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OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Report of the High-Level Mission on the situation of human rights
in Darfur pursuant to Human Rights Council decision S-4/101***

* Due to late submission of the present report, editing rules were applied to paragraph numbering and table of contents only. Annexes are reproduced as received.

Summary

Mandated by Human Rights Council decision S-4/101 to assess the human rights situation in Darfur and the needs of the Sudan in this regard, members of the High-Level Mission on the situation of human rights in Darfur carried out their programme of work from 5 February to 5 March 2007 in Geneva, Addis Ababa, N'Djamena, Abeche and the refugee camps of Eastern Chad, meeting hundreds of relevant persons, reviewing thousands of pages of documents, assessing the human rights situation and corresponding needs, and preparing its report to the Human Rights Council.

Having determined that the effective protection of civilians in Darfur was the central issue at hand, and that the most appropriate framework for addressing this question was the framework of international human rights and humanitarian law, the Mission decided to employ an analysis drawn from the *responsibility to protect*. Confirming that the Sudan has accepted the responsibility to protect, the Mission proceeds to an assessment of the situation in Darfur, noting the complex historical, economic, political and other causes of the conflict. With the emergence of armed rebellion in the region, and the recruitment by the Government of proxy militias to respond to the rebellion, civilians emerged as the primary targets and victims. Government forces often acted in concert with Janjaweed/militia, including in violations of human rights. Rebel movements also engaged in human rights abuses. Armed banditry and criminal activities have increased significantly.

Numerous efforts by the international community have not been successful in ending the conflict. Rebel movements have become increasingly fragmented and abuses have continued. Even after the signing of the DPA, war continues and the human rights situation has further deteriorated. Today, millions are displaced, at least 200,000 are dead, and conflict and abuse are spilling over the border into Chad. Making matters worse, humanitarian space continues to shrink, and humanitarian and human rights actors are increasingly targeted. Killing of civilians remains widespread, including in large-scale attacks. Rape and sexual violence are widespread and systematic. Torture continues. Arbitrary arrest and detention are common, as is repression of political dissent, and arbitrary restrictions on political freedoms. Mechanisms of justice and accountability where they exist are under-resourced, politically compromised, and ineffective. The region is heavily armed, further undercutting the rule of law, and meaningful disarmament and demobilization of the Janjaweed, other militia and rebel movements is yet to occur. Darfur suffers from longstanding economic marginalization and underdevelopment, and the conflict has resulted in further impoverishment. As violations and abuses continue unabated, a climate of impunity prevails.

For its part, the international community, acting through the United Nations and the African Union, has intervened with diplomatic, humanitarian, human rights and development assistance, but the vast majority of its recommendations remain unimplemented by the Government, and effective protection for civilians is yet to be secured. Critical needs for

improving the situation of human rights in Darfur are numerous, and include (1) enhanced protection (2) renewed progress toward peace (3) expanded humanitarian space (4) increased accountability for perpetrators (5) programmes to address root causes (6) efforts to ensure the implementation of existing recommendations from authoritative human rights bodies; and (7) compensation for the victims of violations of human rights. To these ends, the Mission makes a number of specific recommendations for action by the Human Rights Council, the Government, rebel movements and the international community.

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I. INTRODUCTION

A. The High-Level Mission

1. Mandate

1. On 13 December 2006, at its fourth special session, the Human Rights Council adopted by consensus decision S-4/101 on the situation of human rights in Darfur, in which it decided to dispatch a High-Level Mission (HLM) with the mandate “to assess the human rights situation in Darfur and the needs of the Sudan in this regard ... and to report to the Council at its fourth session to be held from 12 March to 5 April 2007”.

2. Members and staff

2. On 26 January 2007, HRC President, Ambassador Luis Alfonso de Alba announced the appointment of the members of the Mission. The members, serving in their personal capacities, included Professor and Nobel Peace Laureate Jody Williams (Head of Mission), Professor Bertrand Ramcharan, the Honorable Mart Nutt, H.E. Ambassador Makarim Wibisono, H.E. Ambassador Patrice Tonda, as well as the Special Rapporteur on the situation of human rights in the Sudan, Dr. Sima Samar. On 14 February 2007, H.E. Ambassador Makarim Wibisono discontinued his participation in the mission and thus did not take part in the preparation of this report. The HLM was supported and accompanied by a team of staff appointed by the High Commissioner for Human Rights. The members of the Mission would like to express their appreciation to the members of the OHCHR secretariat for their extreme professionalism and dedication to the successful completion of the Mission.

3. Terms of reference and working methods

3. Convening on 5 February in Geneva, the HLM adopted its terms of reference, focusing on our mandate “to assess the human rights situation in Darfur, and the needs of the Sudan in this regard, and to report to the Council at its fourth session”. We determined that assessing the situation did not require a human rights fact-finding mission, as such. Volumes of documentation of abuses of human rights and international humanitarian law (IHL) in Darfur from early 2003 to today are abundant. Therefore, for our assessment, we meant to gather as much information on the current situation from as many sources as possible. Our intention was then to give our collective informed perspective on the human rights situation in Darfur.

4. We understood assessing the needs of the Sudan vis-à-vis the human rights situation in Darfur to include needs of the Government of the Sudan, civil society and affected communities and individuals that the Government, in the first instance, has the responsibility to protect. We noted that the Human Rights Council decision welcomed the signing of the Darfur Peace Agreement (DPA), urged its full implementation and called upon non-signatories to sign and all parties to observe the ceasefire. The DPA was negotiated in 2005, and signed on 5 May 2006. We therefore decided that our assessment of the situation would primarily focus on the period from January 2005 to March 2007.

5. We convened in Geneva from 5 to 9 February to begin our work planning and consultation. While in Geneva, we consulted a number of organizations and individuals and

reviewed relevant documentation. Planning our programme, we decided that our work outside of Geneva would take place from 10 to 21 February, and that we would reconvene in Geneva from 26 February to 2 March to draft our report.

6. In considering our travel programme, we determined that priority should be given to visits to Khartoum, Darfur, Addis Ababa, and eastern Chad. In Khartoum, we hoped to meet with senior government officials, United Nations and African Union Mission in the Sudan (AMIS) personnel, and representatives of civil society. In Darfur, we intended to meet victims, witnesses and key parties. In Addis Ababa, seat of the Africa Union, we sought to meet senior AU officials, given the vital role of the AU in addressing the Darfur crisis. Finally, given that hundreds of thousands of Darfurians now reside in refugee camps and communities in eastern Chad, we thought it important for some of our members to also visit those areas to meet directly with witnesses and victims, many of whom are recent arrivals from Darfur. This was particularly advisable given the critical security situation in Darfur, and the consequent greater access to and freedom of expression of those residing in Chad.

7. We decided that our report to the Human Rights Council would include a situation assessment and a needs assessment along with specific recommendations to the Council, to the Government of the Sudan, to the rebels, and to the international community toward stopping violations of human rights and alleviating the acute suffering of the people of Darfur.

4. Cooperation of the Government of the Sudan

8. Decision S-4/101 had welcomed Sudanese cooperation with the Special Rapporteur on the situation of human rights in the Sudan and called upon the Government to “continue and intensify its cooperation with the Human Rights Council, its mechanisms, and the Office of the High Commissioner for Human Rights”. Unfortunately, the Sudanese authorities did not issue visas for the Mission to enter the Sudan.

9. Secretary-General Ban Ki-moon had the opportunity to discuss the HLM with President Bashir while at the AU Summit in Addis Ababa on 29-30 January and received his personal commitment and assurance that the Sudan would fully cooperate with the Mission as constituted.

10. The HLM applied for Sudanese, Ethiopian and Chadian visas in Geneva. Problems with visas for the Sudan arose immediately. Departing as planned on 10 February for Addis Ababa to continue our programme of work, we hoped that ongoing efforts on our behalf would result in Sudanese visas being issued while we were carrying out the Addis leg of our programme.

11. On 14 February, when we had planned to begin our work in the Sudan (in accordance with our programme of work), we still had no visas. The continuing delay was creating significant logistical and planning challenges to our Mission. Nevertheless, in a spirit of cooperation, and before changing our tickets from the Sudan to Chad that afternoon, we made a final, unsuccessful attempt to secure visas.

12. All in all, more than a dozen attempts over the 20-day period from 26 January through 14 February 2007 were made in Geneva, Addis Ababa and Khartoum to obtain our visas and secure the cooperation of the Government of the Sudan. Upon our return to Geneva, we continued to offer cooperation, seeking briefings and information from Government officials, but to no avail.

5. Programme of work

(a) Consultations

13. In Geneva, we had more than thirty consultations with representatives of United Nations agencies, former senior United Nations officials in Sudan, the International Committee of the Red Cross, international and Darfurian human rights organizations, human rights representatives from Darfur, and international humanitarian organizations, as well as with Darfur researchers. The HLM also met with the High Commissioner for Human Rights, the President of the Human Rights Council, and the Executive Director of the Commission of Inquiry for Darfur, and OHCHR staff. We held discussion as well with United Nations Special Envoy Jan Eliasson and AU Special Envoy Salim Ahmed Salim. Members of the Mission also met three times with the Ambassador of the Sudan in Geneva, and with Ambassadors from the African Union, with the Coordinator and other representatives of the European Union and with the Eastern European group.

