submit their reports to the Governor within ten to fifteen days of being created. More recently, similar committees were established in relation to the attacks on Aro Sharow IDPS camp and Guzminu village in September in West Darfur and in Tama village in October in South Darfur.⁵²

The committees have had serious shortcomings that, together with the work of the SCCED, indicated unwillingness on the part of the Government to seek justice for the victims of the Darfur conflict. The Government has largely portrayed them as a means to facilitate the broader tribal reconciliation process in Darfur which was promoted by the state, and which was often characterized by African tribes as being imposed on them by the Government. The methodology of the committees was unclear, inadequate and lacked transparency. In some cases the committee did not visit the attacked area and fully relied on reports from the security agencies. Their impartiality and independence were undermined by the membership of armed forces and other security agencies personnel. In most cases the findings of concluded inquiries did not result in legal action, yet they were presented as a substitute for prosecution of those responsible for crimes committed during the Darfur conflict. Furthermore, the

⁴⁹ Presidential Decree No. 97 (2004), Establishment of an investigation commission on the alleged violations of human rights by armed groups in Darfur States, art. 3. The prohibition on submitting statements to a court was part of the Commission of Inquiry Act of 1954 to which the Darfur commission was legally based upon. Commission of Inquiry Act of 1954, art. 12.

⁵⁰ See generally, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005, paras. 456-464.

⁵¹ *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005, paras. 462.

⁵² See section *Human rights abuses by armed militia and the government's failure to protect it population* above.

committees did not appear to address the issue of state responsibility in a thorough manner. They portrayed the violence they investigated as inter-tribal disputes despite strong indications of state involvement.

Specialized Criminal Courts (*Mahkama Jenayah el-Mutakhasesa*) established in 2003 in Darfur have tried crimes related to the conflict and handed down convictions.⁵³ But there were also allegations from the relatives of victims that Government authorities intervened and manipulated the proceedings and punishments. The Specialized Criminal Courts were established to hear cases as promptly as possible, which led to reports of defense council having inadequate time and facilities for preparation, and limited time to cross examine prosecution witnesses and to examine defense witnesses. The Specialized Criminal Courts also failed to ensure that confessions extracted under torture or other forms of duress were excluded from evidence.

B. Impunity of state agents

In addition to tactics of intimidation used by police, National Security and other officials that made victims fearful of filing complaints and the ineffectiveness of the judiciary in Darfur, state agents throughout Sudan also enjoyed strong legal protections that safeguarded them from being brought to justice for human rights abuses.

Examples of immunity provisions in domestic legislation have included a Presidential provisional order amendment to the People's Armed Forces Act of 1986 issued on 4 August 2005. The 1986 Act applied to military forces and its privileges and immunities could also apply to police forces during a state of emergency.⁵⁴ The order protected members of the forces from criminal charges relating to their official activities. The only exception to this immunity was upon the discretion of the General Commander or anyone whom he delegated this discretion. Prior to this, complete and total prosecutorial discretion had been given first to the commander of the accused and second to the Chief Justice.

The Police Act of 1999 similarly protected police from criminal proceedings for offences committed while executing official duties or for offences that were a consequence of official duties.⁵⁵ Exceptions to this protection were allowed in cases of *flagrante delicto* or upon the instructions of the Minister of Interior or someone to whom he delegated such powers. The Act instructed that police courts were responsible for hearing cases of crimes not committed during the execution of duties, with the exception of *hudud* or *qisas* offenses. This rule could, however, be overridden if the Minister of Interior chose to send the case to a regular criminal court.⁵⁶

The National Security Forces Act of 1999 also provided safeguards against civil or criminal proceedings for any act connected with official duties and provided that

⁵³ These courts should not be confused with the Special Criminal Court on the Events in Darfur or the Specialized Courts (*Mahakama Mutakhasisa*) that were established in 2001 and discontinued in March 2003.

⁵⁴ Police Forces Act of 1999, art. 8.

⁵⁵ Police Forces Act of 1999, art. 46.

⁵⁶ Police Forces Act of 1999, art. 47.

persons covered by the Act be placed under the jurisdiction of a court constituted of National Security members. An exception to this rule could be made with the prior approval of the Director-General of National Security.⁵⁷

The proliferation of immunity provisions did not mean that protected officers were never tried. However, the number of cases brought were significantly lower than the number of alleged perpetrators of human rights abuses. For example, according on information provided to HROs by the director of the legal department of the National Security and Intelligence Service, as of 25 August 2005, the court established to try National Security officers had heard only 34 cases in three years.

