



**Report of the United Nations High Commissioner for Human
Rights on Impunity and Accountability in Darfur for 2014**



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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
CRP	Central Reserve Police
DDPD	Doha Document for Peace in Darfur
DRA	Darfur Regional Authority
HAC	Humanitarian Aid Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person
ICID	International Commission of Inquiry on Darfur
IOM	International Organization for Migration
JEM-B	Justice and Equality Movement-Basher
JTRC	Justice, Truth, and Reconciliation Commission
LJM	Liberation and Justice Movement
MI	Military Intelligence (Sudan Armed Forces)
NCI	National Commission of Inquiry
NGO	Non-Governmental Organization
NISS	National Intelligence and Security Services
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
RSF	Rapid Support Forces
SAF	Sudan Armed Forces
SNHRC	Sudan National Human Rights Commission

SCCD	Special Court for Crimes in Darfur
SCCED	Special Criminal Court for Events in Darfur
SGBV	Sexual and Gender-Based Violence
SLA/AW	Sudan Liberation Army-Abdul Wahid
SLA/MM	Sudan Liberation Army-Minni Minawi
UNAMID	African Union-United Nations Mission in Darfur
UNCT	United Nations Country Team
UNHCR	United Nations High Commissioner for Refugees
UNMIS	United Nations Mission in Sudan
VSF	Victims Support Fund

I. Executive Summary

1. This report is issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR). It presents the analysis of OHCHR with regards to impunity, including challenges to access to justice and the right to remedy for victims of human rights violations and abuses and serious violations of international humanitarian law in Darfur.

2. The report highlights sources of impunity in Darfur. In particular, it describes the failure of initiatives taken so far by the Government to combat impunity in Darfur, including the creation of the Special Court for Crimes in Darfur (SCCD), amendment of Sudan's Criminal Code of 1991 to make provisions for crimes against humanity, genocide, and crimes pertaining to the conduct of hostilities, as well as related provisions in Sudan's Armed Forces Act 2007. The failure of accountability mechanisms has contributed to a climate of impunity which remains a major concern in Darfur.

3. The report covers human rights violations and abuses documented by the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in 2014, committed by all parties to the conflict. Through the examination of the authorities' response to these cases, the report illustrates continued difficulties for victims and their families to seek or access justice and remedy.

4. The report provides recommendations to the Government of the Sudan and the armed opposition movements to strengthen accountability mechanisms to combat impunity and enhance access to justice in Darfur. OHCHR believes that this report and its recommendations will be of assistance to the Government of the Sudan to accelerate efforts to strengthen accountability processes and mechanisms in Darfur. As per its mandate, UNAMID is committed to assisting the Government, at all levels, to address the issue of impunity and will fully engage with the Government at State and federal levels on the implementation of the recommendations contained in this report.

II. Introduction

5. The information in this report is based on the work of UNAMID which is mandated by resolution 2173, amongst others, to ensure public reporting on violations of human rights and international humanitarian law. In addition, in fulfilment of this obligation, the United Nations Security Council "urges the Government of Sudan to extend greater cooperation with UNAMID towards fulfilment of this goal and to provide accountability and access to justice for victims."¹

6. In line with its mandate, UNAMID has been working with the Government of the Sudan and has continuously provided technical assistance to State institutions, including the judiciary and police, the National Human Rights Commission, the Justice, Truth and Reconciliation Commission, as well as civil society organizations.

III. Definitions and Methodology

7. The understanding of impunity invoked in this report is drawn from the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to

¹ Security Council resolutions 2173, S/RES/2173 (2014).

Combat Impunity (Updated Impunity Principles).² This document defines impunity as “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether in criminal, civil, or administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.”³ The Updated Impunity Principles state that “impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished.”⁴

8. As part of its mandate, UNAMID monitors human rights, which involves carrying out field missions, interviews with victims and witnesses, and visiting sites of alleged human rights violations and abuses. UNAMID constantly pursues engagement with the Government of the Sudan to follow up on cases, highlight challenges, and seek remedial action for human rights violations and abuses and serious violations of international humanitarian law. In some instances, these interactions have led to constructive dialogue with Sudanese authorities, and facilitated access to victims and sites of human rights violations and abuses and serious violations of international humanitarian law. UNAMID also worked in partnership with local authorities to build capacity of local governance institutions in the field of human rights pursuant to the Doha Document for Peace in Darfur (DDPD). UNAMID has been forging outreach initiatives with communities and the leadership of internally displaced persons (IDPs) as well as civil society groups.

9. UNAMID followed standard United Nations human rights monitoring, reporting and verification protocols as set out in the Training Manual on Human Rights Monitoring. Given the challenges associated with human rights monitoring and reporting in Darfur, UNAMID has adopted a standard of proof based on the balance of probability or preponderance of the evidence. This means that the standard of proof is met if a particular allegation is more likely to be true than not, and there is sufficient information of a credible and reliable nature for the Mission to make a finding in fact.

10. The volatile and unpredictable situation in Darfur has been destabilizing social structures and family life. Entire communities continued to be displaced as a result of the ongoing conflict. This has made it more difficult for UNAMID to access victims and witnesses of serious violations and abuses of human rights and international humanitarian law. In such situations, UNAMID sought information from secondary sources, including relatives of victims, witnesses, community leaders and law enforcement officials. Occasionally, tense security situations, inhospitable terrain and constraints relating to access and mobility of UNAMID personnel have made verification challenging. UNAMID overcame such difficulties by selectively utilizing third party sources, including credible and reliable national and international NGOs, who offered crucial information that helped human rights monitors to pursue cases of alleged human rights violations and engage with judicial and law enforcement officials.

11. UNAMID could not verify a large number of cases relating to violations of the right to life, physical integrity and (sexual gender-based violence) SGBV, due to difficulties in timely accessing sites and law enforcement officials, victims and witnesses. Whenever possible, UNAMID verified the allegations through engagement with local officials.

² Submitted to the United Nations Commission on Human Rights on 8 February 2005.

³ Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle XX.

⁴ Ibid, First Principle.

12. UNAMID pursued verification with the Government, police and judicial officials to the extent possible. This is critical in following up on cases and gauging action taken by authorities to bring perpetrators to justice. This is the case in Labado (East Darfur), Sisi (West Darfur), Kutum, Tawilla, and Korma (North Darfur). Verification of SGBV has proved particularly challenging due to social stigma and sensitivity of such cases. Even if these cases were sensitive, UNAMID documented them, fully respecting the confidentiality principle.

13. UNAMID actively sought information and testimonies from various relevant sources, which offered a solid means to verify human rights incidents and associated statistics relating to deaths, injuries and sexual violence. In situations where victims were hospitalized due to injuries from violent attacks or other forms of human rights violations and abuses, UNAMID sought consent from competent authorities to speak to them. Due care was taken to obtain the consent and respect the sensitivity of victims, confidentiality and protection from possible reprisals. In 2014, UNAMID continued to observe fear of reprisals and intimidation by alleged perpetrators among victims and witnesses, which generally resulted in their reluctance to report incidents.

IV. UNAMID Human Rights Monitoring Challenges

14. The ability of UNAMID to carry out human rights monitoring (and consequently reporting) has been hampered by numerous challenges which range from lack of information sharing from Government authorities, denial of access to sites and victims of human rights violations and abuses and serious violations of international humanitarian law, as well as denial of access by armed opposition movements to areas they control. As noted, UNAMID has also observed that victims' reporting of human rights violations generally continued to be affected by fear of reprisals. In addition, due to cultural stigma and family honour, victims of SGBV were generally dissuaded from reporting and seeking redress through the formal justice system, leading to an increasing resort to traditional dispute settlements with their inherent discrimination and lack of due process.