14. In Addis Ababa, we were briefed by officials of the African Union, led by the Commissioner for Peace and Security. We also received military and police briefings from AMIS. We spoke with individuals from Darfur, including a former Governor and the head of a Darfurian human rights organization. The HLM met with the ECA Acting Executive Secretary, and subsequently with representatives of the ECA's Working Group on Darfur, and with a member of the United Nations Panel of Experts of the Sanctions Committee of the Security Council. The HLM was also able to consult at length with the acting Special Representative of the Secretary-General for the Sudan.

15. Arriving in N'Djamena, members of the Mission met with the United Nations Country Team, as well as with representatives of rebel movements including the Justice and Equality Movement (JEM) and the secretariat of the National Redemption Front (NRF). The Mission also discussed the case of Suleiman Jamous with advocates on his behalf. In Abeche, we also had numerous discussions with United Nations Children's Fund, United Nations High Commissioner for Refugees, and Office for the Coordination of Humanitarian Affairs representatives, working both with Darfurian refugees and Chadians displaced by militia incursions from Darfur.

(b) Field visits in eastern Chad

16. In Gaga Refugee Camp, UNHCR and the camp leadership provided a general briefing of the refugee situation in eastern Chad, as well as on Gaga itself. Opened in May 2005, the camp houses more than 13,000 refugees from Darfur, most of whom have arrived in the past year. Gaga receives newly arriving refugees on a daily basis. Following this introductory meeting, the Mission divided itself into three teams, the first meeting with a cross-section of the camp's refugees, another with refugees who had undergone torture, and a third with a group of women refugees. Members of the Mission heard first-hand accounts of violations suffered by residents.

17. In Breidjing Camp, which opened in May 2005 and houses more than 29,000 people, members of the Mission held a general meeting with 70 camp leaders and residents, including both men and women. Subsequently, we again divided into three teams, the first meeting with a group of about 30 women, the second with male victims of violence, and the third with a cross-section of camp residents. Again, the Mission heard details of human rights violations committed in Darfur.

(c) Document review

18. The HLM was provided with relevant United Nations and African Union documentation, and received additional documentation from many with whom it met and corresponded, including from human rights and humanitarian relief agencies and non-governmental organizations. (For a full list of documents consulted, see annex IV.)

B. The responsibility to protect

19. In a landmark decision at the World Summit in September 2005, the international community, building on the obligations of member States under the Charter of the United Nations, formally embraced the principle of the responsibility to protect. In doing so, it declared that every State has the responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing, and that, where a state is unable or unwilling to do so, it is the responsibility of the international community to take action to ensure effective protection. In assessing the human rights situation in Darfur and the needs of the Sudan in that regard, and in formulating our recommendations, we considered that the effective protection of civilians in Darfur was the central issue at hand.

20. The Sudan joined in the adoption of the World Summit Outcome, explicitly accepting its responsibility to protect and pledging to act in accordance with it.¹ With its ratification of various human rights and humanitarian law treaties it has also accepted specific legal obligations that underpin this responsibility.² In signing other treaties while not yet ratifying them, it remains legally bound to refrain from acts that would defeat the objects and purposes of those treaties.³

¹ Subsequently, on 28 April 2006, the Security Council passed resolution 1674 (2006) reaffirming the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome document regarding the responsibility to protect. In addition to condemning violations of human rights and international humanitarian law, the resolution also states that “ending impunity is essential” to address abuses against civilians during armed conflict and prevent such abuses in the future.

² These treaties include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of the Child; the African Charter on Human and Peoples’ Rights; and the four Geneva Conventions of 1949.

³ These include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court.

21. The signature by the Sudan of various political agreements also reflects its acceptance of this responsibility. In July 2004 during a visit to the Sudan by the Secretary-General, a Joint Communiqué was signed between the Government and the United Nations. The communiqué contains a number of commitments relating to the Government's responsibility to protect its populations, their lives and welfare, in particular during internal armed conflict, by taking action to guarantee human rights.⁴ Additionally, the Comprehensive Peace Agreement (CPA) that the Government signed with the Sudan People's Liberation Movement/Army (SPLM/A) on 9 January 2005 contains a number of provisions relating to the protection of human rights. The Darfur Peace Agreement (DPA) of 5 May 2006 contains an explicit section on human rights.

22. Sudan's Interim National Constitution includes a Bill of Rights that guarantees most of the rights contained in the international human rights treaties, including rights contained in international instruments to which the Sudan is not a party (for example the Convention Against Torture). It also provides for a national human rights Commission, to be established under its terms.

23. With regard to national plans and policies, the Government Plan for the Restoration of Stability and Protection of Civilians in Darfur (August 2006) is based on the DPA and the timeline established for its implementation. It contains a number of human rights-related elements, with specific objectives, activities, implementation measures, timing and requirements for action by the United Nations and other partners.⁵ The National Action Plan to End Violence against Women in Darfur (November 2005) also contains specific time-bound actions by various ministries.

II. DARFUR: SITUATION ASSESSMENT

A. Brief history and causes of the conflict

24. The causes of conflict in Darfur are complex. Historically, tribal groups have come into conflict over land, water or livestock, but such disputes were settled through traditional tribal

⁴ This includes a moratorium on restrictions for all humanitarian work in Darfur, a commitment to undertake concrete measures to end impunity, to deploy immediate investigations of all ceasefire violations, to provide adequate resources for (Independent Investigation Committee) investigations, to implement resulting recommendations, to ensure that all individuals accused of human rights violations are brought to justice without delay, to allow the deployment of human rights monitors and to establish a fair system, respectful of local traditions that will allow abused women to bring charges against alleged perpetrators. It agreed as well to deploy a strong, credible and respected police force in all IDP areas as well as in areas susceptible to attacks, to train them in human rights law and to hold them responsible for upholding it.

⁵ See document S/2006/665 of 17 August 2006 containing the letter from the Secretary-General addressed to the President of the Security Council and transmitting the Plan of the Government of the Sudan for the restoration of stability and protection of civilians in Darfur.

mechanisms.⁶ But in the 1970s, in part in an effort to modernize, Khartoum introduced a number of administrative changes that began to erode those mechanisms. First Darfur was divided into three states, fragmenting the collective power of tribal groups. Khartoum then appointed new officials with both executive and judicial powers at the state level, and appointed leaders at the local level based upon loyalty to the central government, without regard to the traditional leadership recognized by the communities. While traditional mechanisms were still sought out, those structures were severely weakened, just as power relations between groups were being distorted.

25. In the 1970s and the 1980s, increased desertification and drought resulted in significant movements of people, with nomadic groups moving deeper into southern areas as well as “newcomers” entering from Chad, the Libyan Arab Jamahiriya and Mauritania. With Darfur’s own issues of scarce water and other resources, relations became increasingly contentious. The intensity of conflicts increased significantly with the formation of village defence groups and militias and the influx of small arms and light weapons into the region. By the end of the 1980s most conflict was between the Fur and nomadic tribes.

26. In addition to the struggles around land and resources, the peoples of Darfur have felt discriminated against and marginalized by the central Government. Generally excluded from social services normally provided by the State such as education and basic medical care, they have had no significant political voice in Khartoum. Attempts by the Government to mediate ongoing tribal conflicts produced no long-term results, fuelling the perception that Khartoum was unwilling or unable to protect Darfurians or to address their broader needs. Quite to the contrary, as fighting intensified between 1995-1998, the Government began its recruitment of militias, further aggravating divisions.

27. Against this backdrop of conflict and marginalization, two rebel groups began to organize in 2001/02 – the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) – drawing their members primarily from village defence groups. Most rebels were from the Fur, Massalit and Zaghawa tribes. Interestingly, they were calling for equality

⁶ While Darfur is made up of many dozens of ethnic groups and tribes, all are of the Muslim faith and Arabic is the “lingua franca.” Land is a fundamental issue in Darfur and ownership has traditionally been communal. The predominant tribes in Darfur live in generally mutually accepted homelands, called *dar*. These include that of the Fur around Jebel Marra and the Zaghawa in parts of West and North Darfur. Also in West Darfur around El Geneina and to its south are the Masalit. The Rizeigat, the largest and most powerful of the Arab tribes, are mainly found in the southern parts of South Darfur. Some groups are primarily sedentary agriculturalists, and some of these also herd cattle. Others, primarily Arab, are nomadic and semi-nomadic and traditionally have passed through other tribal homelands as they moved with their herds of camels and cattle. The nomadic Arab tribes, north of Jebel Marra, are known as *Abbala*, and include the Taaysha, the Habaneya, the Beni Helba, the Mahameed and others. The sedentary southern Arab tribes are collectively called *Baggara*. Some tribal sections are *Abbala* in some parts of Darfur, but *Baggara* in others. These complex tribal configurations become even more so with generations of intermarriage and other intertribal relations.

and justice for all Sudanese and not just redress of more narrow tribal interests. The rebel forces began attacking Government police and military targets in late 2002, and those attacks accelerated in 2003.