In Southern Sudan and the transitional areas there are signs that a culture of accountability will be difficult to institute. Violence and documented intimidation tactics carried out by members of the SPLM have discouraged victims from filing complaints. On 30 November 2005, a man from Malakal (Shuluk tribe) was beaten by a SPLA soldier at the Gong Mobil checkpoint (on the southern riverbank of Bahr el Arab) while traveling north from Wau. The man, who was a former member of the Sudanese Armed Forces, was accused of being a northern spy. The victim fled across the river and filed a complaint with the Abeyi police. The following day, the two civilians were met by other SPLA personnel in Abeyi market who physically beat them for having complained to the police.

C. Impunity of Militia in Darfur

Just as law enforcement agents cited a lack of resources for failing to protect Darfurians from human rights abuse, they cited similar reasons for not investigating and arresting armed militia who committed human rights abuses and violations of international humanitarian law. As discussed above, this was more to do with a lack of political will rather than an irresolvable problem of insufficient resources.

Police and other Government officials also proactively obstructed justice by refusing to investigate human rights abuses or conducting inadequate investigations of human rights abuses committed by militia in Darfur. In some cases police even refused to take statements of complaints. Internally displaced persons often recalled that after reporting a crime they never saw police arrive at the site of the incident or interview witnesses. This, despite regulations implemented in 2002 that instructed that the police investigator, “shall immediately move to the scene of the incident or crime to gather evidence and to secure the scene of incident or crime.”⁵⁸ HROs also documented numerous cases of human rights abuses of IDPs between June and November 2005 in which the police placed the onus on the IDP community to carry-out of its own investigation. In many of these cases, police refused to carryout an investigation because the victim could not identify the perpetrator(s). When HROs followed-up with the police at Silea (West Darfur) in late September 2005, the officer in charge informed HROs that in nine cases, his office was not able to investigate further as the relatives and informants who reported the incidents never came back to him with the necessary evidence.

⁵⁷ National Security Forces Act of 1999, arts. 33(b) and 41.

⁵⁸ Instructions 3/2002, Instructions for Regulation of Investigation Procedures, art. 2(2).

Even in cases where victims and witnesses could identify the perpetrator(s), it was the exception rather than the rule for police to conduct adequate investigations and make arrests. HROs documented several cases where IDPs tracked the perpetrators to specific villages and then notified the police of their locations. The police often did not take steps to apprehend the alleged perpetrators. In cases where the police apprehended them, police took the accused men at their word when they denied the criminal allegations and released them without any investigation.

In September, HROs documented a small number of cases whereby police refused to initiate investigations of cases of assault if a complaint was not made within 24 hours of the incident. In Nyala, three women went to the Belel Police Station on 15 September 2005 after being raped while out gathering firewood outside Kalma IDP camp on 13 September by armed men who were wearing green military uniforms and were riding camels and horses. They stated that the police refused to register their complaint because they reported the incident more than 24 hours after it happened. The Prosecutor in Nyala explained that there is no such 24 hour time limit on reporting a crime in Sudanese law. The chair of the South Darfur State Committee to Combat Gender Based Violence also stated that the police officers responsible for the refusal had made a mistake.

However, this problem was not isolated to Belel Police Station. On 15 September 2005, Brigadier General Haider, the acting head of West Darfur state police, informed HROs that all criminal incidents must be reported to police within 24 hours or otherwise reports must be made to a prosecutor to initiate a criminal complaint. The Chief Prosecutor in El Geneina suggested that based on article 44 of the Criminal Procedures Act of 1991, verbal instruction were issued by one of his predecessors that criminal complaints should be made to the police within 24 hours of the occurrence of the alleged crime. Although police had registered complaints after the 24 hour period was exceeded, he stated that the instructions were still in force and that the courts had developed some jurisprudence on the issue. Given the vastness of Darfur, seasonal travel challenges, a limited number of prosecutors in each state, and the high number of assaults, this unnecessary 24 hour policy, if continued, could become a considerable obstruction of justice.