15. UNAMID has always encouraged victims and witnesses to vigorously seek redress through the formal justice process, provided that they are protected from reprisal and intimidation. While Darfur's transitional justice process, as conceptualized by DDPD, recognizes the role of community leaders and social institutions in the promotion of justice, UNAMID has exercised caution not to present traditional social institutions as an equal alternative given the risk to reinforce status quo in relation to imbalances in social and political power structures.

V. Context and Overview of the Darfur Conflict

16. Political and social conditions in Darfur have been affected by decades of internal conflicts that gripped most of the Sudan's post-independence existence. The ongoing conflict dates back to February 2003 and has resulted in killings and displacement of civilians, injuries and destruction of property as well as SGBV. Lack of substantive progress in achieving a durable peace together, and the emergence and shifting loyalties of armed groups have continued to fuel the conflict, with persistent human rights violations and abuses, and serious violations of international humanitarian law perpetrated by all parties to the conflicts.

17. DDPD constitutes the framework upon which the peace process is to be anchored. However, its weak implementation from both the signatories and the international community has negatively impacted the fight against impunity. The conflict has continued, severely affecting civilians with killings, SGBV; displacements and destruction of private property, as documented by UNAMID. The activities of all parties to the conflict have also hampered the functioning and consolidation of the rule of law and judicial institutions whose role is critical in combating impunity and enhancing accountability.

18. During the first quarter of 2014, the Government of the Sudan deployed several military detachments affiliated with the Rapid Support Forces (RSF) in Darfur as part of “Operation Decisive Summer,” which was carried out to bring to an end the rebellions in Darfur and the Kordofan regions. For much of 2014, RSF carried out combat activities which were deemed by the Government as crucial in combatting criminality and containing the advances of armed opposition movements. RSF activities accounted for incidents of alleged human rights violations and serious violations of international humanitarian law documented by UNAMID during the first and second quarter of 2014.

19. The continued uncertain security conditions in Darfur have considerably affected UNAMID operations. UNAMID mandate and its particular focus on protection of civilians demand timely access and ongoing engagement across Darfur to facilitate mandate implementation, including capacity building and mediation processes. These activities have exposed UNAMID to attacks and ambushes carried out by unidentified armed persons. In 2014 alone, five UNAMID peacekeepers were killed. Although some of the attacks on UNAMID personnel, convoys and installations were opportunistic acts of random criminality, others involving coordinated attacks and ambushes seem to have been carried out by armed groups. On 10 April 2014, UNAMID police advisers in El Fasher were robbed and raped. The movement of UNAMID personnel was affected by carjacking incidents, which limited monitoring and visits to sites of alleged human rights violations and abuses.

20. The ongoing hostilities have encouraged impunity and created conditions which hinder the enjoyment of human rights. General insecurity has disrupted the ability of civilians to move freely and pursue their professions and means of livelihoods. Farming and cattle grazing – which are the predominant occupations in Darfur - require a safe environment with freedom of movement and unrestricted access to farmlands. Disputes and competition over coveted resources in Darfur have aggravated the security and well-being of communities, often leading to inter-communal conflicts which have resulted in killings, destruction of property and displacement. In 2014, UNAMID documented 59 incidents of inter-communal conflicts, some of which led to the killing of hundreds of civilians from rival tribes with impunity. Efforts initiated by UNAMID in collaboration with local authorities to seek a resolution to inter-communal conflicts have not led to addressing their root causes, which are often imbedded in social factors such as competition over scarce resources.

VI. Legal Framework

21. The legal framework used for this report includes international human rights law, international humanitarian and criminal law, as well as Sudanese domestic law.

(a). *Obligations under international human rights law*

22. States are responsible under international human rights law to guarantee the protection and fulfilment of human rights and fundamental freedoms at all times, in war and peace. International human rights treaties ratified by the Sudan impose obligations

to respect and protect human rights of all persons in the Sudan including Darfur, combat impunity and strengthen accountability mechanisms. The Sudan has ratified or acceded to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and its first Optional Protocol on the involvement of children in armed conflict, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. The Sudan is also a State party to the Convention on the Prevention and Punishment of the Crime of Genocide. The Sudan has ratified the African Charter of Human and Peoples' Rights (ACHPR) and has also signed the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and the Constitutive Act of the African Union⁵.

23. As a component part of the obligations under the ICCPR and other human rights treaties, States are obliged to investigate "allegations of violations promptly, thoroughly and effectively through independent and impartial bodies,"⁶ and bring to justice those responsible⁷.

24. Additionally, States must provide an adequate and effective remedy to persons whose rights have been violated.⁸ States must ensure through established mechanisms and processes that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."⁹ According to the Human Rights Committee, the right to effective remedy cannot be derogated from even by means of the declaration of public emergency.¹⁰

25. The right to a remedy is linked to the State's duty to investigate. In addition, jurisprudence of human rights treaty bodies and the African Commission on Human and Peoples Rights¹¹, resolutions adopted by the General Assembly, the former Commission on Human Rights¹² the Human Rights Council¹³, the reports of United Nations special procedures mandate holders¹⁴ have all consistently affirmed that States have a duty to investigate and prosecute violations of international human rights and humanitarian law. Accordingly, States are required to ensure that "those responsible for serious crimes under international law are prosecuted, tried and duly punished."¹⁵

⁵ The Constitutive Act of the African Union was signed in Lomé, Togo on 11 July 2000. This Act provides a framework under which the African Union is to conduct itself.

⁶ Human Rights Committee, General Comment 31, paragraph 15.

CCPR/C/21/Rev.1/Add.13, 26 May 2004

⁷ Ibid, para. 18.

⁸ Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR).

⁹ Ibid, Article 2(3)

¹⁰ Human Rights Committee, General Comment 29, paragraph 14. U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

¹¹ African Commission on Human and Peoples' Rights, *Amnesty International et al v Sudan*, Communications 48/90, 50/91, 52/91, 83/93 November 1999, para 51.

¹² GA Resolution 60/147, 16 December 2005.

¹³ United Nations Human Rights Commission, Resolution 2005/35, 19 April 2005.

¹⁴ Human Rights Council, Resolution 9/17, 18 September 2008, para 12.

¹⁵ E/CN.4/2005/102/Add.1, principle 19. The principle defines the term "serious crimes under international law" as encompassing grave breaches of the Genocide Conventions and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or

26. Regional human rights instruments, including the African Charter on Human and Peoples' Rights and the AU Constitutive Act, incorporate the principle of the right to remedy and the sanctity of human life and rejection of impunity.¹⁶

27. While non-state actors cannot formally become parties to international human rights treaties, non-state actors which exercise de facto control over some areas are increasingly considered to be bound by international human rights obligations in relation to all people within those areas.¹⁷

(b). *Obligations under international humanitarian law*

28. Sudan has a number of concurrent obligations under international humanitarian law. In relation to the non-international armed conflict in Darfur, the Sudan is bound by Common Article 3 to the Geneva Conventions, the second 1977 Protocols Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts, and customary international humanitarian law.

29. States have obligations to hold individuals accountable for serious violations of international humanitarian law. The doctrine of command responsibility also holds that commanders are responsible for war crimes committed by their subordinates if they do not take all necessary and reasonable measures in their power to prevent their commission or punish the persons responsible.¹⁸ In a series of resolutions, the United Nations Security Council has reaffirmed its "strong opposition to impunity for serious violations of international humanitarian law and human rights law and emphasizes in this context the responsibility of States to comply with their relevant obligations to end impunity and to thoroughly investigate and prosecute persons responsible".¹⁹ These requirements are supported by international criminal law discussed below.