B. Nature of the Government's response

28. The Government was not prepared either for the intensity or the successes of the rebel attacks. With many of its forces engaged in its long war with the Sudan People's Liberation Army (SPLA) in South Sudan, Khartoum was also concerned because many rank-and-file soldiers in the Sudanese military were from Darfur. The Government significantly picked up its recruitment of proxy militias, continuing to exploit the existing and ongoing tensions between tribal groups. Those members of Arab tribes recruited to fight in Government-backed counterinsurgency operations became known as "Janjaweed," which is a term used in Darfur for an armed man on horse or camel.

29. Janjaweed attacks, sometimes in concert with Government land and air forces have been and continue to be primarily directed against the civilian population of Darfur, and focused especially on the tribal groups from which most of the rebels have been drawn. In both refugee camps, and in our discussions with a number of observers, we were told of such joint attacks on civilians. Women, children and men have been killed indiscriminately. Villages have been razed, livestock stolen or killed, and crops destroyed, and whole populations forcefully displaced, in part in an attempt to deprive rebel groups of support and resources. In particular, rape and sexual assault have been widespread and systematic, terrorizing women and breaking down families and communities.⁷

III. THE DARFUR PEACE AGREEMENT, THE ENSUING VIOLENCE AND THE RESPONSIBILITY TO PROTECT

30. Attempts to resolve the conflict began in 2003, and a ceasefire between the Government and the SLM/A was signed on 3 September of that year. A report to the AU Peace and Security Council read: "Following the September Ceasefire Agreement, fighting largely stopped between the Government and the SLM/A. However violence intensified against the civilian population. A militia group called '*DJanjaweed*' deliberately targeted civilians viewed as providing support to the SLM/A and the JEM."⁸

⁷ See, inter alia, report of the International Commission of Inquiry on Darfur of February 2005 (S/2005/60); report of the Independent expert on the human rights situation in the Sudan (E/CN.4/2005/11); report of the Special Rapporteur on the human rights situations in the Sudan (E/CN.4/2006/111); reports of the Panel of Experts established pursuant to Security Council resolution 1591 (2005) (S/2006/65; S/2006/795) and High Commissioner's Periodic Reports on the human rights situation in the Sudan.

⁸ Fifth Meeting of the Peace and Security Council, Addis Ababa, 13 April 2004, "Report of the Chairperson of the Commission on the Situation in the Sudan (Crisis in Darfur)," PSC/PR/2(V), p. 2.

31. As violence and violations of human rights continued, so did attempts to stop the conflict. On 8 April 2004, the Government, the SLM/A, and JEM signed a humanitarian ceasefire agreement and protocols on establishing humanitarian assistance in Darfur. The ceasefire agreement called for the establishment of a Ceasefire Commission (CFC) to monitor the cessation of hostilities, supported by an AU Observer Mission. Appeals were made to the United Nations and the international community to support the CFC, to “ensure the scrupulous compliance” of warring parties to the ceasefire.⁹

32. Subsequent efforts for peace in Darfur took place in Addis Ababa and in Abuja mediated by the African Union and with all parties to the conflict participating. But against this backdrop, violence was again on the rise in Darfur as all parties sought military gains to advantage them in the talks. At the seventh round of negotiations, the Darfur Peace Agreement was signed on 5 May 2006, but only by the Government and by one faction of the SLM (that of Mini Minawi, SLM/MM). The SLA faction led by Abdul Wahid (SLM/AW) did not sign, nor did the JEM.

33. Since the signing of the DPA, the security situation in the region has deteriorated. Non-signatory rebel factions have splintered. Though hostilities have been significantly reduced between the two signatories to the DPA, fighting between signatories and those opposed to the DPA escalated in violation of the ceasefire agreements.¹⁰ Attempts by these factions to meet and develop common positions for renewed efforts to open the DPA to new negotiations have been attacked and bombed by Government forces.¹¹ Violations of human rights and international humanitarian law have increased by all parties to the conflict since the signing of the DPA. Armed banditry and other criminal activity have also increased.

34. People began to flee the fighting that erupted in Sudan’s western region of Darfur in early 2003. By the end of 2004, some 200,000 Sudanese had fled across the border to neighbouring Chad and an estimated 1.6 million were displaced within Darfur. The deteriorating security situation since the DPA has resulted in tens of thousands of newly displaced – now totalling well over two million displaced people in Darfur -- and 30,000 more refugees in the camps in Chad, with new arrivals daily.¹²

⁹ Fifth session of the Peace and Security Council, Addis Ababa, 13 April 2004, Communiqué of the Peace and Security Council, PSC/PR/Comm. (V).

¹⁰ See, inter alia, UN Security Council, monthly report of the SG on Darfur, S/2007/104 of 23 February 2007 and 63rd meeting of the Peace and the Security Council of 18 September 2006, Report of the Chairperson of the Commission on the situation in Darfur, PSC/MIN/2(LXIII), p.11.

¹¹ Security Council, monthly report of the Secretary-General on Darfur (S/2007/104 of 23 February 2007), p. 7 para. 31.

¹² Briefings to HLM by UNHCR and OCHA, Geneva and Abeche, February 2007; “There are presently an estimated 2 million displaced persons in north, south and west Darfur, including 250,000 who have fled fighting in the past six months. In West Darfur alone, where UNHCR’s teams are mainly based, there are an estimated 700,000 displaced”.

35. Cross-border attacks into Chad by Janjaweed and retaliations by rebels and Chadian forces have resulted in a dramatic increase in Chadian IDPs – from about 30,000 in June of 2006 to over 113,000 by the end of that year.¹³ Today, the conflict is also having a growing impact in the Central African Republic. If the conflict in Darfur is not meaningfully and equitably resolved, bringing peace and security to its people, it could increasingly engulf the region. Secretary-General Ban Ki-moon has called for a peace-keeping force along both borders.

36. Humanitarian aid has, since the beginning of the conflict, consistently been restricted by the Government with delays in the issuing of visas, travel permits to go to Darfur, daily travel permits to leave the capitals in Darfur, and fuel permits to travel around Darfur. But with the spiralling of violence since the DPA, humanitarian access to populations in dire need has been increasingly strangled and in some areas it has ceased entirely. Action by rebel groups has also impacted humanitarian access in recent months.¹⁴

37. Attacks on humanitarian agencies have increased dramatically over the past months. On 17 January 2007, in an unprecedented initiative, 14 United Nations agencies with operations in Darfur issued a Joint Statement on the urgency of the situation. They noted that: 12 aid workers have been killed in the past six months -- more than in the previous two years; 30 NGO and United Nations compounds were directly attacked by armed groups; and more than 400 aid workers were forced to relocate 31 times from different locations throughout the 3 Darfur states in both government and rebel controlled areas. There have also been three sexual assaults on relief workers in the previous five months – the first in September 2006 by Janjaweed /militia, the second in December 2006 by SLA/MM forces, and the third on 19 January 2007 by Government police and National Security agents.¹⁵

IV. SUDAN'S ACTIONS REGARDING THE RESPONSIBILITY TO PROTECT

38. The witnesses, victims and observers with whom we spoke, and the United Nations and other documentation consulted underscore that the killing of civilians in Darfur remains widespread. Violence has increased since late 2005 and has continued unabated into 2007.¹⁶

¹³ See UNHCR briefing note January 2007 “While there has been a decrease in fighting between the Chadian army and opposition forces, intercommunal conflict continues in south-eastern parts of the country near the border with Sudan’s Darfur region. More than 10,000 Chadians have been driven from their homes in cross-border attacks by alleged Janjaweed militia in the Borota region, and another 10,000 have fled more than 20 villages and are now gathered in the town of Gassire, 8 km north of Goz Beida. This insecurity is now posing a direct threat to refugee camps housing thousands of Sudanese from Darfur”. See www.unhcr.org.

¹⁴ See Sudan Humanitarian Overview, 1-31 January 2007, Vol.3, Issue 1, OCHA and Darfur Humanitarian Access Map available at www.unsudan.ig.org.

¹⁵ *Idem*.

¹⁶ See, *inter alia*, UN Security Council, monthly report of the SG on Darfur, S/2007/104 of 23 February 2007.

There were numerous large scale attacks on civilian communities during this period. Descriptions of these attacks indicate that tactics used have been very similar to those used during the height of the war in Darfur in late 2003 and 2004, characterized by (1) coordination of operations between the Sudanese armed forces and government-supported militia, (2) failure to respect the principles of distinction and proportionality, and (3) grave violations of international human rights and humanitarian law. While precise figures are not available, the United Nations estimates that 200,000 civilians have been killed as a direct result of the conflict or due to its devastating impact on access to health care, food and other life essentials.