Police inaction also presented itself through police being dismissive and incredulous toward complainants. Victims of sexual violence continued to inform HROs that police and other state officials told them that they “are lying and making up stories.” Police informed HROs on various occasions that victims were never subjected to sexual violence despite medical certificates from international nongovernmental organizations (INGOs) stating otherwise. In Wadi Salih locality (Zalingei area of West Darfur), a policeman told HROs that he had been given instructions not to report or admit to the international community incidents of rape because it is something “shameful” and “brings a bad image” to Sudan. Police in various locations in Darfur told HROs that cases of rape had not been filed for the past six months despite evidence available to HROs that indicated that this was not true.

Through procedural misapplication, Criminal Form 8 (a standard form for recording evidence of physical assault) was used on many occasions as an obstacle to investigations and prosecutions. This was especially true for victims of sexual

violence.⁵⁹ A state doctor in West Darfur who refused to fill out a Form 8 for a rape victim was reported to have said she “was not a virgin anymore and rape could only happen to virgins.” Also in West Darfur, medical certificates provided by NGOs that indicated an individual was subjected to sexual violence were ignored by police and there was a practice of falsification of evidence during the completion of Form 8 to deny that rape or physical assault had taken place. Despite the Government’s 24 October 2005 endorsement of the Rules of Application of the Criminal Circular No. 2, misapplication of the form continued to occur. On 19 November 2005, a staff member from a clinic in Beida (West Darfur) stated, “we are directed not to give treatment to anyone who comes here without going first for a Form 8. The direction comes from the Ministry of Health.”⁶⁰

As a consequence of police inaction, victims failed to report crimes. When asked why, victims often cited the same factors: inaction or inadequate action by the police. This created a reoccurring cycle. Inaction by the police resulted in victims not notifying police of their case and, in turn, police often stated that they have not received complaints to investigate.

An additional reason often cited for not filing a complaint were substantiated fears of retaliation by the perpetrators of the crime or state officials. In an illustrative case, a 36 year-old women from an IDP camp in West Darfur was beaten by three army officers in November after attempting to lodge a complaint against a *janjaweed* who attempted to kill her daughter.

For women who were victims of sexual violence, this fear was documented on a number of occasions. When victims of sexual violence made their abuse public (i.e., by filing a complaint) they were often ostracized. However, this was only one factor that discouraged victims of sexual violence from filing complaints. Women who reported being raped were charged with or threatened with charges of adultery, bad behavior, spreading false information, and acting against the state. In an IDP camp in South Darfur, a woman explained: “the police do not do anything if we report that a rape occurred. We are afraid of the police.” A 15 year-old survivor stated, “I did not want to report to the police because they will treat me badly.” Another woman told HROs that, “the police do not want girls to say that rape occurred.”

VI. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN DARFUR, ABYEI, AND SOUTHERN SUDAN

The combined impact of war, drought, and famine has left millions of people in Sudan dead and millions more in destitute poverty, suffering from poor health and inadequate shelter and education, amounting to a human rights and humanitarian crisis.

On 18 March 1986, the Sudanese Government, without declarations or reservations, became a State Party to the International Covenant on Economic, Social and Cultural

⁵⁹ For a more detailed discussion of the Form 8 see the OHCHR report, *Access to Justice for Victims of Sexual Violence*, 29 July 2005. See also the section, *Sexual and gender based violence by government forces*, above.

⁶⁰ See the section, *Sexual and gender based violence by government forces*, above.

Rights (ICESCR). These rights pertain to, amongst others, an adequate standard of living, including food, clothing and housing; being free from hunger; enjoying the highest attainable standard of physical and mental health; and education. Through its authority to interpret the Covenant, the Committee on Economic, Social and Cultural Rights stated that “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”⁶¹

The Committee has also explained that the Covenant contains implicit “immediate obligations” and “core minimum obligations.” Immediate obligations are those obligations, such as refraining from discrimination, that are not subject to progressive realization or cannot be excused on the basis of insufficient resources. The concept of “core minimum obligations,” which include essential foodstuffs, essential primary health care, basic housing and shelter, and the most basic forms of education, are to “ensure the satisfaction of, at the very least, minimum essential levels” of each right in the covenant.⁶² The Committee reasoned that “[i]f the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.”⁶³

While the committee concedes that a state may not be able to meet its minimum core obligations due to a lack of available resources, it places a heavy burden squarely on the state to prove why it cannot meet those obligations⁶⁴ Moreover, given that one of the primary purposes and goals of the Covenant is to allow individuals to progressively enjoy their rights, the ICESCR has stated that, “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”⁶⁵ Also worth noting is that unlike the ICCPR, there is no derogation clause in the ICESCR and as such States Parties remain bound in full to the Covenant even in times of emergencies.

