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

**Killing and injuring of civilians on 25 August 2008 by government security forces:  
Kalma IDP camp, South Darfur, Sudan**



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



to the Nyala Teaching Hospital while 59 victims were treated at NGO medical clinics located in the camp. All of the 49 injured evacuated by UNAMID received treatment for gunshot injuries.

The findings indicated that the Government security forces committed violations of international human rights law against the civilian population of Kalma IDP camp. It was established that the security forces used lethal force in an unnecessary, disproportionate and therefore unlawful manner. Even if, as the Sudanese government officials have alleged, armed elements fired from behind the IDPs, law enforcement and other security forces opened fire on civilians when it was avoidable<sup>2</sup>. This amounts to a violation of the prohibition on arbitrary deprivation of life and constitutes a failure by the state to protect the right to life.

UNAMID could not confirm statements by the Government indicating that armed elements were using the IDPs to prevent the security forces from entering the camp. UNAMID was unable to verify the allegations made by the Government that armed elements from within the camp opened fire on governmental security forces, and that seven military personnel were injured by gunfire, thus compelling the security forces to respond in a purely defensive manner. The Government did not permit UNAMID access to the alleged injured military personnel nor provide details about the nature of the injuries.

In the aftermath of the incident, UNAMID issued a statement condemning “the excessive, disproportionate use of lethal force by the GoS security forces against civilians, which violated their human rights and resulted in unacceptable casualties”<sup>3</sup>. Further to this, on 1 September 2008, the Joint Special Representative (JSR) of UNAMID met in Khartoum with Sudan’s Foreign Ministry Undersecretary, Dr. Mutirf Siddiq and expressed UNAMID’s “grave concern” over the tragic events at Kalma camp. For his part, Dr. Siddiq expressed the regrets of the Government of the Sudan over the incident, adding that an investigation was underway, the outcome of which will be shared with UNAMID<sup>4</sup>.

The findings of this report are based upon on-site visits conducted at Kalma camp as well as interviews with victims, witnesses, community leaders, IDP sheiks, tribal leaders, NGOs, medical practitioners, UNAMID police and military, governmental authorities and security forces, including the NISS and police, by UNAMID. Cooperation provided by the Government of the Sudan enabled UNAMID to conduct fact-finding at Kalma IDP camp and to meet with governmental authorities, particularly in Nyala.

## **Background and context**

The incident at Kalma IDP camp should be analysed in the context of the long-standing tension between the residents of the camp and the Government of Sudan regarding control of the camp. South Darfur governmental authorities have frequently asserted that there is a presence of political, criminal and armed movement elements within the camp. Kalma camp was established in February 2004. As one of the largest camps in Darfur, the total population of Kalma camp is estimated at approximately 80,000 individuals: the majority being from the Fur, followed by the Dajo, Zaghawa Massalit, Birgit and Tunjer tribes. The camp is one to two kilometres’ long and extends seven kilometres’ along the railway track from east to west. The camp is located 15 km east of Nyala and

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<sup>2</sup> See Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 1990).

<sup>3</sup> See UNAMID Press Release, 26 August 2008, “UNAMID condemns use of excessive force at Kalma IDP camp in South Darfur”.

<sup>4</sup> See UNAMID Press Release, 1 September 2008, “UNAMID Joint Special Representative expresses grave concern to Government of Sudan over Kalma incidents”

is divided into eight sectors; each dominated by one or more ethnic group and headed by a sheik nominated by the IDPs in the area. The camp has become tribally fragmented and is plagued by internal divisions and quasi-urban problems that often reflect the political aspirations of the different ethnic groups living in it.

Living conditions in the camp are very poor due to overcrowding, water and food shortages and the lack of basic sanitation infrastructure, which at times have been exacerbated by measures introduced by government on security grounds. For example, prior to the incident IDPs and humanitarian agencies were often unable to operate the pumps to draw water from the wells due to Government imposed fuel restrictions, forcing them at times to utilize unclean water sources, such as rainwater. In some of these circumstances, the measures were lifted at the intervention of UNAMID.

The Government maintains a presence approximately two kilometres from the camp, through two checkpoints (one National Intelligence and Security Services (NISS) and the other of the Humanitarian Aid Commission (HAC)).

Prior to the incident, UNAMID police maintained a daily presence at Kalma camp<sup>5</sup>. Following the incident and requests by IDP leadership for increased UNAMID protection, on 13 September 2008, UNAMID began maintaining a 24/7 presence in the camp.