39. Rape and sexual violence are widespread across Darfur, including cases of gang-rape.¹⁷ Since May 2006 sexual violence has also been reported in intra-tribal attacks. Despite the well-known patterns of rape of women around IDP camps, the authorities have done little to diminish the threat or investigate cases reported. Monitoring of the criminal justice system over the last two years has shown that very few cases of rape are investigated or prosecuted relative to the number of incidents that occur. Access to justice and prosecution of rape is further complicated both by cultural and by institutional factors, including the provisions of the criminal law combining rape and adultery in the same article.¹⁸ Women are also attacked in and around refugee camps in Chad.¹⁹

40. Arbitrary arrest and detention in Darfur by government security forces continue. Individuals reportedly targeted include lawyers, community leaders and others who work on

¹⁷ See, inter alia, Report of the International Commission of Inquiry on Darfur of February, (S/2005/60) and High Commissioner's Periodic Reports on the human rights situation in the Sudan including, Access to Justice for Victims of Sexual Violence (29 July 2005) http://www.ohchr.org/english/countries/sd/periodic_report.htm.

¹⁸ Article 149 (1) of the Sudanese Criminal Act of 1991: “*There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy, with any person without his consent*”.

¹⁹ We were particularly struck by the stories of rape recounted to us by victims. During our meeting with roughly thirty women in the camp of Breidjing, we learned of a total of nine rapes. Five women, who were 15, 17, 20, 21 and 45 years old, respectively, described having been gang raped in attacks on their villages. Another one while trying to return to her village to recover things left behind, and one by four Chadians when she left the refugee camp for firewood. The 45-year old woman was married and had eight children. When her husband learned of the rape, he divorced her. The other four rapes were described by a woman who told us that when her village was attacked and that she and three other women were surrounded. An old woman was thrown into a fire and burned to death. The woman telling us the story was being beaten while the two youngest women were repeatedly raped, and the husband of one of them was killed. She became pregnant as a result of the rapes and when the baby was born it “died immediately” and she has been “sick” ever since. All of the women – except for the one raped in Chad – said their attackers were Janjaweed. When we had first met with the camp's leaders, one of the men talked about the raping of the women by the Janjaweed. He said, “Especially the raping of women -- how can they do this in the name of Islam?”

human rights, Sudanese who work for international organizations or who are perceived as cooperating too closely with the international community, individuals who share the predominant ethnicities of various rebel groups, and Sudanese who display opposition political views. Since May 2006 security forces have also targeted individuals who openly oppose the DPA. Sudanese who work closely with IDPs are also targeted, often on the basis of accusations that they encourage popular discontent and anti-government sentiment.

41. Since September 2006 there has been a wave of arrests of Darfurians in Khartoum. The arrests of over 30 Darfurian teachers, businessmen, journalists and university students predominately from the Fur, Masaalit and Zaghawa tribes have been carried out by the police and National Security, purportedly in furtherance of the investigation into the murder of Mohamed Taha, a prominent editor. Former detainees suggest that the murder investigation is being used as a pretext to arrest those with perceived links to rebel movements in Darfur. To date 13 detainees have been released due to lack of evidence, with three released as recently as 29 January 2007. Another three continue to be held without charge while 19 others have been charged with murder.²⁰

42. Arbitrary restrictions on freedom of expression, association and assembly are widespread. Human rights defenders, lawyers, local leaders and political opponents voicing concerns or expressing views that are critical, of the Government, continue to be particularly vulnerable to abuses by state security agencies. The United Nations has documented numerous cases of people being harassed, arrested, detained and physically abused for voicing their human rights concerns. The victims include members of NGOs, journalists, and people who file complaints with the police or other government officials.

43. The HLM has also received credible information of torture, inhumane and degrading treatment by National Security and Military Intelligence during attacks and in the treatment of detainees. The methods used include beatings with whips, sticks and gun butts, prolonged sun exposure, starvation, electrocution, and burning with hot candle wax or molten plastic. Many detainees are held incommunicado without charge or access to a lawyer.

A. Ongoing displacement and interference with humanitarian assistance

44. Ongoing attacks have resulted in massive displacement of civilians. According to the United Nations, there were 25,000 new IDPs in Darfur as of January 2007, bringing the total to over 2 million in the three regions of Darfur. We learned that there are 233,000 refugees from Darfur currently residing in Eastern Chad and receiving services from UNHCR. Many other refugees are being hosted in communities along the border. In addition to Chad, the Central African Republic has also suffered important consequences of the spill-over from Darfur.²¹

45. Attacks on humanitarian workers, obstacles and interference with humanitarian aid by the Government and armed militia have increased during 2006-2007. The humanitarian situation in

²⁰ Article 130 of the Sudanese Criminal Act of 1991.

²¹ OCHA briefing note on the humanitarian situation in Chad, January 2007.

Darfur remains critical and humanitarian space and access in the three regions of Darfur has been rapidly diminishing over the past year. Access has deteriorated to a level worse than in 2004, even as there has been a huge increase in the number of people relying on humanitarian aid. In the last six months of 2006, more relief workers were killed than in the previous two years combined. Just during the month of December 2006, 29 humanitarian vehicles were hijacked and 430 humanitarian workers relocated in all three Darfur states.

B. Accountability and justice

46. Although formally, the national court system in Sudan is functional and has jurisdiction over human rights crimes perpetrated in Darfur, these courts have been unable to resolve human rights abuses there. There is an acute shortage of judges and other judicial staff. Although there have been a few exceptional cases of domestic courts charging state officials in cases involving conflict-related crimes, the justice system as a whole is unable or unwilling to pursue justice or prevent attacks, and this is compounded by a general lack of independence and resources, an ill-equipped police force and legislation that protects state officials from criminal prosecution.

47. In the face of growing international criticism over the lack of the rule of law, the fair administration of justice as well as of mechanisms to address impunity in Darfur, the Government of Sudan has announced a number of initiatives. Between 2004 and 2006, it created at least five judicial and quasi-judicial bodies with the mandate to ensure accountability for human rights crimes in the war-torn region. To date, these bodies have had limited results in dealing with the widespread and serious violations committed in Darfur.

48. The first of these bodies was the National Commission of Inquiry established in May 2004 by the President of the Sudan to investigate human rights violations committed by armed groups in Darfur. Reportedly it met over 65 times and listened to 28 witnesses, and made a number of visits to Darfur. But it appears that the Commission did not go beyond recommending “further investigations” into a number of specified incidents.²²

49. Ad Hoc Investigatory Committees were established in Darfur in response to incidents of armed attacks against civilians. Nothing significant has come from these initiatives in terms of redress for victims or accountability for perpetrators. In July, the Minister of Justice established by Special Decree the Committees against Rape to look into the issue of rape and sexual violence in Darfur. According to observers, no specific investigations or cases have been brought by the Committee to date.²³ Another body known as the Unit for Combating Violence against Women and Children was established under the Ministry of Justice. Though initially hailed as a positive step, it has reportedly not investigated human rights crimes, and has been criticized as ineffective.

²² ICC, Office of the Prosecutor Report, Situation in Darfur, the Sudan. No. ICC-02/05, 27 February 2007.

²³ Ibid.

50. The most elaborate attempt by the Government of the Sudan to create an accountability mechanism with conventional judicial elements was the establishment of the Special Criminal Court on the Events in Darfur (SCCED). Created by a decree of the Chief Justice, the Court was initially constituted as a panel of three judges, based in El Fasher but with ability to circuit to any location deemed appropriate. It was granted wide jurisdiction covering all crimes in the Sudanese Penal Code and any charges concerning investigations into the violations cited in the report of the Commission of Inquiry and any charges pursuant to any other law, as determined by the Chief Justice. On 26 November 2005, the Chief Justice established two additional Special Criminal Courts for Nyala and El Geneina with the same jurisdiction as the initial SCCED, but with the addition of international humanitarian law (IHL). The SCCED statutes also contained explicit provisions on the right of observers from the AU or other entities to attend the court hearings.

51. The effectiveness of this court has been limited at best. According to observers, only nine known cases have come before the Court.²⁴ The court delivered a verdict in eight of them. A ninth case was initially heard but later dismissed. Only one of these cases dealt with the types of major violations of human rights and the laws of war that have characterized the conflict in Darfur -- an October 2005 attack on Tama in South Darfur.²⁵ No one was found guilty of taking part or held responsible for orchestrating the attack. The men charged in relation to the attack were found guilty only of stealing property at the site of the attack after it took place. According to informed observers, the SCCED has also not addressed the issue of criminal responsibility for senior-level officials in Darfur and Sudan. Only one high-ranking official was ever charged and he was acquitted. Ten State officials, all low-level officers, have been convicted by the SCCED.

C. The militias

52. Witnesses, victims and observers we met repeatedly confirmed joint action between Government forces and armed militia in assaulting civilian targets in Darfur. The DPA requires that the Government implement a plan for the neutralization and disarmament of the Janjaweed and other militia. A phased plan to these ends is supposed to be implemented under AU supervision. This requirement, to date, remains largely unimplemented.