30. In addition, non-State armed groups are obliged to respect the applicable principles of distinction and proportionality during the conduct of hostilities, take all feasible precautions to avoid, and in any event to minimise, the impact of violence on civilians, and take steps to ensure the safety and protection of civilians by enabling them to leave areas affected by violence in safety and dignity, and to facilitate their access to basic humanitarian assistance at all times. Parties to the conflict must also take steps to

which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution and slavery.

¹⁶ Article 7 of the African Charter on Human and Peoples' Rights provides for the right to effective remedy, while Article 4(o) of the Constitutive Act of the African Union provides for the "respect for and the sanctity of human life, condemnation and rejection of impunity and political assassinations."

¹⁷ For example, In its 2007 report to the Security Council (S/2007/584, paras. 282 and 330) the Panel of Special Procedures Experts on the Sudan concluded: "Although it is the primary responsibility of the Government of the Sudan to guarantee the human rights of its citizens and to protect them from any transgression, the different armed opposition movements also bear responsibility in areas under their control [armed groups] have consistently committed grave violations of human rights in areas where the armed group has a presence." See also, S/PRST/2002/27(2002), S/PRST/2002/22(2002), S/PRST/2000/12, Concluding Observations on Nepal of the Committee on the Rights of the Child, CRC/C/15/Add.261(2005), para. 10, CEDAW General Comment No. 30 (2013), CEDAW/C/GC/30, paras. 13 and 16, A/56/253(2001), paras. 27 and 30, A/HRC/2/7(2006), para. 19, E/CN.4/2006/53/Add.5(2006)), S/2007/584, paras. 282 and 330.

¹⁸ Rule 153 ICRC Customary IHL Study.

¹⁹ See, for example, UN Security Council, Resolution 1894(2009), 11 November 2009, paras. 10-11.

ensure the protection and care of the most vulnerable among the civilian population, and are required to prevent violations and abuses from taking place.²⁰

(c). *Obligations under international criminal law*

31. Sudan signed the Rome Statute of the International Criminal Court (ICC) on 8 September 2000, but it has not ratified it as yet. The Rome Statute establishes four categories of international crimes: war crimes, crimes against humanity, genocide, and the crime of aggression. War crimes include serious violations of Common Article 3 to the Geneva Conventions and other serious violations of the laws and customs applicable to non-international armed conflicts.²¹ Sudan is obliged to refrain from acts that would “defeat the objects and purpose of [the] treaty” pursuant to the Vienna Convention on the Law of Treaties, acceded to by Sudan. Furthermore, pursuant to United Nations Security Council Resolution 1593, the situation in Darfur from 1 July 2002 onwards was referred to the International Criminal Court, with the investigation officially opened by the ICC prosecutor on 6 June 2005. There are four ongoing cases, with five public arrest warrants having been issued. In accordance with UNSC Resolution 1593, “the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution” and, also urged “all States and concerned regional and other international organizations to cooperate fully.”

(d). *Obligations under Sudanese national law*

32. Sudan’s Interim National Constitution (INC),²² incorporates all international human rights treaties ratified by the Government of the Sudan through its “Bill of Rights.” Article 27(3) of INC indicates that treaties ratified by the Sudan constitute “an integral part” of the regime of rights provided for in the Constitution. Article 27(1) of the Constitution stipulates that the Bill of Rights “is a covenant among the Sudanese people and between them and their governments at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution,” and that it constitutes “the cornerstone of social justice, equality and democracy in the Sudan.” In addition, DDPD, which underpins the current peace process and while yet to be signed by all parties to the conflict, formulates mechanisms and processes towards achieving peace with strong grounding in human rights and international humanitarian law.

33. Sudan’s legal framework contains provisions containing the right to redress for victims of violations of human rights and humanitarian law. Sudan’s Criminal Code (Amendment) Act of 2008, makes provisions for “offences against humanity, genocide offences and offences pertaining to war.” The Act also criminalizes offences relating to SGBV with Articles 187 and 189 providing for sentences for the use of coercion or violence in acts of a sexual nature. Article 7(1 b) and (1 c) of the Sudan Armed Forces Act of 2007 stipulates that members of the armed forces shall comply with human rights and international humanitarian law. Notably, Article 155 prohibits attacks on civilians by members of the Sudan Armed Forces (SAF) and imposes penalties to that effect.

²⁰ Common Article 3 to the four Geneva Conventions of 1949 provides a range of protections that ‘each Party to the conflict shall be bound to apply’ at minimum, see also, for example, Rules 1-24, ICRC Customary IHL Study.

²¹ Article 8(2) (c) and (e), Rome Statute of the International Criminal Court.

²² The Interim National Constitution entered into force in July 2005. It was enacted to provide for the democratic and human rights provisions of the Comprehensive Peace Agreement (CPA) and was intended to cover the interim period in the peace process as laid out in the CPA. A new Constitution for the Sudan following the independence of South Sudan in 2011 is yet to be drafted.

VII. Nature and Patterns of human rights violations and abuses in Darfur

34. UNAMID has been documenting human rights violations and abuses that have been perpetrated by all parties to the conflict, including members of Sudan's Armed Forces (SAF), Sudanese Police, the Central Reserve Police (CRP), Border Guards, Rapid Support Force (RSF), armed opposition movements, and Government affiliated armed militia groups. UNAMID has also documented inter-communal conflicts which resulted in killings, injuries, mass civilian displacements and disruption to livelihood activities.

35. This chapter highlights the nature and pattern of impunity in Darfur for victims of human rights violations and abuses and serious violations of international humanitarian law.

(a). *Violations and abuses of the right to life*

36. Article 6(1) of ICCPR states that every human being has the inherent right to life that no one shall be arbitrarily deprived of it. The United Nations Human Rights Committee has stressed that the right to life constitutes "a supreme right from which no derogation is permitted."²³ The Committee also considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.²⁴ The prohibition on arbitrary deprivation of life is also part of customary international law and was also recognized by the Committee in its General Comment No. 24 as a peremptory norm or jus cogens, signalling that it cannot be overridden by other norms.²⁵ This imposes an obligation on States parties to respect and protect the right to life, to investigate alleged violations and to provide effective remedial mechanisms for any violations and abuses and of violations of international humanitarian law, including the targeting of civilians, or disproportionate or indiscriminate attacks resulting in the death of civilians. Provisions under the Sudan Armed Forces Act 2007 require prosecution of cases involving attacks on civilians by soldiers. However, in all these cases involving Sudanese security elements, no substantive actions were taken to hold alleged perpetrators accountable.

37. In 2014, UNAMID verified and documented the killing of 392 civilians across Darfur. The majority of these killings were directly linked to the conflict while other incidents occurred in the context of the conflict, if not always directly resulting from it. Cases which involved Government security elements and affiliated militia tend to illustrate the weakness of law enforcement institutions and the degree of impunity in which violations are committed. A number of these cases are instructive.

38. On 31 May 2014, a SAF soldier allegedly shot and killed a Sheikh (community leader) in Abusuruj IDP camp, West Darfur. The killing was reportedly triggered by a complaint lodged by the victim to the SAF commander against SAF members for harassment and physical assault of civilians. When contacted by UNAMID, the local SAF commander denied the involvement of his soldiers and took no further action. On 24 July 2014, UNAMID conducted a mission to Abusuruj IDP camp and met the police

²³ Human Rights Committee, General Observation No.6: Article 6 (Right to life), para.1.

²⁴ General Committee (6) of the Human Rights Committee, para 3

²⁵ CCPR/C/21/Rev.1/ Add.6, para. 10).

commander of Abusuruj police station, who confirmed the shooting to death of the Sheikh. The commander informed that following repeated calls by the victim's family for justice, the police had arrested three women who were thought to be with the perpetrators at the time of the shooting, instead of any soldiers. The women were kept in detention for a month allegedly for their own safety. The killing of the Sheikh is only one example of a pattern of violence towards civilians attributed to members of security forces of the Government of Sudan.