The Government has stated that supporters of Sudanese Liberation Army/Abdul Wahid faction (SLA/AW), Sudanese Liberation Army/Minni Minnawi faction (SLA/MM) and a much smaller presence of Justice and Equality Movement (JEM) reportedly live within the camp<sup>6</sup>.

According to the Advisory Council for Human Rights of the Government of the Sudan (ACHR)<sup>7</sup>, between 2004 and August 2008, the South Darfur State authorities registered 75 cases of criminal offenses, including numerous acts of killings and armed robberies, which are believed to have been perpetrated by gangs or individuals sheltered or living within the camp.

Since the establishment of Kalma camp, there have been several violent exchanges between armed elements within the camp and Government security forces. For example, in November 2004 members of a movement attacked the police compound outside of Kalma camp, killing 25 police officers. On 21 August 2007, the Nyala police conducted an operation at Kalma camp in which at least 35 camp residents were arrested on suspicion of alleged involvement in armed attacks on two police stations in nearby Al Salaam IDP camp on 15 August 2007 and in Um Kunduwa on 16 August 2007. The police stated that the attackers later sought refuge and hid stolen weapons in Kalma camp. Credible, independent sources have reported the presence of light and heavy arms in Kalma camp although this information has not been verified by UNAMID.

The conflict between the Government and armed elements has exacerbated tensions between the IDP community and the Government. This tension may stem from attempts by the Government to uproot armed elements as well as significant abuses at the hands of the Government forces and its allied militia. These abuses include rape, arbitrary arrest and detention, assault, intimidation, shooting incidents, commercial bans and other forms of violence. Aid entities conducting humanitarian assistance activities in Kalma camp have faced harassment, restricted movement or entry into the camp, visa denial and other impediments impacting their ability to provide assistance

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<sup>5</sup> Prior to the incident, UNAMID Police maintained a daily, but not overnight presence at Kalma IDP camp, and thus were not present during the attack.

<sup>6</sup> Of these three movements, only one (SLA/MM) is a signatory to the Darfur Peace Agreement (DPA) signed on 5 May 2006.

<sup>7</sup> Letter to UNAMID from the Advisory Council for Human Rights, 28/12/ 2008 , Index: و/ع/ق !

in the camp. The government has also imposed fuel cuts from time to time on the camp on the grounds that fuel supplies destined for humanitarian purposes are being diverted to the movements.

Efforts to dismantle the Kalma camp or break it into smaller more manageable camps began in November 2004 at the suggestion of the Humanitarian Aid Commission. In June 2005, humanitarian agencies initiated an information campaign for voluntary relocation from Kalma Camp to Al Salaam camp, which was rejected by the Kalma IDPs due to their concern that this was the initial stages of a forced relocation.

On 21 August 2008, Judge Kamal El-Deen Ali Mohamed El-Zaki from the Nyala Criminal Court, issued a General Search Order authorizing the police to search “all centres of Kalma IDP camp” for “arms, drugs, stolen property, detainees and anything which violates the law”. Although the warrant refers to suspicion of crimes related to unlawful possession of weapons, kidnapping, receipt of stolen property, theft and robbery, the warrant does not refer to specific individuals, locations or previously committed crimes, and appears to be a blanket warrant to search the entire camp.<sup>8</sup>

In more general terms, the lack of protection of civilians, and in particular of IDPs, remains one of the most salient concerns in Darfur. Throughout Darfur, increased presence of Government security forces and armed movements in and around IDP camps has resulted in heightened vulnerability of the IDP community. Following the Kalma incident, IDP leaders in several camps expressed their concern to UNAMID that similar operations would be conducted in other IDP camps throughout Darfur.

The information in this report is based on the work of UNAMID which monitors the implementation by the Government of the Sudan of its obligations under international law and international humanitarian law, in line with UNAMID’s mandate. UNAMID also monitors respect by other parties to the Darfur conflict to their obligations under international law. In Darfur, UNAMID conducts field investigations and on site visits; interviews witnesses and victims; meets with officials of the Government of the Sudan, political and tribal leaders, representatives of UNAMID, UN agencies, and other stakeholders. To ensure reliability, information is cross-checked with other sources. UNAMID regularly engages in dialogue with local, regional and national authorities to obtain information, raise human rights concerns and recommend corrective and preventative actions. UNAMID also provides capacity building on human rights to Government institutions, civil society and UN agencies.