53. Arms continue to flow freely, and heavily armed militia continue to operate across the territory of Darfur with impunity.²⁶ Victims and witnesses with whom the Mission met frequently identified the provision of arms by the Government to the Janjaweed and other militias as one of the most significant factors in fostering tensions and violence between tribal groups and communities.

²⁴ Four in Nyala, three in El Fasher and two in El Geneina.

²⁵ Such as the mass killings of civilians, widespread burning of villages, systematic rape, and the other crimes documented by the International Commission of Inquiry.

²⁶ The DPA, including its disarmament provisions, is monitored by UNMIS, which reports monthly on these matters in *The DPA Monitor*, available at www.unmis.org.

D. Development, economic and social rights

54. Gross disparities between the centre and other regions of the country, including Darfur, and unbalanced development policies have created a dual economy in the country, constituting one of the roots causes of the conflict. Disparities in the distribution of national wealth and public resources have repeatedly been identified by rebel groups and militia, (including non-signatories to the DPA) as one of their principal grievances, and an engine of conflict in the country.

55. While the centre has been the focus of economic activity, the periphery, including Darfur, has not benefited either from any substantial economic development activities, or from any re-distribution of income, including from oil exports. At the same time, local factors such as competition between communities and tribes for land and water resources, continued desertification, and environmental degradation, have contributed to increasing conflict between groups in Darfur.

56. Compounding and complicating these long-standing disparities, the consequences of the Darfur conflict have resulted in the disruption of food systems, the collapse of livelihoods and the disintegration of already limited basic services in Darfur. In addition, the widespread displacement, the massive destruction of villages, properties, and lands have resulted in increasingly precarious access to food and income. Insecurity, losses of physical infrastructure, reduced economic activity, rampant military expenditure, loss of assets and related vulnerabilities have all contributed to a critical situation of deprivation in the region. Today, the people of Darfur face a dramatic humanitarian crisis, and one which is further hampered by the obstruction of humanitarian access and a general shrinking of humanitarian space.

E. Rebel abuses

57. Rebel abuses of human rights and humanitarian law also continue. Civilians have been targeted in armed rebel attacks, and acts of rape and torture by rebel forces have also been documented. There have been reports of attacks on aid convoys by rebel forces, putting the populations in these areas in a particularly precarious situation. Many of the violations committed by rebels relate to the fragmentation of rebel groups and intra-rebel fighting that first erupted in March and April 2006 in North Darfur, and the situation has been further exacerbated by increased acts of violent banditry by armed criminal elements taking advantage of the chaos.

V. THE INTERNATIONAL COMMUNITY'S RESPONSIBILITY TO PROTECT

A. Efforts by the United Nations

58. The Security Council has been continuously seized of the situation since the crisis erupted. The Council adopted resolution 1564 (2004) on 18 September 2004 calling for an International Commission of Inquiry on Darfur to investigate violations of international humanitarian and human rights law. The Commission carried out its work in the final three months of 2004 and presented its landmark report in January 2005, establishing that the Government and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law, and that these

violations were so widespread and systematic that they may constitute crimes against humanity. The Commission also found credible evidence that, while not widespread and systematic, rebel forces from the JEM and SLA were responsible for serious violations of human rights and humanitarian law which may amount to war crimes.

59. The Security Council also passed three additional key resolutions in March 2005. While not directed to Darfur, resolution 1590 (2005), (24 March) established the United Nations Mission in the Sudan (UNMIS) and authorized deployment of up to 10,000 military personnel, plus a civilian component, for a UN Peace Support Operation to support the Comprehensive Peace Agreement (CPA), by monitoring its implementation, investigating violations, observing the movement of armed groups and ensuring an adequate human rights presence.²⁷ Resolution 1591 (2005), (adopted on 29 March) imposed an arms embargo on all parties in Darfur and provided for travel bans and the freezing of assets of individuals who continue to violate commitments to end the conflict (to be designated by the Security Council Panel of Experts). Resolution 1593 (2005) (adopted on 31 March) referred the situation in Darfur to the International Criminal Court (ICC), allowing the ICC to examine and act on alleged perpetrators of crimes in Darfur, including those identified by the International Commission of Inquiry.

60. On 31 August 2006, the Security Council passed resolution 1706 (2006) explicitly reaffirming the elements of the responsibility to protect as contained in the 2005 World Summit outcome document, determined that the situation in the Sudan constitutes a threat to international peace and security, and decided to deploy an international peacekeeping force with a Chapter VII mandate allowing for the use of force for protection of civilians.

61. During this period, other agencies and United Nations bodies were also trying to assist the Government to exercise its responsibility to protect the peoples of Darfur. In March 2001, OHCHR began a programme of technical cooperation for human rights with the Government, with projects for the administration of justice, legislative reform, human rights education and capacity building in the formal and informal sectors. In April-May 2004, OHCHR sent two fact-finding missions to Chad and Darfur, and on 7 May 2004, the acting High Commissioner for Human Rights briefed the Security Council on the mission's findings. Its report recommended the establishment of an international commission of inquiry into the ongoing situation (see above) and highlighted the urgent need to deploy United Nations human rights observers to Darfur. Subsequently, in response to the Darfur crisis, OHCHR deployed a team of human rights monitors to Khartoum and Darfur in August 2004 to support protection efforts in Darfur and to monitor, report and follow up on individual cases. Following the creation of the United Nations Mission in the Sudan (UNMIS), OHCHR technical cooperation activities were integrated into the human rights component of UNMIS in June 2005.

62. The United Nations has also provided technical assistance for the implementation of the Comprehensive Peace Agreement which requires sweeping reforms to governance, the creation

²⁷ Human rights officers in Darfur conduct daily monitoring activities, investigating reports of human rights violations, interviewing victims and witnesses, following up on cases with local authorities and making recommendations on corrective action that should be taken to prevent further violations.

of new institutions, and significant capacity building at all levels of government. If followed through, these could contribute to effective decentralization and equitable resource allocation which in turn would be important elements of a long-term resolution to the existing conflict in Darfur and potential conflicts in other parts of the country.

63. Other UN efforts have included a dedicated special procedure of the Commission on Human Rights and its successor the Human Rights Council on the situation of human rights in the Sudan since 1993. The Special Rapporteur has undertaken field visits and reported to both the Commission and the Council and the General Assembly on the situation with recommendations for action to promote and protect human rights. In addition to the Sudan country mandate of the CHR/HRC, special rapporteurs and independent experts for thematic areas relevant to the crisis in Darfur have undertaken fact-finding missions to Darfur and made numerous recommendations since 2004.²⁸ United Nations human rights treaty bodies have also made countless recommendations to the Sudan.²⁹

B. Efforts by the African Union

64. In its communiqué of 25 May 2004, the AU Peace and Security Council requested the AU Commission on the Situation in Darfur to take all steps deemed necessary to ensure an effective monitoring of the Humanitarian Ceasefire Agreement of 8 April 2004 through the deployment of an Observer Mission, with a civilian component and, if necessary, a protection element, to support the work of the Ceasefire Commission.³⁰

65. In October 2004 the AU Peace and Security Council agreed on an enhanced AMIS mission. The mission was further mandated to improve the security situation in Darfur and oversee the safe return of refugees and IDPs to their homes. Tasks included: "Protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the Government of the Sudan".³¹ Positive protection initiatives have included proactive

²⁸ The Special Rapporteur on extrajudicial, summary and arbitrary executions, the Special Representative of the Secretary General on internally displaced persons, the Special Rapporteur on violence against women, its causes and consequences and the Independent Expert on the human rights situation in the Sudan. See www.ohchr.org.

²⁹ For example, in 2002 the Committee on the Rights of the Child expressed its concern that the large majority of the concerns and recommendations adopted on October 1993 (CRC/C/15/Add.6) following the Sudan's initial report (CRC/C/3/Add.3) on the issue have been insufficiently addressed. In 2007 the Committee on the Rights of the Child (optional protocol) and the Human Rights Committee will review the periodic reports of the Sudan and its obligations under those instruments.

³⁰ African Union, Peace and Security Council, Communiqué of the Solemn Launching of the Tenth Meeting of the Peace and Security Council, (PSC/AHG/Comm.(X)), 25 May 2004.

³¹ African Union, Peace and Security Council, Communiqué, (PSC/PR/Comm. (XVII)), 20 October 2004.

patrolling, escort/firewood patrols, deployments to prevent attacks, mediation and conflict resolution, deployment of CIVPOL and efforts to combat the recruitment of child soldiers. Since the recent spiralling of violence, many of these measures are no longer being carried out.

66. In its communiqué of 30 November 2006, the AU Peace and Security Council endorsed a three-phased United Nations support package for AMIS, and extended the mandate to 1 January 2007. Phase one would provide a light support package with a small number of UN advisors and some vital material assets. The second phase represents a heavy support package with a number of critical enabling capabilities, including 2,250 military personnel and a number of civilian personnel to undertake substantive tasks related to the implementation of the DPA. The third phase would bring a fully-hybrid AU-UN operation. At the time of the writing of this report, Phase One has been completed, and Phase Two is set to begin.