39. A further example of this pattern is the violent attack on pupils from the Nyala secondary school for boys in South Darfur, on 2 July 2014. Witnesses reported to UNAMID the physical assault and shooting of students by members of RSF. UNAMID gathered information from witnesses and victims which confirmed that while the students were on their way home from school and upon arrival at Nyala Junction, they were stopped by a group of armed RSF who ordered them to handover their personal effects. When the students refused to comply, the RSF opened fire, killing one student and injuring another. The injured victim was taken to Nyala Teaching Hospital for treatment, and the incident was reported to the local police in Nyala. UNAMID followed up with the police and family of the victim to determine a course of action. Despite availability of overwhelming evidence relating to the identity of the perpetrators, no action was taken to bring them to justice. UNAMID subsequently learned through community leaders that the injured student resisted calls to pursue his case because of fear of reprisals. The shooting of the students was preceded by over 12 incidents in Nyala and other parts of South Darfur, implicating RSF in violent attacks against civilians. Most victims of such attacks had difficulties in accessing justice due to lack of action from authorities as well as thin presence of judicial institutions (see annex to this report).

40. Sudanese security forces, such as the Central Reserve Police (CRP), Sudan Armed Forces (SAF), Sudanese Police and the Border Guards, have been implicated in acts of violence and have been enjoying impunity. On 20 October 2014, for example, five CRP members reportedly attempted to rob IDPs at Zamzam IDP camp in the Muhajeria area (North Darfur.) The IDPs allegedly resisted, and in the ensuing confrontation, one CRP member was killed. On the morning of 21 October, a group of heavily armed CRP members arrived at the IDP camp and set ablaze 26 IDP shelters, destroying most of the IDPs' personal possessions. In another incident, on 14 October 2014, a SAF soldier reportedly shot and severely injured a 36 year-old man and a 32 year-old woman who were returning from their farm to El Riyadh IDP camp (West Darfur). The woman subsequently died in hospital. The attack was unprovoked and carried out with violence intended to cause harm. Following the incident in Zamzam, UNAMID followed up with the police who reported that an investigation had been initiated into the killing of the CRP member, but no such action had been done in relation to the destruction of IDP shelters. With the intervention of the Darfur Regional Authority (DRA), food items were distributed to IDPs whose shelters were destroyed. Similar follow up with the police on the alleged killing of the 32 year-old woman by a SAF soldier in West Darfur revealed that no action had been taken to investigate the incident.

41. UNAMID has observed that the relationship between Border Guards and communities around border towns has been tense with reported threat of violence and attacks against civilians. On 10 June 2014, Border Guards allegedly shot to death two Sudanese traders with refugee status in Chad at the Chukori border check point, 40 kilometres west of El Geneina (West Darfur). The Border Guards stopped and searched the victims, and attempted to confiscate their money, accusing them of smuggling. When the refugees resisted, the Border Guards reportedly shot them at close range. The victims were taken to El Geneina hospital where they subsequently died. The prosecutor

in El Geneina, ordered an autopsy, which concluded that both died from gunshot wounds. In a meeting with the Commissioner at the Medina police station in El Geneina, UNAMID was informed that the case had been filed as an “incident on official duty” by the Border Guards. This decision clearly absolved the alleged perpetrators of any wrong doing, denying prospects for justice for the victims’ families.

42. UNAMID also documented cases of Sudanese Police carrying out violent attacks against civilians with impunity. In one particular case, tensions between police and IDPs at the Kalma IDP camp, South Darfur, were heightened by a patrol of a Sudanese police team in the camp on 4 September 2014. The police patrol reignited the camp’s resistance to any form of Government presence and led to the mobilization of a group of IDPs who randomly attacked UNAMID facilities in the camp, resulting in injuries to one UNAMID personnel and damage to lighting installations. IDPs blamed UNAMID for not preventing the patrol. They subsequently marched in protest towards Beliel Police Station, and then to Beliel market. UNAMID was informed by victims and witnesses that shortly after IDP-protesters arrived at Beliel market, police opened fire to disperse the crowd, killing one IDP and injuring eight others. On 6 September 2014, UNAMID human rights monitors visited Kalma IDP camp and interviewed community leaders, victims and family members who expressed shock at the conduct of the police. Despite calls for justice by the IDPs and series of follow up by UNAMID, the police have made no attempts to hold to account the officers who fired live bullets at the protesters.

43. These examples of attacks against civilians perpetrated by Sudanese security forces illustrate a broader pattern of violence documented by UNAMID during 2014. In a majority of cases, violations of the right to life were committed with impunity. In engaging with State authorities on the above-mentioned case, UNAMID expressed concern about the slow pace of justice for the victims’ family and reminded the police and authorities of their obligations to expedite the investigation to ensure timely access to justice and due process of law for the detainees. UNAMID drew their attention on the requirement to prosecute, especially Article 7(1b) and (1c) of the Sudan Armed Forces Act 2007, which stipulate that members of the armed forces shall comply with human rights and international humanitarian law, while Article 155 prohibits attacks against civilians by members of the Sudan Armed Forces (SAF) and imposes penalties to that effect. Despite UNAMID calls for justice, no progress had been made to hold the perpetrators to account at the time of this report. The failure by the SAF commander to initiate disciplinary proceedings and to facilitate prosecution of the soldier who had killed an unarmed civilian reinforced the perception that violations involving members of security forces are rarely addressed.

(b). *Other violations and abuses of the right to physical integrity*

44. The “right to physical integrity,” as guaranteed in Articles 6, 7 and 8 of ICCPR, encompasses protection against attacks to personal security, life and or related intimidation or attack. Every State has the obligation to prevent and protect its population from such violations and attacks. Article 33 of INC stipulates that “no person shall be subjected to torture or to cruel, inhuman or degrading treatment,” while Article 28 provides for the protection of the dignity and integrity of the person.

45. In 2014, UNAMID documented 411 cases of violations and abuses of the right to physical integrity affecting 980 individuals. These included abductions, physical assaults, and armed attacks against civilians, particularly IDPs, causing injury or death. SGBV cases, including allegations of rape, gang-rape and sexual harassment. The number of cases documented by UNAMID is believed to be much lower than the actual number of SGBV incidents owing to a tendency to underreport such cases, generally

due to fear of reprisals, social stigma and lack of trust in law enforcement authorities to take remedial action.

46. Although armed individuals and groups have emerged as common perpetrators of attacks against civilians, Government security forces and affiliated armed militia continued to be implicated. Most of the documented incidents of attacks were neither investigated, nor were the alleged perpetrators apprehended. In some instances, the failure of law enforcement officials to initiate investigations despite clear allegations of victims and witnesses pointed to the unwillingness to combat impunity. Two cases are particularly instructive in this regard. On 22 June, a 35 year-old man was attacked and abducted at El Geneina station in Nyala, allegedly by five armed members of the RSF, with at least one of the men dressed in CRP uniform. Witnesses informed UNAMID that the alleged perpetrators arrived at the victim's hotel and demanded to speak to him, following which he was reportedly forced into a waiting land cruiser vehicle, and driven towards Um Rukura village outside Nyala. For several days, his family repeatedly asked the police to investigate and conduct a search for the victim. Although the victim was eventually released by his captors, no police investigation was carried out into the incident.

47. On 21 June 2014, in Kass locality (South Darfur), a group of SAF soldiers forcefully entered a house where a wedding was being celebrated by IDPs from the community. Intimidated by the presence of armed soldiers, the guests asked them to leave. This reportedly triggered an altercation and some of the soldiers fired shots, injuring two guests and fled the scene. The incident was reported to the local police at Kass. UNAMID followed up with the local police who indicated that no action had been taken to apprehend the perpetrators. IDPs and community leaders subsequently shared with UNAMID their shock and sense of helplessness in the face of such acts of violence and the impunity enjoyed by members of the security forces.