### **Incident details**

The South Darfur Police chief informed UNAMID that at approximately 05:00 am on 25 August 2008, 1,000 members of Government security forces comprised of NISS, police forces and SAF were positioned around Kalma IDP camp in South Darfur in order to execute the General Search Order handed by the Nyala Criminal Court.<sup>9</sup>

IDPs and community leaders in the camp reported that approximately one or two days prior to 25 August, they received information through unofficial sources that Governmental forces were planning to conduct an operation in the camp. Although some IDPs reported that they had heard that the Government would search the camp for weapons, others, including sector sheiks, mentioned that they had heard that the security forces would attack the camp for the purpose of

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<sup>8</sup> Article 86.2 of the 1991 Criminal Procedure Act states that the Magistrate, at any time, may upon the request of the competent body, issue an order for conducting general search of any places, or persons, whenever he deems that the same helps in the purposes of crime detection.

<sup>9</sup> UNAMID received written notification (in Arabic) from the Government of the planned search operation on the evening of 24 August. The operation began at approximately 0500 on 25 August 2008.

dismantlement. The Government informed UNAMID that the IDPs had received advanced notice of the operation.

Most IDPs interviewed reported that on 25 August, they woke up at approximately 04:00am<sup>10</sup> from noise either from vehicle movement or from the movement of other IDPs. IDPs consistently stated that they heard other camp residents shouting that the Government forces were trying to enter the camp near the southern side of the railway tracks<sup>11</sup>. At this time, approximately 63 vehicles, believed to consist of police, military and NISS forces were stationed on the south side of the railway track, and then proceeded to advance towards the northern side of the camp.

Sources interviewed consistently reported that a crowd of women, men and child IDPs gathered on the northern side of the railway tracks in an area approximately 60 metres long and 30 metres wide. Reportedly, there were between 1,000 and 6,000 IDPs gathered in this area. Witnesses reported that armed Government security forces wearing police or military uniforms stood approximately 10 metres back on the other side of the railway tracks. Heated verbal exchanges between IDPs and the security forces ensued with the latter reportedly insisting upon entry<sup>12</sup> to the camp with the IDPs refusing. Some witnesses stated that they heard some security forces personnel shout "*let us in or we will destroy you*".

Although some IDPs had stated that camp leaders had reportedly instructed and encouraged a large number of women and children to line up against the northern side of the railway tracks to prevent the Government forces from advancing, most IDPs reported that they independently left their homes to walk toward the area where the Government forces were stationed.

South Darfur Government sources and representatives of governmental security forces indicated to UNAMID and issued public statements<sup>13</sup> that IDPs were used by armed elements in the camp to prevent the security forces from advancing. According to Sudanese Government officials, IDPs armed with spears and knives attacked the police while armed elements opened fire at the security forces from behind the demonstrating IDPs. The Government reported that one SAF soldier was killed and seven suffered gunshot injuries during the incident. IDPs disputed this position and reported that although there were IDPs carrying knives and sticks, none of them, or other persons from Kalma camp, had carried or used firearms. UNAMID could not ascertain if armed elements were at the time in the camp or not.

The shooting reportedly began between 08:00am and 08:30am and lasted approximately two minutes. Several IDPs informed UNAMID that security forces first fired warning shots, and opened fire at the crowd of IDPs. Various witnesses informed UNAMID that Rocket Propelled Grenades (RPGs), mounted heavy machine guns and light weapons were used by the Government security forces against the IDPs. On 2 September UNAMID observed approximately one hundred casings from a heavy machine gun (normally mounted on the back of a technical vehicle) and from light weapons such as AK-47s<sup>14</sup>.

UNAMID confirmed that 33 IDPs were killed during the incident: 30 died immediately as a result of the firing by governmental security forces while two men, ages 20 and 29, died in the week

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<sup>10</sup> Time accounts provided may vary; residents of Kalma camp do not follow official Sudanese time.

<sup>11</sup> A railway track runs adjacent to the camp. The space between the tracks and the camp is approximately 20 metres.

<sup>12</sup> Kalma camp is not surrounded by a fence or any other physical barrier. Access to the camp may be achieved from many areas around the camp.

<sup>13</sup> 'Security Committee of South Darfur Issues Statement on Incidents Happened at Kalma Camp on Monday Morning', 25 August 2008, (SUNA), Khartoum. [http://www.suna-sd.net/Index\\_EN.htm](http://www.suna-sd.net/Index_EN.htm) (last visited on 15 September 2008)

<sup>14</sup> An IDP living in the vicinity of the incident site had collected the casings from the incident site.

following the incident from their injuries.<sup>15</sup> A 75 year old woman drowned in a pool of water as she was attempting to flee from the shooting on 25 August, bringing the total number of deceased to 33. The 33 deceased consist of nine children ages 11-16, 10 women and 14 men<sup>16</sup>.