C. The responsibility of the international community to protect the people of Darfur: current status

67. Important as these steps may be, they have not proven adequate in ensuring effective protection on the ground. The Government of the Sudan publicly opposed resolution 1706 and has actively resisted the deployment of a United Nations peacekeeping force in Darfur. After intensive diplomatic effort, Khartoum accepted, in Addis Ababa in November 2006, to allow the three-phased hybrid approach. But in March 2007, almost five years into the conflict, and three years after the Security Council first expressed concern about the crisis in Darfur, the details of the arrangement are still being discussed with the Government of the Sudan. Gross violations of human rights and grave breaches of humanitarian law continue across the region.

VI. NEEDS ASSESSMENT

68. Critical needs for improving the situation of human rights in Darfur are numerous and profound. The region has long suffered from neglect and marginalization vis-à-vis the country's political, administrative and developmental centre in Khartoum. Underdevelopment is evident across all economic and social sectors. Democratic deficits are broad and longstanding. Those public institutions that have existed have been starved for resources, and short on credibility among the region's inhabitants. The ongoing conflict has made a bad situation worse, further weakening public institutions, and distorting vital traditional mechanisms of governance, including, importantly, traditional mechanisms for the peaceful resolution of disputes between tribes. In Darfur today, claims are asserted and disputes settled not principally through courts, or ministries or councils, but through armed militias, banditry, and violence. The level of peace and stability necessary for development is absent. Human resource challenges are prohibitive. Millions have fled. Thousands have died. Many more are gravely wounded. In sum, war-torn Darfur, like most of the country lacks the most basic essentials for the rule of law, democratic governance, and the progressive realization of economic and social rights.

69. The long-term development challenges of the area, including those relating to addressing root causes, are daunting. A review of key documentation including the report of the Joint Assessment Mission, and that of the Commission of Inquiry, reveals low confidence in public authorities and services, significant regional disparities, much higher than average poverty rates,

much lower Human Development Index ratings than other areas of the country, high disease rates, inadequate health services, high rates of child malnutrition, low numbers of families with adequate food supplies, and a general lack of access to justice.

70. The Mission has enquired and assessed the most pressing needs in Darfur. The first of these, emphasized by virtually everyone we met, and a consistent theme in the documentation we collected, is the need for effective protection. For most that we spoke to, this means a large, robust, broadly-mandated, well-resourced UN/AU peacekeeping/protection force deployed across the territory of Darfur. The force should be supplemented by the contingent of UNMIS human rights monitors currently supported by the High Commissioner for Human Rights. It should be accompanied as well by the proposed national human rights commission provided for in the interim national constitution, which should be established in accordance with the United Nations Paris Principles. Establishing such a commission will require facilitated broad consultations, technical advice and assistance, and material support for start-up and early operations.

71. Secondly, peace is among the most pressing needs of the people of Darfur. No one we met believed that a military solution to the conflict is possible, and all stressed the need for a negotiated solution to the crisis. But the issue of renewed peace negotiations is a sensitive one. The Government had insisted that the DPA be signed *as is*. Most others called for a reopening of peace negotiations to include all parties to the ongoing conflict. Representatives of the non-signatory rebel movements with whom we met (including the NRF and JEM) as well as refugees that we met in Chad were adamant that the DPA as it stands does not adequately reflect their needs and aspirations. They sought an “Abuja Plus” to address issues they viewed as unresolved, including power sharing, wealth sharing and compensation for victims. When pressed on the DPA, the NRF and JEM told us they thought they were close to peace, with the signing of the First Declaration of Principles on 5 July 2005, but, as the various rounds of talks continued they said that international mediators became frustrated with the time it was taking to address outstanding issues in the negotiations and, in the seventh round, the DPA was forced on them. They contrasted this with the long and delicate negotiations between the Government and SPLM/A that resulted in the Comprehensive Peace Agreement with the South. Without renewed talks, they insist that peace will remain out of reach for the people of Darfur. We also heard that to resolve the human rights situation in Darfur, any “Abuja Plus” type negotiations must include all stakeholders, including all fighting forces, civil society, human rights defenders, prominent individuals, women and women’s groups.

72. Third, while the international community has been generous in its support for humanitarian assistance to the people of Darfur, the effective delivery of that aid has been dramatically hampered by the obstruction of humanitarian access, assaults on humanitarian workers, and a general shrinking of humanitarian space. Today, Darfur is confronted with an urgent need for expanded humanitarian access and safety, a need which requires not just aid funds, but also political will on the part of the Government and the various armed groups of

Darfur to afford such access. At the same time, sustained donor support in this, one of the world's worst humanitarian crises, will be needed if the \$1.2 billion price-tag for humanitarian assistance to Sudan in 2007 is to be met.³²

73. Fourthly, in a region where impunity prevails and feeds upon itself, there is a vital need for accountability in Darfur. Recent action by the ICC has offered new hope that the protagonists in the Darfur conflict will begin to understand that gross violations of human rights and grave breaches of humanitarian law will be subject to direct consequences for those who perpetrate them. Support for the ICC process is thus essential to an improvement of the situation on the ground. On 27 February 2007 the Prosecutor of the ICC asked pretrial judges to issue summons for Ahmad Harun, State Minister of Interior during the height of the Darfur conflict (2003-2004), and currently the Minister of State for Humanitarian Affairs, and militia commander Ali Muhammad Ali Abd-al-Rahman, also known as Ali Kushayb. This action by the ICC begins to pierce the shield of impunity, but there is much more to be done. Once an effective United Nations/African Union peacekeeping/protection force is in place, work must begin on a comprehensive programme of transitional justice, accountability and reconciliation. Such a process must begin with a Darfur-wide consultation, through which the views and wishes of all affected communities on an appropriate course of transitional justice can be heard. Financial, technical and facilitative support from the international community will be crucial to these ends.

74. Fifth, when the United Nations/African Union peacekeeping/protection force is in place, work should begin on addressing the root causes of conflict and human rights abuse in Darfur. Thus, dedicated international support for the building of national protection systems will be required. Equally important will be human rights-based development cooperation across all sectors. Such aid must be participatory, accountable, transparent, non-discriminatory, empowering, based on international human rights standards, and directed to building the capacity of the people of Darfur to claim and realize their rights, and of officials to deliver on their responsibilities. The justice sector and dispute resolution capacities will need priority attention. And deliberate, rapid disarmament, demobilization and reintegration will be essential.

75. Finally, the Mission has assembled and catalogued a full listing of the many recommendations for remedial action made during the period under review by the various United Nations human rights mechanisms, among them the various special rapporteurs, the High Commissioner for Human Rights, the human rights treaty bodies, and the Commission of Inquiry, highlighting 115 of the most relevant in an indicative list.³³ Many provide specific guidance on action to be taken to improve the situation. The vast majority of them have yet to be implemented. In the period following the deployment of the United Nations/African Union peacekeeping/protection force, these recommendations, taken together with broad Darfur

³² See United Nations, *Sudan Consolidated Appeal: Work-plan 2007* (available at www.reliefweb.int).

³³ HLM-Darfur, *Compilation of Recommendations for the Government of the Sudan*, February 2007, available in the files of the Secretariat.

consultations and the findings of an updated United Nations World Bank Joint Assessment, could form the basis of a meaningful programme of assistance directed to addressing the human rights needs of Darfur.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

76. The High-Level Mission concludes that the situation of human rights in Darfur remains grave, and the corresponding needs profound. The situation is characterized by gross and systematic violations of human rights and grave breaches of international humanitarian law. War crimes and crimes against humanity continue across the region. The principal pattern is one of a violent counterinsurgency campaign waged by the Government of the Sudan in concert with Janjaweed/militia, and targeting mostly civilians. Rebel forces are also guilty of serious abuses of human rights and violations of humanitarian law. All parties to the conflict must recognize that applicable human rights and humanitarian law standards must be respected during internal armed conflict and that the “fog of war” is not an acceptable justification for violating these standards. While important steps have been taken by the international community, including the African Union and the United Nations, these have been largely resisted and obstructed, and have proven inadequate and ineffective. The needs identified by the Mission include immediate, effective protection of civilians, renewed progress toward peace, expanded humanitarian space, increased accountability for perpetrators, action to address root causes, meaningful compensation and redress for victims, and concerted efforts to implement the many existing recommendations of authoritative international human rights bodies. The Mission further concludes that the Government of the Sudan has manifestly failed to protect the population of Darfur from large-scale international crimes, and has itself orchestrated and participated in these crimes. As such, the solemn obligation of the international community to exercise its *responsibility to protect* has become evident and urgent.