A. Darfur

With respect to Darfur, during the period from June to November 2005 the Government not only failed to protect the civil and political rights of individuals, but also their economic, social and cultural rights. The bulk of violations of economic, social and cultural rights could be grouped into five categories that had a cumulative negative impact. In the first three of these categories, the violations of economic, social and cultural rights arose as a result of inaction on the part of Sudanese authorities to prevent attacks on the civilian population and thereby adequately ensure the rights of the Covenant. The Government’s failures mirror those articulated above in the sections on impunity and the government’s failure to protect its population.

⁶¹ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 3 (nature of States parties’ obligations)*, para. 2.

⁶² CESCR, *General Comment 3 (nature of States parties’ obligations)*, para. 10.

⁶³ CESCR, *General Comment 3 (nature of States parties’ obligations)*, para. 9.

⁶⁴ CESCR, *General Comment 3 (nature of States parties’ obligations)*, para. 10.

⁶⁵ CESCR, *General Comment 3 (nature of States parties’ obligations)*, para. 9; see also CESCR, *General Comment 13 (right to education)*, para. 45.

First, attacks perpetrated by armed militia on IDPs and villagers outside the confines of their homes impeded IDPs from cultivating their land, collecting fire wood for cooking, and collecting grass for livestock feed. These activities were crucial for achieving an adequate standard of living. They provided the means to food, shelter, and health and were a source of income through which other essentials could be purchased. In August, IDPs from six camps in West Darfur stated that if they ventured beyond 3 kilometers from their camp they risked being subjected to attacks by armed militia.

Second, armed militia destroyed crops, set fire to arable land, and chased after people, driving them from their land. In West Darfur, community leaders in Kerenek IDP camp and local police confirmed that nomads were destroying the IDP crops by releasing their cattle onto the farming land at night and withdrawing them in the early morning.

Third, incidents of attacks, banditry, harassment and hijacking, and incursions of UN, NGO, or sub-contractor supplies and personnel impeded humanitarian relief from reaching people in need. Rebel groups as well as organized armed militia contributed to this problem, which was on the rise in June 2005 and continued through to November 2005. Between June and October 2005 there were at least 110 recorded security incidents of this kind that had an impact on humanitarian operations in Darfur.

A fourth way in which the economic, social and cultural rights of the Sudanese population were eroded in Darfur was through Government action that directly and/or deliberately restricted Darfurians from progressively enjoying their rights. As mentioned above, due to the large attacks that Government forces participated in, civilian houses, stores and crops were destroyed and their economic, social, and cultural rights were violated. These attacks also contributed to further displacement which resulted in overcrowding and worsening living conditions at the already resource-deficient IDP camps.

Additionally, the Government hampered people's access to humanitarian assistance and other services and items crucial to their livelihood. In North Darfur, Government authorities quarantined Abu Shouk camp on 30 and 31 October 2005 denying IDPs access to latrines, water points and primary health services inside the camp. As a direct result of the restriction of movement in and out of the camp the police refused to evacuate a pregnant woman who was suffering from complications during child-birth and her baby subsequently died at birth. In South Darfur, a ban on commercial traffic in and out of Kalma IDP camp placed substantial commerce and travel obstacles on IDPs. The ban proscribed motorized commercial transport which was often used to carry tradable goods. As a result, IDPs were left to travel by foot or donkey-cart for most of the trip and this significantly limited the types and quantities of goods they could transport and sell. This restriction on economic opportunity contravened the rights of IDPs to progressively enjoy an adequate standard of living. Moreover, the proscription on motorized transport restricted the ability for many IDPs, especially those in vulnerable situations, to enjoy the employment opportunities they previously sought in Nyala, as well as access to secondary schools.

Because the Government did not in any sufficient way compensate for the impact of the ban, the law had clear retrogressive results on various economic, social and cultural rights. As the Committee on Economic, Social and Cultural Rights has explained, “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”⁶⁶ The Government had, however, indicated that the law was imposed, *inter alia*, for reasons of national security. Under the ICCPR, national security is a legitimate justification for the restriction of freedom of movement.⁶⁷ Under the ICESCR, limitations on the rights within can also be imposed. Various entities have criticized the legitimacy of the justifications the Government has given for imposing the ban. But regardless, as the ban was never formally codified, it was an inherent violation of international human rights law, which clearly requires that any restrictions under either of the above Covenants must, at the very least, be provided by law.