IDP leaders have reported the number of injured civilians to be at least 117 and UNAMID confirmed that 108 IDPs were injured and hospitalized at various healthcare facilities. Of the 108 confirmed injured, 38 were children, 25 were women and 45 were men. Following the attack, the injured were moved by IDPs to the NGO medical clinics at the camp. After IDP and community leaders within the camp requested UNAMID to provide assistance, UNAMID evacuated 49 victims, including 20 children and 11 women, three of whom were pregnant, to the Nyala Teaching hospital<sup>17</sup>. All of the 49 injured evacuated by UNAMID received treatment at Nyala Teaching Hospital for gunshot wounds<sup>18</sup>. The other 59 injured IDPs (including 18 children and 14 women) received treatment at NGO clinics in Kalma camp. All reported injuries were sustained in the area near the northern side of the railway tracks where Government security forces opened fire on the crowd.

Government sources informed UNAMID that 14 security force personnel (seven military and seven police) sustained injuries. It is important to note that the seven police casualties sustained injuries several hours after the shooting incident while the seven military allegedly sustained gunshot injuries during the incident. According to the Government of South Darfur, military personnel sustained injuries as a result of fire coming from within the camp. UNAMID has not been able to verify this allegation by the Government of injured military personnel since the Government has not yet provided UNAMID with further information about the nature of the injuries, nor the opportunity to interview the military personnel as requested.

On 15 September UNAMID interviewed the seven injured policemen who had sustained minor injuries during an assault by IDPs armed with non-lethal weapons. The police reported that at approximately 12:00pm, several hours after the incident, they were en route to Kalma when their vehicle became stuck in the mud. According to the police, a large crowd of IDPs gathered and assaulted them with stones, sticks, knives and metal bars. The police were reportedly unarmed. After another police vehicle approached the area, the IDPs reportedly fled. Government officials confirmed that three IDPs had been arrested after this assault on 25 August.

UNAMID received reports of damage to NGO property in the camp and verified the damage caused to one NGO centre; parts of its roof had been burnt.

After the shooting, the Government security forces did not proceed to enter the camp to execute the search warrant and no further attempts were made on 25 August by the security forces to enter the camp. Some security forces remained in position outside the camp for two days and then left the area.

In response to the Government's actions during the 25 August incident, 16 people have reportedly resigned from their positions with the Government in South Darfur, including two members of the

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<sup>15</sup> IDP leaders reported to UNAMID that the total number of deceased is 37, but these figures have not been confirmed.

<sup>16</sup> Three of the 11 adult males deceased were aged 18.

<sup>17</sup> A UNAMID team and medical personnel from humanitarian agencies sent to the area to evacuate casualties and provide assistance was stopped on its way to Kalma at a Government National Security check-point, which demanded a written authorization to proceed. While the UNAMID team was eventually allowed to proceed, it took a further two hours for the NGO medical team to be authorized by the Government to proceed to the camp.

<sup>18</sup> UN personnel with experience in the treatment of battlefield injuries viewed photos of the injured and reported that some of the injured had topical injuries consistent with shrapnel wounds.

South Darfur State Parliament, six National Congress Party (NCP) members and tribal leaders from the Native Administration.

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

On 3 December 2008, UNAMID provided the Wali of South Darfur State and the Advisory Council for Human Rights of the Government of the Sudan (ACHR) a draft version of the report for comment. UNAMID received input from His Excellency Ali Mahmoud Mohamad, Wali of South Darfur State, Government of Sudan on 14 December 2008<sup>19</sup> and received input from the ACHR on 6 January 2009<sup>20</sup>. The South Darfur Government reiterated the lawful basis of the search operation at Kalma IDP Camp and explained that the operation stemmed from evidence establishing the presence of arms, drugs and other forms of organized crime at the camp. The Government of Sudan affirmed that they only used light weapons to defend themselves after being fired upon by snipers from inside the camp.

The ACHR inputs provided to UNAMID confirm that 32 men, women and children were killed during the search operation at Kalma Camp. The ACHR also provided details about the camp and emphasized the history of criminality by individuals and gangs allegedly living within Kalma IDP camp and the security threat posed by the camp.