B. Recommendations

1. Recommendations to the Human Rights Council

77. (a) **The Human Rights Council should remain seized of the situation in Darfur, regret the Government’s manifest failure in its responsibility to protect civilians, condemn the continuing violations, and call for effective protection for civilians, accountability for perpetrators (including through action by the ICC) and compensation and redress for victims.**

(b) **The Human Rights Council should establish a dedicated procedure or mechanism to monitor the situation of human rights in Darfur, to measure the degree of implementation of outstanding recommendations by relevant United Nations human rights mechanisms and reports (including the special procedures, the treaty bodies, the Commission of Inquiry report, the reports of the High Commissioner for Human Rights and other relevant recommendations) and to report regularly to the Council. The mechanism should work in close cooperation with the Special Rapporteur on the situation of human rights in the Sudan, whose mandate should be extended as required.**

(c) **The Human Rights Council should call for and actively support the establishment of a credible, independent national human rights commission for the Sudan, established in accordance with the Paris Principles and under the terms of the Interim National Constitution, with dedicated mandate, resources and capacity to address the grave situation in Darfur.**

2. Recommendations to the Government of the Sudan

(d) **The Government of the Sudan should cooperate fully in the deployment of the proposed UN/AU peacekeeping/protection force without further delay. It should remove all obstacles to the delivery of humanitarian assistance and abide scrupulously by the terms of the Moratorium on Restrictions on Humanitarian Work in Darfur and the Status of Forces Agreement. It should ensure the free and safe movement of human rights monitors, and facilitate the access of UNMIS human rights offices and ICRC officials to all detainees and prisoners. It should as well afford full cooperation to the International Criminal Court.**

(e) **The Government of the Sudan should fully comply with its obligations under international human rights and humanitarian law, as well as those voluntarily undertaken in the signing of political agreements relating to the Darfur conflict, (CPA, DPA, and others) and fully implement the many recommendations of United Nations human rights mechanisms and inquiries, still outstanding. Sudan should end the targeting of civilians in Darfur, cease all support for Janjaweed/militia forces, and proceed with the disarmament, demobilization and reintegration of such forces. It should hold perpetrators to account, facilitate the safe return of refugees and IDPs, and ensure compensation and redress for victims.**

(f) **The Government of the Sudan should advance the process of harmonization of all laws and policies with the Interim National Constitution and international human rights standards. It should work for the establishment of a credible, independent national human rights commission for the Sudan, established in accordance with the Paris Principles and under the terms of the Interim National Constitution, with dedicated resources and capacity to address the grave situation in Darfur. It should further create the necessary legislative framework and institutions for democratization and the holding of free and fair elections. It should also move toward putting in place fair and equitable policies and programmes to reverse decades-long discrimination and economic, political and cultural marginalization of the people of Darfur.**

(g) **The Government of the Sudan should cooperate in the convening of a national conference on peace, human rights and a common vision for the Sudan, with the participation of political parties, women's groups, human rights defenders, community representatives, tribal leaders, and a broad cross-section of civil society from across the country. The national conference should be supported and facilitated by the United Nations and the African Union.**

3. Recommendations to armed rebel movements in Darfur

(h) All armed rebels movements operating in and around Darfur should strictly observe and respect the requirements of international human rights and humanitarian law, take all necessary steps to clearly distinguish themselves from the civilian population, abstain from efforts to recruit fighters in IDP and refugee camps, cease all attacks against civilian and humanitarian targets, and ensure the free and safe access and movement of humanitarian personnel. All rebel movements should cooperate in good faith in the pursuit of peace.

4. Recommendations to the international community

(i) The Security Council should take urgent further action to ensure the effective protection of the civilian population of Darfur, including through the deployment of the proposed UN/AU peacekeeping/protection force and full cooperation with and support for the work of the International Criminal Court. All United Nations Security Council and African Union Peace and Security Council resolutions should be fully implemented, including those relating to travel bans and the freezing of funds, assets, and economic resources of those who commit violations.

(j) The General Assembly of the United Nations should request the compilation of a list of foreign companies that have an adverse impact on the situation of human rights in Darfur. The list should be published and periodically updated. In addition, the General Assembly should call upon all United Nations institutions and offices to abstain from entering into business transactions with any of the identified companies.

(k) The member States of the United Nations should urgently provide adequate funding and support for the United Nations support package to AMIS, for the deployment of the proposed United Nations/African Union peacekeeping/protection force, for adequate numbers of international human rights monitors, for the continuing humanitarian needs of Darfur, for the establishment of a credible independent national human rights commission, and for programmes of compensation and redress for victims in Darfur. Member States should also be prepared to prosecute individuals suspected of committing war crimes and crimes against humanity in Darfur through the exercise of universal jurisdiction in national courts outside of the Sudan.

(l) The international community should adopt a fully unified approach in addressing Darfur, supporting the joint efforts of the United Nations and African Union Envoys, and moving toward an expansion of the DPA process, to include all warring parties, as well as the representatives of civil society in Darfur. Particular attention must be paid to engaging women and women's organizations at all levels of the process.

(m) The international community should call for, support and facilitate the convening of a national conference on peace, human rights and a common vision for the Sudan, as proposed in paragraph (g), above.

(n) The international community should organize a regional conference, under the auspices of the United Nations and the African Union, with the participation of all neighbouring and other concerned States, on the safeguarding and promotion of peace and human rights in the region.

ANNEXES

Annex I

DECISION ADOPTED BY THE HUMAN RIGHTS COUNCIL AT ITS FOURTH SPECIAL SESSION

S-4/101. Situation of human rights in Darfur

At its 4th meeting, on 13 December 2006, the Human Rights Council decided, without a vote, to adopt the following text:

“The Human Rights Council,

- “1. *Expresses* its concern regarding the seriousness of the human rights and humanitarian situation in Darfur;
- “2. *Welcomes* the signing of the Darfur Peace Agreement, urges its full implementation, and calls upon parties who have not signed it to do so, and upon all parties to observe the ceasefire;
- “3. *Welcomes* the cooperation established by the Government of the Sudan with the Special Rapporteur on the situation of human rights in the Sudan and calls upon the Government to continue and intensify its cooperation with the Human Rights Council, its mechanisms, and the Office of the High Commissioner for Human Rights;
- “4. *Decides* to dispatch a High-Level Mission to assess the human rights situation in Darfur and the needs of the Sudan in this regard, comprising five highly qualified persons, to be appointed by the President of the Human Rights Council following consultation with the members of the Council; as well as the Special Rapporteur on the situation of human rights in the Sudan;
- “5. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all administrative, technical and logistical assistance required to enable the High-Level Mission to fulfil its mandate promptly and efficiently, in coordination with the President of the Human Rights Council and also requests the latter to consult as appropriate with the concerned country;
- “6. *Requests* the High-Level Mission to report to the Council at its fourth session.”

Annex II

TERMS OF REFERENCE OF THE HIGH-LEVEL MISSION TO DARFUR

On 13 December 2006, at its Fourth Special Session, the Human Rights Council adopted decision S-4/101 on the situation of human rights in Darfur, in which it decided to dispatch a High-Level Mission to assess the human rights situation in Darfur and the needs of the Sudan in this regard, and to report to the Council at its fourth session.

In accordance with the decision of the Human Rights Council, the High-Level Mission comprises five highly qualified persons, appointed by the President of the Council, as well as the Special Rapporteur on the situation of human rights in the Sudan. It is thus composed of Professor Jody Williams (Head of Mission), Professor Bertrand Ramcharan (Member), Honourable Mart Nutt (Member), H.E. Ambassador Makarim Wibisono, (Member), H.E. Ambassador Patrice Tonda, (Member), and Dr. Sima Samar, (Special Rapporteur). Pursuant to paragraph 5 of the same resolution, the Mission will be supported and accompanied by a team of qualified staff appointed by the High Commissioner for Human Rights.

The Mission will conduct its work inside and outside of the Sudan between 5 February and 15 March 2007, and thereafter will report to the fourth session of the Human Rights Council.

The High-Level Mission Members and staff shall enjoy the privileges and immunities accorded to them by the 1946 Convention on the Privileges and Immunities of the United Nations, the United Nations Charter, and other applicable agreements.