A fifth way in which economic, social, and cultural rights of Darfurians were threatened was through the accumulated impact of the Government’s failure to provide even the “core minimum obligations” required under the Covenant over the course of many years.⁶⁸ While the international community was providing a considerable amount of assistance to people in need, this did not displace the responsibilities of the Government under international law. The absence of schools, medical facilities, potable water, and shelter, and the high rates of illiteracy, disease, malnourishment, poverty, and the low life expectancy rates, as well as other issues affecting livelihood, indicate the continued existence of urgent unaddressed issues that the Government must immediately confront in a concerted effort to meet its obligations under the ICESCR.

B. Abyei and Southern Sudan

The Government’s failure to allocate sufficient resources and build infrastructure poses the biggest threat to economic, social and cultural rights in Southern South and Abyei. Prior to the signing of the CPA, the south of Sudan and the transitional areas provided extremely limited economic, social, and cultural opportunities. Medical facilities, secondary schools, and other services essential to the enjoyment of economic, social and cultural rights were scarce. After the CPA, the death of First Vice President John Garang, and the riots in Khartoum large portions of the four million IDPs began to increasingly return to their homes and villages of origin. This placed a considerable strain on the already meager available resources.

Humanitarian services mitigated some of the problems but the state had a tremendous amount of work to do to meet the needs of its people. In Abyei, where people from the North were passing through or returning to, the population of the town increased from approximately 6,000 to 10,000 in three weeks. Poorly equipped schools became overcrowded, a problem which was exacerbated by the military occupation of some schools. The highly limited medical facilities, already lacking basic drugs and medical

⁶⁶ CESCR, *General Comment 3 (nature of States parties’ obligations)*, para. 9.

⁶⁷ ICCPR, art. 12(3).

⁶⁸ CESCR, *General Comment 15 (right to water)*, para. 37; CESCR, *General Comment 14 (right to an adequate standard of living)* para. 43; CESCR, *General Comment 13 (right to education)*, para. 57; CESCR, *General Comment 12 (right to food)*, para. 8.

personnel, were overwhelmed by the sudden increase of patients and were unable to provide even basic assistance. The international humanitarian aid presence in the area was unable to sufficiently cope with the increased caseload of people seeking medical assistance. At times patients had to travel considerable distances on foot to receive urgent treatment. The only two water pumps in Abyei became the center of violence amongst women (not necessarily between returnees and locals, but rather between whoever happened to be queuing at the time) who fetched water for their families and in so doing had to queue for long periods of time under the hot sun. Incidences of Sudanese Armed Forces, who were posted at the entrance to Abeyi, preventing villagers from using the water reservoir, were also documented.

IDPs arrived in Juba from the North and from various locations in the South. But due to insecurity caused by landmines, banditry, looting, and the Lord's Resistance Army (LRA), the returnees were reluctant to travel outside of Juba. This too resulted in a strain on resources. Attacks by the LRA in late October and November 2005 against employees of international humanitarian groups, as well as looting of humanitarian supplies, threatened commerce and impeded the delivery of humanitarian assistance and services to those in need.

As the population continues to increase in Southern Sudan and the transitional areas, national, state, and local government will have to make decisions about what resources to allocate and where. In making these decisions the Government should ensure that it is not violating its immediate obligations under ICESCR. To accomplish this, budgetary decisions should be informed by human rights considerations and benchmarks should be set for the progressive achievement of the rights of the Covenant.

These considerations should include the funding and deployment of well-trained and professional law enforcement personnel to combat abuses of economic, social and cultural rights, such as issues of land tenure, the occupation of schools by militia, or access to water sources. Given the wealth of oil revenue that Sudan is expected to receive, it will also be important that the Government and oil companies ensure the transparency of budgetary and resource allocation decisions so as to avoid incidents and accusations of discrimination and corruption.

VII. INSTITUTIONAL HUMAN RIGHTS FRAMEWORK FOR SUDAN

The human rights situation between June and November 2005 indicated that a considerable amount of work needed to be done for Sudan to meet its human rights obligations. Because Sudan is in a transitional period where reforms are taking place at all levels of Government, it is critical that all relevant actors (Government, civil society, international community, etc.) seize this opportunity to lay a strong human rights foundation and ensure a departure from state practices and policies that grant authorities abusive powers and permit widespread impunity.