48. Besides cases implicating Sudanese security forces, a number of reports by victims and witnesses referred to armed individuals, often described by victims and witnesses as Arab. On 3 June 2014, a group of armed militia men reportedly dressed in official military uniform of the Sudan military uniform, attacked Abu Hamra village in the Mershing locality, South Darfur. Victims and witnesses informed UNAMID that the perpetrators looted property, including livestock, and torched 50 houses belonging to members of the Zaghawa community. Civilians, including women were assaulted, with reported injuries. UNAMID was further informed by victims and community leaders that armed Arab militias were reported to have intimidated, harassed, attacked and torched villages, which ultimately led to the displacement of people to nearby valleys and IDP camps in Manawashi town. According to witnesses, the incident was triggered by a dispute between Arab militiamen and members of the Zaghawa community in the Mershing locality.

(c). *Sexual and gender-based violence*

49. Women and girls continued to be exposed to and suffer from SGBV across Darfur. SGBV incidents have occurred within and around the vicinity of IDP camps. Poor security conditions in IDP camps, farmlands and adjacent localities have exacerbated insecurity, especially for women and girls, who remain the primary victims of SGBV.

50. However, SGBV cases continued to be under-reported. When cases are reported, most survivors' quests for justice remain unfulfilled. Addressing this sensitive issue has proved to be challenging given the prevailing social stigma which discourages reporting and discussion outside the victims' immediate family settings and even within the family spheres. Survivors also in many cases fear reprisals. This was the case on 13

April when a 12 year old IDP girl was seriously injured during an attempted rape by two armed Arab men while she was working on a farm in Abusuruj, West Darfur. The survivor sustained severe injuries including a fractured leg from an axe that was used by the perpetrators. SAF soldiers in a near military base apprehended the alleged perpetrator and handed him to Sirba police station on 15 April. Due to social stigma and fear of reprisal, the family of the survivor chose not to pursue the case any further. Weak judicial structures coupled with general lack of will and capacities of law enforcement agencies, as well as the lack of an effective national witness and victim protection and assistance programme, have further compounded the plight of survivors of SGBV. For example out of the 127 cases documented by UNAMID, only 12 were brought to court.

51. UNAMID documented 127 SGBV cases with 211 survivors in 2014²⁶. The majority of documented cases illustrate the utilization of rape and other forms of sexual violence as instruments of war in Darfur. UNAMID human rights monitors were not always able to gain access to remote areas controlled by opposition armed groups and areas with ongoing military operations due to insecurity and access restrictions imposed by Government authorities. The pattern that emerged from SGBV cases documented by UNAMID suggests that certain attacks were perpetrated by unidentified individuals, while in other cases, attacks were allegedly perpetrated by members of the Sudan security forces.

52. On 22 August 2014 in the Buram locality of South Darfur, a group of 15 persons including 8 females, 6 of them minors, aged between 14 and 17 years, were attacked while they were working on a farm. They were physically assaulted and all females raped at gunpoint by a group of 10 armed men. UNAMID followed up with the police and the survivors' relatives on the need to investigate and provide medical and psychological support to the survivors. Despite the serious nature of the crime and the prolonged trauma on the survivors, law enforcement authorities had not initiated any investigation into the incident.

53. UNAMID data and statistics indicate that law enforcement authorities' inaction is common, especially concerning SGBV cases. In another incident, on 5 July, two girls aged 16 and 14, were raped by a group of five unidentified armed men in military uniform. The survivors were attacked during an ambush on a commercial vehicle they were travelling in from Dobo to Zamzam IDP camp in North Darfur. The girls were captured by the armed men while other passengers were beaten and robbed.

54. On 7 November 2014, a 15 year-old IDP girl was abducted by an armed Arab man at gunpoint while she was working on a farm in West Darfur. The survivor was taken to an area about 18km from her farm where she was repeatedly raped. Relatives subsequently traced the survivor and reported the case to the local police who issued 'Form 8 to the survivor.'²⁷ The alleged perpetrator was arrested and remanded in custody pending investigations. Through advocacy from UNAMID Human Rights, the alleged perpetrator was brought to court and charged with rape. However, while the final stages of hearing were unfolding, UNAMID was informed by court officials that the accused had escaped from detention. The court subsequently issued an arrest warrant and suspended the trial pending the arrest of the accused. UNAMID learned from police and prison authorities that there were no records of the arrest. This failure seriously

²⁶ The number of cases documented by UNAMID is believed to be much lower than the actual number of SGBV incidents owing to a tendency to underreport such cases, generally due to fear of reprisals, social stigma and lack of trust in law enforcement authorities to take remedial action.

²⁷ Form 8 is issued to survivors of all forms of physical violence including violence of a non-sexual nature.

hampered the ability of the police to search and apprehend the accused. Although the prosecution of perpetrators of SGBV remained rare in Darfur, efforts made in this case were undone by procedural lapses in law enforcement practices.

55. While unidentified armed individuals and armed Arab men have often been cited as common perpetrators of SGBV cases, Sudanese security elements and affiliated armed militias continued to be implicated in such acts. On 4 November, for example, two IDP women were allegedly raped by two armed men in SAF uniform in Tur village, South Darfur.²⁸ Family sources informed UNAMID that the survivors were attending to their farm when they were attacked and raped by the alleged perpetrators, who subsequently fled the scene. In another incident, on 8 November, in the Sirba locality of West Darfur, community leaders reported to UNAMID the abduction of a 16 year-old IDP girl at her farm by a group of armed men suspected to be affiliated with security elements. Reportedly, the survivor was gang raped and abandoned in an area east of Sirba, where she was rescued by members of her community. UNAMID followed up with the police and subsequently conducted interviews with the survivor and some of her family members, which revealed that no action was taken to initiate investigations into the incident.

56. Difficulties in access to information, sites and victims of alleged human rights violations and abuses continued to impede the reporting of SGBV cases. A case that perhaps epitomized this challenge relate to events that allegedly occurred in Thabit on 31 October 2014. On 1 November 2014, media sources reported allegations of the mass rape of over 200 women and girls in Thabit,²⁹ North Darfur, by members of the Sudanese armed forces. An initial UNAMID fact-finding team comprising military and police components was denied access by a Sudanese military checkpoint in the outskirt of Thabit. UNAMID subsequent attempts to negotiate access to Thabit were unsuccessful. An integrated UNAMID verification team visited Zamzam, the nearest settlement area to Thabit, on 5 November, to gather information and assess possible displacements from Thabit. Following assessment and interaction with residents and community leaders in the Zamzam area, the integrated mission concluded that there was no evidence to suggest that displacements had occurred. UNAMID was permitted access to Thabit on 9 November to investigate and interact with the community. However, due to the SAF presence, the mission was unable to conduct confidential interviews with survivors and witnesses. It also observed that interviewees displayed fear and reluctance to speak freely. Further attempts by UNAMID to access Thabit in order to carry out a human rights investigation were repeatedly denied by Sudanese authorities, in violation of the Status of Forces Agreement (SOFA) signed between the Mission and the Government of the Sudan.

(d). *Conduct of hostilities*

57. In 2014, UNAMID documented violations of international humanitarian law perpetrated by all parties to the conflict. UNAMID has observed that patterns and incidents of violations of international humanitarian law deteriorated following the deployment to Darfur of RSF in February 2014, which was part of “Operation Decisive Summer.” During the campaign UNAMID documented cases in which RSF launched attacks including on civilians suspected of being sympathetic to armed opposition movements in both North and South Darfur States. The attacks involved multiple human rights violations and serious violations of international humanitarian law, including indiscriminate killing of civilians, destruction of civilian property and objects,

²⁸ Located 47km north of Kass, South Darfur.