Annex III

HIGH-LEVEL MISSION ON THE SITUATION OF HUMAN RIGHTS IN DARFUR

Programme of Work

Geneva Programme (1)

Sunday 4/2

Arrival in Geneva

Monday 5/2

- 09.00-10.00 Introductions and briefings at Palais des Nations
- 10.00-10.15 Head of HLM Secretariat (Introduction, overview)
- 10.15-11.00 OHCHR, Sudan Desk (briefing on Sudan & Darfur)
- 11.00-11.10 OHCHR, (Administrative matters)
- 14.30-15.30 Geneva Institute for Human Rights
- 16.00-16.15 OHCHR, Executive Director, Commission of Inquiry for Darfur
- 16.15-16.30 OHCHR Gender and Women's Human Rights Unit
- 16.30-16.45 OHCHR Special Procedures Unit
- 17.00-18.00 UN Special Advisor on Prevention of Genocide
- 18.15-18.45 Meeting with High Commissioner for Human Rights

Head of the mission: meeting with the Ambassador of Sudan in Geneva

Tuesday 6/2

- 09.00-10.00 Human Rights Watch
- 10.00-11.00 Amnesty International
- 11.00-11.30 UNICEF
- 11.30-12.30 OCHA

Wednesday 7/2

- 09.30-10.00 Norwegian Refugee Council
- 10.00-11.00 Darfur Relief and Documentation Centre
- 11.30-12.30 Mission consultations
- 14.00-15.00 President of the Human Rights Council
- 15.00-16.00 Mission consultations
- 16.30-17.00 International Centre for Transitional Justice
- 17.00-18.00 UNHCR

Head of the mission: meeting with the Ambassador of Sudan in Geneva

Thursday 8/2

- 09.00-10.00 ICRC President and delegates
- 14.00-14.45 International Crisis Group
- 14.45-15.45 European Union Presidency
- 16.00-17.00 African Union

Head of the mission: meeting with the Ambassador of Sudan in Geneva

Friday 9/2

- 09.30-10.00 Consultations, academic researchers on Darfur
- 10.00-10.30 Predeployment Security Briefing
- 10.30-11.00 Mission consultations
- 11.00-11.45 Former UN Resident Coordinator in Sudan
- 11.45-12.45 Press briefing
- 14.00-15.00 Representatives of 6 international humanitarian organizations
- 15.00-17.00 Mission consultations

Saturday 10/2

06.50/07.00 Departure for Addis Ababa

Addis Ababa Programme

Saturday, 10/2

21.05/21.55 Arrival in Addis Ababa

Sunday, 11/2

Mission consultations

Monday, 12/2

09.00-10.15 Mission Consultations

10.15-11.15 Meeting with former Governor of Darfur

11.15-12.30 Senior Officials of the African Union Peace and Security Team

15.00-16.00 African Union Military Briefing

16.00-17.00 Consultations, academic researchers on Darfur

17.00-17.30 Consultations, academic researchers on Darfur

Tuesday, 13/2

09.00-10.15 Mission Consultations

10.15-11.30 Acting SRSG for Sudan and UNMIS representatives

12.00-12.15 ECA Deputy Executive Secretary

12.15-13.30 Representatives of ECA Working Group on Darfur

Wednesday, 14/2

A.m. Mission consultations

16.00-17.00 Sudanese Organization Against Torture

Thursday, 15/2

Travel to Chad

Chad Programme

Friday, 16/2

- 09.30-10.30 Working session
- 10.30-12.00 HLM preparations on research/interview techniques while in camps
- 14.00-15.00 Representatives of Suleiman Jamous
- 15.00-16.00 JEM and NRF representatives
- 16.00-19.00 Mission consultations

Saturday, 17/2

- 08.00 Depart from N'Djamena Airport to Abeche
- 09.30 Arrival in Abeche and transfer to Gaga Refugee Camp
- 11.30-14.30 Interviews with refugees from Darfur
- 14.30-16.00 Return to Abeche
- 16.00-19.30 Mission consultations

Sunday, 18/2

- 08.30 Depart for Farchana area
- 09.00-15.00 Interviews with refugees in Breidjing camp
- 15.00 Depart camp for Abeche
- 16.00-18.00 Meeting with UNHCR Protection staff in Abeche
- 18.00-19.30 UNICEF

Monday, 19/2

- 09.30 Depart Abeche Airport for N'Djamena
- 11.30 Arrival in N'Djamena
- 15.00-17.00 Meeting with the UN Country Team
- 17.00-20.00 Mission consultations
- 00.00 Departure for Geneva

Tuesday, 20/2

Arrival in Geneva

Geneva Programme (2)

Wednesday, 21/2-Friday, 23/2

Data compilation and review

Monday, 26/2

Reconvening of Mission members in Geneva

Consultations and report writing

Tuesday, 27/2

Consultations and report writing

Wednesday, 28/2

Consultations and report writing

Teleconference with Mr. Suleiman Jamous

Thursday, 1/3

Consultations and report writing

UN Special Envoy Eliasson and AU Special Envoy Salim

Friday, 2/3

Consultation and report writing

Annex IV

LIST OF KEY DOCUMENTS CONSULTED

United Nations Documents

1. OHCHR, Compilation of obligations and commitments by the Sudan on Darfur, 2007
2. OHCHR, Compilation of recommendations made to the Sudan on Darfur, 2007
3. OHCHR, Third Periodic report on the Human Rights Situation in Sudan, April 2006
4. OHCHR, Fourth Periodic Report on the Human Rights Situation in Sudan, July 2006
5. OHCHR, Sixth Periodic Report on the Human Rights Situation in Sudan, November 2006
6. OHCHR, Fifth Periodic Report on the Human Rights Situation in Sudan, October 2006
7. OHCHR, Report of the commission on Human Right on the situation of human rights in Darfur region of the Sudan, E/CN.4/2005/3, May 2004
8. OHCHR, Briefing Paper for the Human Rights Council special session on the human rights situation in Darfur, December 2006
9. OHCHR, Briefing note for the High Level Mission on the status of Darfur-specific recommendations made by UN Special Procedures, February 2007
10. United Nations, Monthly reports of the Secretary-General on Darfur (15 reports between April 2005 and February 2007)
11. United Nations, Monthly reports of the Secretary-General on the Sudan (10 reports between April 2005 and February 2007)
12. United Nations, Reports of the Secretary-General on the Sudan pursuant to paragraphs 6, 13 and 16 of Security Council resolution 1556(2004), paragraph 15 of resolution 1564 (2004) and paragraph 17 of resolution 1574 (2004) (S/2005/10 (January 2005 to December 2006)
13. United Nations, Reports of the Special Rapporteur on the human rights situation in the Sudan, E/CN.4/2006/111, January 2006 and A/61/469, September 2006
14. United Nations, Report of the Representative of the Secretary-General on the human rights of internally displaced persons - Mission to Sudan, E/CN.4/2006/71/Add.6, February 2006
15. United Nations, Letter from Mr. Juan E. Mendez, Special Adviser to the Secretary-General on the Prevention of Genocide addressed to the President of the Human Rights Council, A/HRC/S-4/3, December 2006

16. United Nations, Letter from Ms. Sima Samar, Special Rapporteur on the situation of human rights in the Sudan, addressed to the President of the Human Rights Council, A/HRC/S-4/4, December 2006
17. United Nations, Report of the Secretary-General on Sudan, S/2005/579, September 2005
18. United Nations, Report of the Secretary-General on United Nations assistance to the African Union Mission in the Sudan S/2005/285, May 2005
19. Letter from Mr. Antonio Cassese, former Chairperson of the International Commission of Inquiry on Darfur addressed to the President of the Human Rights Council, 7 December 2006
20. United Nations, Report of the Secretary-General on children and armed conflict in the Sudan S/2006/662, August 2006
21. United Nations, Report of the Secretary-General on children and armed conflict in the Sudan, S/2006/665, August 2006
22. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January 2005
23. United Nations Security Council resolutions (1679/2006), 1706/2006, 1709/2006, 1713/2006, 1714/2006
24. United Nations, Reports of the Panel of Experts established pursuant to paragraph 3 of resolution 1591 (2005) concerning the Sudan, S/2006/65, January 2006, S/2006/250 of April 2006, and S/2006/795 of October 2006
25. Report of the Secretary-General on Chad and the Central African Republic (S/2006/1019), 2 December 2006
26. UN Economic Commission for Africa, Causes and background to the conflict in Darfur Region - Background paper prepared for presentation to the Consultative Meeting of African Parliamentarians on Darfur
27. UNMIS Human Rights Section, Briefing paper to the HLM, February 2007
28. UNMIS Political Affairs Section, Briefing paper for the High Level Mission, February 2007
29. UNMIS Child Protection Unit, Note for HLM on children in Darfur, February 2007
30. OCHA, Geneva and field briefings to the High Level Mission to Darfur, February 2007
31. UNHCR, Geneva and field briefings to the High Level Mission to Darfur, February 2007

32. UNICEF, Geneva and field briefings for the High Level Mission to Darfur, February 2007
33. OCHA, OCHA Briefing Book on Chad

Peace Agreements and related materials

34. Comprehensive Peace Agreement, 20 July 2002
35. Darfur Peace Agreement, 5 May 2006
36. UNMIS, CPA Monitor, 2006 (October, November and December issues)
37. UNMIS, DPA Monitor, 2006 (October, November and December issues)

International Criminal Court (ICC)

38. Statement by the Prosecutor of the International Criminal Court to the UN Security Council, December 2006
39. Fourth report of the Prosecutor of the International Criminal Court to the UN Security Council, December 2006
40. Fifth report of the Prosecutor to the Assembly of State Parties, December 2006

Materials produced by the Government of Sudan

41. Salient facts about Darfur, Sudanese Government, 2006

African Union documents

42. AU, Report of the Chairperson of the Commission on the situation in Darfur to the Peace and Security Council, September 2006
43. AU, Communiqué of the 66th meeting of the Peace and Security Council to the UN Security Council, November 2006
44. AU-led joint assessment mission: 10-20 December 2005, the African Union and the Conflict in the Darfur Region of the Sudan- Meetings of the PSC, Addis Ababa, 2004-2006