A. Legal reform and oversight mechanisms

Legislative reform and the establishment of a national human rights commission will be a key test for putting words into action. The incorporation of human rights into the Interim National Constitution and the Comprehensive Peace Agreement (CPA) were

steps in the right direction. The Constitutional Court must be given the power to uphold these rights with deference. It was also a positive step that the Government became a State party to the two optional protocols to the Convention on the Rights of the Child. But there are additional international treaties that Sudanese Government should become a party to in order to strengthen human rights protections in Sudan. These include the Convention on the Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Elimination of all forms of Discrimination of Women (CEDAW).

In terms of reforming domestic law, in late October the Ministry of Justice established the Law Reform Committee with the mandate to review the compatibility of domestic legislation from 1901 to 2005 with the Interim National Constitution. The Committee should make the harmonization of the constitution's Bill of Rights and domestic legislation a paramount part of its work. This will include making significant revisions of provisions in domestic law that granted wide powers of arrest and detention, and high levels of immunity to state agents. Strengthening non-discrimination laws and laws pertaining to the human rights of women as envisaged under international human rights treaties is also necessary. Law reform is also needed in areas of freedom of expression, freedom of the press and freedom of association.

To ensure that human rights reforms are complied with, a variety of mechanisms should be put in place. They should include international accountability and oversight mechanisms—most notably through the ratification of the Rome Statute of the ICC and the First Optional Protocol to the ICCPR, the latter of which would place Sudan under the jurisdiction of the Human Rights Committee's complaint mechanism.

Another mechanism with considerable potential to contribute to, and support the institutional human rights framework in Sudan is the fifteen-member national advisory independent Human Rights Commission called for in the Interim National Constitution; it was given the task of monitoring and receiving complaints relating to the rights and freedoms set forth in the Bill of Rights.⁶⁹ In addition to addressing ongoing human rights issues in Sudan, the national Human Rights Commission could contribute to the reconciliation process that the SPLM and the Government of Sudan agreed to in CPA. The national Human Rights Commission could investigate and map out crimes of the past, shedding light on who was responsible, and bringing a degree of justice to the victims of human rights abuses.

To be effective, the Human Rights Commission should strive to meet the internationally recognized "principles relating to the status of national institutions" (Paris Principles). In doing so, it must be properly funded, able to operate with complete independence, and be accessible to all. Members should be of the highest independence and integrity and not be selected solely by the Government. They should be broadly representative of society, including representatives of vulnerable groups. The commission should consult with civil society concerning the kind of assistance they need for the promotion and protection of human rights, especially in relation to marginalized and vulnerable groups. Witnesses should be protected. The results of its investigations must be open to scrutiny by civil society and any reports

⁶⁹ Interim National Constitution, art. 142. At the time of writing, a law establishing a national human rights commission had not been adopted.

that it issues should not be subject to review by any outside body prior to being made public.

At the time of writing the commission had not been established. However, the manner in which it was being established has raised concerns. Pursuant to the CPA, the National Constitutional Review Commission (NCRC) was required to prepare legal instruments to give effect to the Peace Agreement, including “detail[ing] the mandate and provid[ing] draft statutes for the appointment and other mechanisms to ensure the independence of such National Institutions...” (e.g., the Human Rights Commission).⁷⁰ However, government representatives marginalized and bypassed the NCRC by drafting legislation that it had not reviewed. Thus far three different drafts have been prepared with a minimal common understanding among the drafters about the elements that should be essential to the commission.

B. Reforming National Security, police, and military

National security should be reformed and discharged of its abusive and unchecked powers of arrest and detention. This was envisaged in the Interim National Constitution, which placed issues of national security in the hands of two institutions: the National Security Council and the National Security Service. The former was charged with defining a security strategy for Sudan and the latter was charged with focusing primarily on information gathering, analysis, and appropriate services.⁷¹

Law enforcement and military personnel must also reform their behavior to ensure their actions coincide with international human rights standards. In order to achieve this, law enforcement and military personnel must be properly hired, trained and adequately funded. This includes the incorporation of women into these professions as well as ensuring ethnic, racial, and religious diversity. Human rights training initiatives for law enforcement have taken place, but more needs to be done.