²⁹ Located 45km south-west of El Fasher, North Darfur.

as well as considerable displacement of civilians.³⁰ UNAMID also obtained information from victims and witness accounts that pointed to a pattern of burning of villages, looting of civilian property, including livestock, and destruction of sources of livelihood necessary for civilian survival. According to OCHA, as of 31 March 2014, the number of newly displaced civilians as a result of the military campaign stood at 199, 268.

58. Armed clashes between Government forces and armed opposition movements in several parts of South and North Darfur in February and March 2014, and the spill-over effects in other Darfur States, impacted negatively on the civilian population. Between 2 and 6 March 2014, in North Darfur, elements of the Minni Minawi faction of the Sudan Liberation Army (SLA/MM), launched attacks in El Laeit, Haskanita, El Taweisha, Olibade (approximately 4 km north of Kulbus), Kaleimando and Al Kiber. Similarly on 13 March, SLA-MM joined forces with the Sudanese Liberation Movement for Justice led by Ali Karbino and captured Mellit, but later pulled out of the area. On 23 March, combined forces of the Abdul Wahid faction of the Sudanese Liberation Army (SLA/AW) and the SLA/MM captured Fanga Suk in Central Darfur.³¹ In South Darfur, the 27-28 February attacks on Hijer, Um Gunya and surrounding villages by armed elements believed to be members of the RSF resulted in 94 civilian deaths, 17 injured persons, massive displacements and destruction of property. According to the International Organization for Migration (IOM) tracking teams, by 22 March, 67,851 persons had been displaced to Otash, Beleil, Dereige, El Sereif, Kalma, and Al Salam IDP camps, as well as the Sani Deleiba area in South Darfur.

59. Through victims, witnesses and community leaders' testimonies, UNAMID recorded further attacks by RSF in several villages in Shangil Tobaya and Korma, North Darfur, between 16 and 17 March and between 21 and 27 March respectively. In another incident, on 22 March, Khor Abeche in South Darfur was attacked by RSF supported by armed militia resulting in one confirmed civilian death, destruction and looting of civilian property as well as the displacement of approximately 4,000 civilians, including 1,000 children to the UNAMID team-site in Khor Abeche. Similarly between 21 and 27 March, an estimated 40 villages in and around Korma, North Darfur were attacked by RSF and allied armed militia groups, displacing an estimated 25,000 people, including some who sought refuge at UNAMID team-site in Korma. By 31 March, at least 3,000 of the 25,000 displaced persons were receiving refuge and humanitarian assistance at the Korma UNAMID team-site.

60. In an incident that occurred on 21 March 2014 in Korma, North Darfur, about 4,000 displaced persons sought refuge at UNAMID team site following attacks on Kobe town and neighboring villages by suspected RSF elements and armed Arab militia. In all these attacks and accompanying violations, no mechanisms have been put in motion to hold perpetrators on all sides accountable for alleged attacks on civilians, indiscriminate attacks and destruction of civilian property and objects. In some instances, testimonies from victims and witnesses provided details which could form the basis of police investigations. For the most part, UNAMID established through interviews with victims and their families as well as the police that investigations were

³⁰ Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts states that: "(1) The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances; (2). The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited; (3). Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities."

³¹ 75km north-east of Nertiti, Central Darfur.

not initiated into RSF attacks against civilians. UNAMID had no information on action taken against alleged perpetrators associated with armed opposition movements.

61. UNAMID documented aerial bombardments attributed to Sudanese armed forces. On 28 April 2014, the Government carried out aerial bombardment in Thabit, North Darfur, which resulted in one confirmed civilian death and injuries to three civilians as well as destruction of civilian property. Further aerial bombardments were reported in North Darfur areas of El Taweisha on 2, 7, 13 and 16 March; in Nitega village (South Darfur) on 15 March; in Hashaba (North Darfur) on 16 and 17 March 2014. All these resulted in forced displacements, civilian deaths, injuries, as well as destruction of several villages and water sources in Hashaba. UNAMID was further informed by local sources of alleged bombardment of Abu Jabra in East Darfur on 4 March 2014 by SAF, reportedly resulting in civilian deaths, injuries and displacements. UNAMID gathered testimonies from community leaders in Abu Leha and Orschi villages around the Um Baru area, North Darfur, of aerial bombardments in these areas on 19 October 2014. UNAMID verified that a total of six bombs had been dropped in the area, resulting in one civilian death. Indiscriminate aerial bombardments of civilian areas amount to violations of international human rights law, international humanitarian law, as well as a contravention of the United Nations Security Council resolution 1591 additionally given the absence of investigations and provision of remedial processes for victims.

62. Ground attacks jointly launched by SAF and police against unidentified armed elements in North Darfur on 19 and 20 May 2014, resulted in at least three civilian deaths, including of a minor, and confirmed injury of another minor, as well as the alleged destruction of a local market. Further ground attacks against unidentified armed elements including Sudanese Liberation Army/Ali Karbino (SLA/AK) faction in North Darfur, on 15 and 28 June, also resulted in civilian deaths and injuries, as well as destruction of property and lootings. On 14 July 2014, a clash was reported between Government of the Sudan armed forces and SLA/AW elements in Golo town,³² in which Government forces used heavy weaponry, which allegedly resulted in the killing of two civilians and injuries to an unconfirmed number of civilians. In addition, an unconfirmed number of houses were reportedly destroyed and civilians displaced. While Sudanese authorities did not comment on the incidents when approached by UNAMID human rights monitors, UNAMID gathered from victim accounts that no attempt was made to investigate, neither were alleged perpetrators held to account.

63. UNAMID has established beyond doubt that the RSF offensive campaign as part of “Operation Decisive Summer” continued to have a major impact on civilians’ lives and livelihood. However, despite overwhelming evidence on the impact of the campaign on civilians and the role of RSF, the Sudanese authorities have continued to absolve RSF from any violations committed against civilians, and have instead attributed such actions to armed criminal elements. On 7 May 2014, the First Prosecutor for El Fasher stated to UNAMID that, according to the North Darfur Security Committee, that groups in uniforms similar to those of RSF were responsible for violations committed against civilians in Mellit (North Darfur). Similarly, a statement by the RSF Commander, issued on 14 May 2014, qualified any gaps by RSF elements as individual mistakes by his forces that were magnified by the media. In the light of these statements and the continued exoneration of RSF by the Government, prospects for accountability for human rights violations and serious violations of international humanitarian law remain remote.

³² Located 90km north-east of Nertiti, South Darfur.