C. Independent judiciary

Sudan’s judiciary must be independent and respectful of human rights. The Supreme Court in Khartoum has on occasion overturned decisions in lower courts where defendants were sentenced without lawyers and on the basis of confessions extracted under duress. These rulings from higher courts should be the rule rather than the exception in the new Sudan. The judiciary should act with independence and with deference for human rights. Courts should not be seen as manipulative fora for political agendas and power struggles. They should not be places for those with power to impose their wishes arbitrarily on those with less power. Key to this goal is strengthening legislation and legal mechanisms that promote judicial transparency and eliminate bribery and other forms of undue interference.

D. Supporting a strong civil society

To build a strong human rights ethos in Sudan, the Government must demonstrate its commitment to supporting the rights of civil society to function freely. The relaxation of media restrictions immediately after the adoption of the Interim National Constitution was a positive measure in this respect; as was the release of political prisoners and the lack of interference with various community-based activities

⁷⁰ CPA, Chapter II, 2.10.1 and 2.12.9.

⁷¹ Interim National Constitution, arts. 150 and 151.

surrounding the international campaign of 16 Days of Activism against Gender Violence that started on 25 November. The Government also permitted national organizations and the international community to carry out a considerable number of civil society human rights training and capacity building activities in Khartoum, Southern Sudan, Eastern Sudan, the transitional areas, and Darfur, including the training of independent journalists and human rights trainings for human rights activists, lawyers, and community leaders.

That said, a stronger commitment and understanding of human rights is needed. The Government of Khartoum reverted to censoring criticism of the government during the Khartoum riots and maintained rigid regulations that hampered the independence and freedom of the media. In the wake of the riots, on 4 August 2005, the President of Sudan issued two provisional orders that struck at the principle of accountability and the right to freedom of association.⁷² One was an amendment to the People's Armed Forces Act of 1986 which protected officers or soldiers from criminal charges being brought against in relation to their official activities. While the provision did not appear to have been immediately linked to issues of freedom of expression and association, the timing of the decree made it clear that the intention was to allow law enforcement the latitude to deal with protests devoid of accountability. The second was the "Organization of Voluntary and Humanitarian Work Act, 2005" which struck at the right to freedom of association and prompted protests by a broad coalition of national NGOs that considered the law arbitrary and unconstitutional. At the time of writing, the Voluntary and Humanitarian Work Act had been repealed.

The Government's abusive response to what were perceived as anti-Government activities was again exhibited on 17 October 2005. On that day, eight university students from Omdurman University (Khartoum State) were subjected to treatment by National Security which appeared to be tantamount to torture. The treatment was linked to their involvement in a student alliance that focused on an agricultural development scheme which political parties such as the Democratic Union Party, the National Umma Party, the Sudanese Communist Party and the SPLM had heavily criticized in the past.

The Sudanese Government made important commitments and undertook various initiatives towards putting an end to its history of gross human rights abuses. It provided itself with a potentially strong institutional human rights framework. At the national level, the CPA and the Interim National Constitution gave human rights a prominent place as one of the founding principles of the new Sudan. The Law Reform Commission and the national Human Rights Commission added to this potential. The lifting of emergency law and the release of certain political prisoners was also welcomed, as were the special courts and commissions that had the potential to deal with crimes related to the conflict in Darfur. UNMIS Human Rights was pleased that the Government agreed to allow HROs unfettered access to all detention facilities in the country.

⁷² Article 109 of the Interim National Constitution provided the president with the power to pass provisional orders when the National Legislature is not in session. When it returns to session, the legislature is to review the order for ratification or rejection. Article 109(2) instructs that the president cannot make any provisional order on matters affecting the Comprehensive Peace Agreement or the Bill of Rights.

To make its institutional human rights framework a success the Government will need to exercise far more political will than it has exercised to date. There is a considerable disjunction between the positive human rights potentials of the new Sudan and its current state of affairs. From June to November 2005, commitments on paper did not adequately permeate the day-to-day lives of people in Sudan.

Many of the Government's commitments to improve the human rights situation in Sudan appear to be superficial. One year after the signing of the CPA, National Security reform has not taken place; legislation to establish the national Human Rights Commission has not been passed; a reconciliation and accountability scheme to address the 21-year war has not been initiated. The proliferation of accountability and investigatory mechanisms in Darfur have inadequately contributed to the achievement of justice; HROs were regularly obstructed from visiting National Security and Military Intelligence detention facilities despite agreements by the Government in Khartoum; and the Government's commitments in 2004 to the Secretary-General to disarm the *janjaweed*, end impunity, and install a competent police force in Darfur have not been effectively addressed or implemented.