64. Precarious conditions in Darfur continued to impact the work of UNAMID and humanitarian agencies. Under international humanitarian law, directing an attack against personnel and objects involved in a UN peacekeeping mission, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited.³³ Such attacks may also amount to a violation of UN privileges and immunities.³⁴ Violent attacks and ambushes on UNAMID personnel and installations highlight both the difficult operating terrain and the unpredictability of events across Darfur. On 30 August, a personal dispute between a UNAMID security guard and a Government police officer escalated in El Geneina, West Darfur, leading to a confrontation from which the police shot and killed the UNAMID security guard. UNAMID interviewed witnesses and shared the testimonies with the police, who took no action to investigate the incident. On 16 October 2014, a heavily armed unidentified militia group launched an attack on a UNAMID patrol team which was guarding a water borehole at Shoba, North Darfur. The attack resulted in the death of two Ethiopian peacekeepers on the scene, while a third peacekeeper subsequently died from gunshot injuries. On 29 October, a group of armed men on board a machinegun-mounted vehicle attacked a UNAMID patrol team in the outskirts of Kutum, North Darfur. A firefight erupted from which three South African peacekeepers sustained injuries. Although the attacks are a violation of international humanitarian law and SOFA, none of the perpetrators were apprehended.³⁵

65. Threats of violence and incidents of abduction have impacted the delivery of humanitarian assistance to the needy and vulnerable groups. On 6 June 2014, a male employee working for INGO Concern was shot by unidentified armed men at Wadi Kaberei area in West Darfur.³⁶ In another incident, on 6 June, a WFP truck was stopped at gunpoint at Sala³⁷ by unidentified armed men who robbed the driver and helper of their personal belongings. On 9 March, a UNAMID peacekeeper was abducted by unidentified armed men aboard two vehicles in Nyala while transporting a water tank from Dereige IDP camp to the UNAMID sector south headquarters. The peacekeeper was held for 54 days. On 18 June in Kutum, North Darfur, a total of 25 humanitarian workers were abducted in separate incidents by unidentified armed groups and held for one day and released. In Nyala, South Darfur, the head of IOM office was abducted on 6 July while driving to Nyala town. He was held for 20 days and released. Attacks against peacekeepers and humanitarian workers constitute violations of international humanitarian law. In all these cases, perpetrators have remained at large in the context of a lack of action from law enforcement authorities.

VIII. Accountability Mechanisms for Darfur

66. The Darfur conflict continues to generate conditions of impunity with civilians as primary victims. In adopting Resolution 2173 to renew UNAMID mandate in August 2014, the Security Council condemned the “increased human rights violations and abuses in, and relating to, Darfur, including those involving extrajudicial killings, the excessive use of force, abduction of civilians, acts of sexual and gender-based violence,

³³ Rule 33, ICRC Customary IHL Study.

³⁴ Convention on the Privileges and Immunities of the United Nations, 1946.

³⁵ Article 6 (b) of SOFA stipulates that the Government of the Sudan “undertakes to treat at all times the military personnel of UNAMID with full respect for the principles and rules of international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977.”

³⁶ Located 15 kilometres south-east of UNAMID team site Habila, West Darfur.

³⁷ Located 25 kilometres south-east of UNAMID team site in Habila, West Darfur.

violations and abuses against children, and arbitrary arrests and detentions.”³⁸ The Security Council further urged parties to the conflict to “comply with their obligations under international human rights law and international humanitarian law, [and] stressing the importance that the Council attaches to ending impunity including through ensuring accountability and bringing to justice the perpetrators of crimes committed by all parties in Darfur.” The Council reiterated the need for ‘the Government of Sudan to comply with its obligations’ to ending impunity including through ensuring accountability and bringing to justice the perpetrators of crimes committed by all parties in Darfur.

67. Concerns on impunity in Darfur had intensified following the publication of a report, in January 2005, by the International Commission of Inquiry on Darfur (ICID).³⁹ The Commission concluded that “the Sudanese justice system was unable and unwilling to address the situation in Darfur” which “contributed to the climate of almost total impunity for human rights violations in Darfur.”⁴⁰

68. Over the years, the Government of the Sudan had taken some initiatives to combat impunity in Darfur through establishing national commissions of inquiry and judicial investigation mechanisms.⁴¹ The mandate of some of these judicial mechanisms was sourced from Sudanese law with references to crimes under international law.⁴² However, the impact of these mechanisms has been negligible, with only a few investigations initiated. In rare instances where alleged perpetrators were indicted and prosecuted, amnesties through presidential decrees were issued to quash sentences or discharge accused persons.⁴³ Most of these mechanisms have now ceased to exist.

69. The DDPD process attempted to revitalize accountability mechanisms through an integrated approach to confronting impunity through the prism of justice, accountability, reparation and reconciliation.⁴⁴ Two pertinent institutions in this regard are the Special Court for Crimes in Darfur (SCCD) and the Justice, Truth, and Reconciliation Commission (JTRC). SCCD was created pursuant to article 59 of the DDPD. On 7 January 2012, the Chief Justice issued a decree establishing the court,⁴⁵

³⁸ United Nations Security Council, Unanimously Adopting Resolution 2173 (2014), Renews Mandate of African Union-United Nations Hybrid Operation in Darfur, SC/11536, 27th August, 2014.

³⁹ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January 2005. See http://www.un.org/news/dh/sudan/com_inq_darfur.pdf.

⁴⁰ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January 2005.

⁴¹ These included the creation of the National Commission of Inquiry (NCI) in 2004 with a mandate to investigate alleged human rights violations in Darfur; the creation of the Joint Implementation Subcommittee on Human Rights and Protection (Sub-JIM) to implement the Joint Communiqué on Darfur signed between the Government of Sudan and the Secretary-General of the United Nations in July 2004; the establishment of the Special Criminal Court in June 2005; the creation of the Special Criminal Court in 2003.

⁴² In December 2005?, the jurisdiction of the Special Criminal Court on Events in Darfur was expanded in December to include crimes under international humanitarian law. The Specialized Prosecution for Crimes Against Humanity, created in September 2005, was mandated to “exercise the powers of the international conventions to which the Sudan is a party and any other relevant law in relation to crimes against humanity and any other crimes stated in any other law and which infringes upon (constitutes a threat to) the security and safety of humanity.”

⁴³ Presidential Decree No.114, 11 June 2006.

⁴⁴ See Articles 57, 58 and 59 of the DDPD.

⁴⁵ SCCD has its office in El Fasher, North Darfur. Three judges including the president of the court have been appointed. Since their appointment, they have remained stationed in

with the mandate to prosecute four categories of crimes committed in Darfur from February 2003.⁴⁶ Although welcome, SCCD has been struggling to make substantive headways in providing remedy for victims of human rights violations and abuses and serious violations of international humanitarian law. Between 2012 and 2014, SCCD ruled on only seven cases, while 33 were under trial and 25 were still being investigated in 2014. Furthermore, none of the concluded cases had relevance to alleged violations and abuses of international human rights and international humanitarian law in Darfur.

70. JTRC was conceived from the DDPD process. Article 58 of DDPD outlines the role of truth, reconciliation and justice in the achievement of peace in Darfur, and emphasizes the importance of ‘rebuilding and strengthening relationships between the components of Darfur society as well as raising the level of coexistence, cooperation and social solidarity in Darfur.’ However, JTRC suffers from serious funding and capacity deficit. The dismissal of its Head in April 2014, through presidential decree 67, may erode what were already modest activities.

71. The Sudan National Human Rights Commission (SNHRC) is another mechanism with relevance to access to justice in Darfur. It was established by presidential decree in January 2012, pursuant to Article 142 of Sudan’s Constitution.⁴⁷ Its mandate includes receiving and examining individual complaints, advising State organs to address human rights issues, and raising public awareness about human rights issues. Partly due to funding gaps and operational difficulties, SNHRC has struggled to take off ground, with no visibility despite clearly set out plans to establish offices in all States of Darfur. The challenges faced by SNHRC in many ways reflect those of other judicial institutions.

72. The Sudan’s criminal justice system failed to have a meaningful impact in combatting impunity and strengthening accountability. In 2014, however, there were instances where the right to remedy of victims was boosted by the successful prosecution of cases.⁴⁸ For instance, the Special Criminal Court in El Fasher, which was created in 2003 in response to the crisis and allegations of atrocities in Darfur, saw the trial and conviction of the gang-rape of a United Nations Police officer in El Fasher on 18 September. In its verdict, the court found the first, second and third accused persons guilty of robbery⁴⁹ and, in addition, the second accused was found guilty of rape⁵⁰. All three were sentenced to 100 lashes, in contravention of international human rights law. Nonetheless, cases of prosecution and trial remain the exception rather than the norm, meaning that for the most part, impunity continues to prevail.

Khartoum. In addition to the three appointed judges, eight judges of regular courts sit as ad hoc judges of the SCCD. three in El Fasher (North Darfur), two in Nyala (South Darfur), one in El Geneina (West Darfur), one in Zalingei (Central Darfur), and one in El Daein (East Darfur).

⁴⁶ Serious crimes as outlined in chapters 5,6,7,14, 15, 16 and 17 of the Sudanese Criminal Act 1991; (ii) terrorism crimes as provided for in the Sudanese Terrorism Act 2001; (iii) Gross violations of the international humanitarian law; (iv) any other crimes under other law as may be determined by the Chief Justice.

⁴⁷ Article 142 of the Interim National Constitution of Sudan states: “the President of the Republic shall, after consultation with the Presidency, establish an independent Human Rights Commission consisting of fifteen independent, competent non-partisan and impartial members.”

⁴⁸ On 5 November, a 25 year-old SAF soldier accused of abducting and raping a 13 year-old girl on 05 February 2014, was found guilty of violating Article 45(c) of the Child Act 2010 (Sexual Harassment and Sexual Abuse of Children), and sentenced to 10 years of imprisonment and a fine of SDG 3,000 and 2,000 Sudanese Pounds as compensation to the victim.

⁴⁹ Under article 21/175 of the Sudanese Criminal Act 1991

⁵⁰ under article 21/175 of the Sudanese Criminal Act 1991

IX. Conclusion

73. The Darfur conflict continues to have a major impact on civilians, with well over 300,000 people killed since the eruption of the conflict in February 2003. The indiscriminate nature of the violence has also resulted in massive civilian displacements, with people often ending in very congested and poorly resourced IDP camps, and as refugees in neighbouring States.

74. The challenges brought about by the conflict also mean that impunity continued to remain a major feature. Government security forces and affiliated militia, unidentified armed individuals as well as members of armed opposition movements have been involved in the continued violence. All these various actors continued to exploit the vulnerability of civilians especially IDPs, committing killings, physical injuries, destruction of property. For the most part, prospects of redress for victims remain remote.

75. The capacity deficit of the justice sector, including the lack of adequate and effective legal aid services⁵¹ coupled with a very limited awareness of human rights among the population, has major implications on access to justice in Darfur. This is the case in most parts of Darfur where high incidence of poverty, low literacy levels and marginalization of vulnerable groups are steeped in the region's history. As a result, large portions of the population remain alienated from the basic outlets of the justice sector, and their ability to access and seek remedies is therefore limited. Weaknesses in Sudan's national legal architecture and the existence / provision of amnesties granting immunity to military officials from prosecution continued to remain a major impediment to obligations to combat impunity in Darfur.⁵²

76. The institutional bodies that supports the Sudan's constitutional and justice structures have a major role to play in the promotion of human rights and justice. During the Sudan's UPR of 2011, the Human Rights Council made recommendations to the Government to effect reforms to its national laws, especially the National Security Act and Armed Forces Act. While some of the recommendations have been implemented such as the establishment of the National Human Rights, those relating to reforms of coercive national legislation are yet to be effected. These disparities between constitutional provisions, domestic legal settings, and international law, have negatively impacted human rights and access to justice.

X. Recommendations

77. The findings of this report point to major outstanding challenges of impunity and accountability, and stress the urgent need for the Government of the Sudan to take proactive remedial measures in addressing these concerns. The right to remedy is a fundamental human right which has a firm rooting in the Interim National Constitution of the Sudan and a wide range of regional and international human rights instruments

⁵¹ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems encourage Member States to consider, where appropriate, the provision of legal aid and to provide such aid to the maximum extent possible. (A/69/187)

⁵² Sudan's Armed Forces Act 2007, which provides for penalties for serious violations of human rights and international humanitarian law, embodied an encouraging development to confront impunity. However, the Act is characterized by weaknesses which are cause for concern with implication on access to justice and victims' right to remedy. Under the Act, military personnel are granted amnesty for offences committed in the course of their duties including prosecution by military or civilian courts unless immunity is waived by the president of the Sudan.

that the Sudan has ratified. It is important that major initiatives be taken by the Government of Sudan, with the support of UNAMID and UNCT, to make tangible progress towards combating impunity and enhancing accountability mechanisms in Darfur. In this context, OHCHR makes the following recommendations:

To the Government of the Sudan:

78. Cease direct and indiscriminate aerial attacks on civilians areas and civilian objects;

79. Immediately put in place mechanisms to ensure respect for and compliance with international human rights law and international humanitarian law;

80. Provide immediate and unrestricted access to sites and areas of human rights incidents as well as access to United Nations officials and agencies for purposes of verification and investigation of human rights violations;

81. Strengthen judicial institutions with adequate women representation and take urgent steps towards deploying law enforcement agencies in all localities in Darfur;

82. Strengthen the independence and impartiality of the judiciary and confer on courts adequate powers to address human rights violations; with the help of international community, enhance the capacity of the judiciary through the training of judges, prosecutors and lawyers. Emphasis should be laid on human rights law, humanitarian law, as well as international criminal law;

83. Invest resources and bring in expertise to facilitate the apprehension and subsequent prosecution of alleged perpetrators of violations and abuses of human rights and serious violations of international humanitarian law;

84. Reform and strengthen legal aid services for Darfur and vigorously explore the creation of a Victims Support Fund (VSF) in partnership with UNCT; and establish an effective national witness and victim protection programme;

85. Revoke immunity laws for state agents, regardless of their official status or function.

86. Repeal Emergency laws in Darfur; undertake legislative reforms at both the federal and state levels, especially the National Security Act and the Armed Forces Act which are deemed to perpetuate impunity;

87. Honour undertakings made during the UPR process, in particular, urgently bring forward reforms in the national legislative framework.

88. Take positive steps toward completely abolishing obstacles experienced by victims of sexual and gender based violence in seeking redress, particularly in relation to the difficulties of having access and completing Form 8; and respect the wishes, the rights, and the dignity of the survivors when taking action to prevent or respond to an incident of SGBV; and undertake prompt, thorough, effective, independent and impartial investigations into all reports of SGBV cases to identify those responsible and bring them to justice whether the crime is perpetrated by law enforcement officials, armed groups or private individuals;

89. Establish victim and witness units for courts, which will provide protective measures and security arrangements, counselling and other appropriate assistance during the investigation and trial process and any subsequent period when the safety of the victims or witnesses so requires;

90. Implement a public awareness-raising campaign so that victims are informed of their rights in seeking redress through justice mechanisms;

91. Investigate and prosecute all attacks on UNAMID peacekeepers, as such attacks constitute international crimes under international law, and bring perpetrators to justice;

92. Cooperate with investigation and prosecution processes of human rights violations and abuses, and serious violations of international humanitarian law; including those carried out by the ICC pursuant to United Nations Security Council Resolution 1593.

To the Armed Opposition Movements

93. Refrain from attacks on civilian persons, objects, habitats, and sources of livelihood, and take steps towards preventing displacements;

94. Respect and adhere to obligations under international human rights and humanitarian law;

95. Provide and facilitate immediate and unrestricted access to all areas under their control for all human rights and humanitarian actors and ensure that no obstacles are imposed on UNAMID and humanitarian actors by any of their members;

96. Participate in, commit to, and abide by the spirit and provisions of the DDPD as well as other initiatives intended to bring lasting peace to Darfur.

97. Cooperate with investigation and prosecution processes of human rights violations and abuses, and serious violations of international humanitarian law; including those carried out by the ICC.

GOS FORMAL COURTS LOCATION IN DARFUR

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