As detailed above, people's civil, political, economic, social, and cultural rights have been regularly threatened and violated between June and November 2005. In Darfur, where the conflict intensified in the months after July 2005, HROs documented numerous attacks on civilians by Government forces. In some cases these attacks were carried out jointly by Government forces and armed militia. Alongside this violence, police regularly left Darfurians unprotected from armed militia who killed, raped, attacked, and looted. In Darfur, as well as Khartoum, National Security agents and other officials tortured detainees. Throughout the country a culture of impunity persisted and detainees were denied their basic fair trial guarantees and often detained in inhuman and degrading conditions. In Southern Sudan and the transitional areas the influx of returnees exacerbated the already deeply deficient economic, social, and cultural opportunities in those regions. In Darfur, economic, social, and cultural rights were also violated.

The Sudanese Government has established numerous commissions, committees, courts, or other mechanisms to deal with its human rights problems. But this approach has been proved inadequate. These mechanisms have not been used effectively and in many cases they appear to be token gestures that have not bridged the gap between Sudan's stated commitments to human rights and a tangible improvement in the human rights situation on the ground. The recommendations below provide key solutions on how Sudan could begin to bridge this gap.

i. Ending the culture of impunity throughout Sudan

In areas where peace has taken hold in Sudan, the Government should focus on implementing a new culture of accountability. The judiciary must be adequately financed, reformed, and staffed with professionals. Immunity laws for state agents, regardless of their official status or function, should be revoked. This is particularly true for personnel with powers of arrest and detention such as National Security and police personnel. Law enforcement and military forces in Southern Sudan and the transitional areas should be held accountable for their actions. With regard to Darfur, in addition to ending impunity and reforming the National Security Service, the Government should cease its attacks on civilians, disarm militias, and install an active,

professional, well-trained law enforcement system in Darfur with adequate resources. Those who have not yet been held accountable for the commission of prior crimes, including those relating to the 21-year civil war, should be brought to justice. This should be one of the foundational components of the reconciliation process called for in the CPA. The National Human Rights Commission envisaged in the Interim National Constitution could play an important role in mapping out these crimes and proposing relevant mechanisms for establishing accountability.

The Sudanese Government has made numerous commitments to ending impunity in Darfur and established a variety of accountability and investigatory mechanisms. While these are welcome initiatives, the measures taken to implement them have been highly insufficient and reflect an inability or unwillingness to prosecute perpetrators of human rights abuses and violations of international humanitarian law. The Government should consider working in cooperation with the International Criminal Court (ICC) to bring about justice for crimes related to the conflict that began in 2003. Meanwhile, the Government should start to use its domestic legal system more effectively.

ii. *National Security reform*

The Interim National Constitution envisaged reform of the National Security organs that are critical to improving the situation of human rights in Sudan. The National Security Service should be stripped of its abusive and unchecked powers of arrest and detention. This must include nullifying their immunity protections in domestic law. Similar reform is needed for the police and armed forces.

iii. *Respecting economic, social, and cultural rights*

Sudan must start to progressively realize the economic, social, and cultural rights of its people. Conflict in Sudan was initially sparked in response to practices of marginalization and discriminatory resource allocation. The wars that followed resulted in further devastation to health, education, and living conditions. To remedy this, resource allocation must be fair, transparent, non-discriminatory, and involve the affected communities. The Government should also permit and facilitate the assistance of humanitarian and development assistance, especially where it is unable to provide the required services itself.

iv. *A free civil society*

The Government must allow civil society to function freely. Restrictions on the creation and activities of media outlets and associations, including political parties and unions, should be the exception rather than the rule.

v. *Making effective use of the national law reform committee*

In late October 2005, the Ministry of Justice established a committee for law reform with a mandate to review the compatibility of domestic legislation adopted from 1901 to 2005 with the Interim National Constitution. This process should result in the harmonization of Sudan's domestic legislation with its obligations under international human rights law. For the committee to be successful in this respect, it must rely on the expertise and advice of national and international human rights experts. In addition to reforming the specific laws mentioned in this report, the committee should strengthen, *inter alia*, non-discrimination laws and those pertaining to the rights of women, as envisaged under international human rights treaties.