In addition to the inputs provided by the Wali of South Darfur, various Governmental officials have indicated that the objective of the operation was to seize weapons, ammunition, drugs, stolen property and other unlawful materials, and to arrest 'criminals'. During a meeting between UNAMID and the NISS Director for South Darfur on 25 August, and a meeting with the South Darfur Chief of Police on 7 September, authorities stated that the IDPs had received advanced notice of the operation and that they had taken measures to prevent the Government from executing the warrant. The NISS Director stated that the Government forces were forced to respond to defend themselves from the attack launched by armed elements behind the demonstrating IDPs. The South Darfur government further stated in its response that Government forces initially fired warning shots in response to fire received from snipers positioned in trees inside the camp. Government forces only opened fire in self-defence out of necessity and did not target the crowd of IDPs but fired toward snipers positioned away from the crowd.

Officials of the South Darfur government have stated that the response of the security forces was not excessive and was proportional to the threat faced by the Governmental security forces. Authorities have stated that the camp is no longer an IDP camp, but a rebel camp with different affiliates present including members of SLA/Abdul Wahid, SLA/Abdul Shafi, SLA/Minnawi Minnawi, SLA/Unity. The NISS Director stated that the authorities plan to continue efforts to apprehend criminals and seize weapons, ammunition and drugs. The officials also confirmed that the security forces did not achieve any of the objectives of the operation as they did not enter the camp. On 25 August, the Security Committee of South Darfur State issued a public statement consistent with the version of events relayed by the NISS Director and the police chief<sup>21</sup>. In their inputs provided to UNAMID in December 2008, the Government of South Darfur confirmed that the 49 persons evacuated by UNAMID received treatment at the Nyala Hospital but expressed doubt that 33 people were killed during the operation.

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<sup>19</sup> File number: 1/1/1/OM/DGO, dated 7 December 2008.

<sup>20</sup> Dated 28 December 2008, Index: و/ع/ق 1

<sup>21</sup> 'Security Committee of South Darfur Issues Statement on Incidents Happened at Kalma Camp on Monday Morning', 25 August 2008, (SUNA), Khartoum. [http://www.sunasd.net/Index\\_EN.htm](http://www.sunasd.net/Index_EN.htm) (last visited on 15 September 2008)

On 28 August, the State Deputy Wali for South Darfur issued a decree establishing a Commission of Inquiry to investigate the events that took place at Kalma camp. The seven-member Commission is chaired by a senior governmental advisor, with the South Darfur Human Rights Commissioner acting as the rapporteur. Other members of the Commission include the State Cabinet Commissioner, State prosecutor and a representative from the police, SAF and NISS. UNAMID has been informed by a South Darfur state official that the commission will complete its task by the end of October and present its report to the Wali of the State.

In addition to the state-level Commission of Inquiry initiated by the South Darfur Deputy Wali, on 2 September, the Sudanese Minister of Justice issued a decree which established a national-level Investigation Committee to investigate the events in Kalma. This Committee is expected to file weekly reports and submit its findings to the Justice Minister. It is not yet clear how the two investigation bodies will interface. The Investigation Committee arrived in Nyala on 9 September to begin its investigation and reportedly spent four days there.

According to the Government of South Darfur, the two committees established to investigate the 25 August incident, as well as other neutral investigative bodies, have completed their investigations and presented their recommendations to the appropriate authorities. No further details are provided in the response about the outcome of the investigations.

On 4 September that a high-level government delegation, comprised of the Federal Minister of Interior, the Federal Minister of Religious Affairs and Waqfs, the Wali of Khartoum State and other dignitaries, had visited Nyala. The delegation reportedly expressed their sympathy to the families of the victims of the incident in Kalma IDP camp and promised to pay compensation to the families of IDPs killed. The delegation reportedly requested that the injured receive appropriate medical treatment and called for an immediate investigation into the incident and for those responsible to be brought to justice. On 21 October, the senior official told UNAMID that an investigative commission has been established at the national level but the Government is yet to carry through its promises to offer reparations and redress to the victims.

### **Human rights framework**

The Kalma incident should be considered in the context of the State's obligation under Sudanese and international human rights law to respect the right to life. There is no doubt that any State has the right and the duty to enforce the law, and protect its citizens from the spread of unlicensed arms, and other dangerous material. Nevertheless, any use of force by law enforcement officials has to be analysed against their human rights law obligations.

#### *a) National law:*

Sudanese law restricts the use of force and firearms by law enforcement officials during arrest to specific situations defined by law. In particular, the principles of necessity and proportionality in the use of force by law enforcement officials are expressly stated in Article 9 of the 2008 Police Forces Act<sup>22</sup>.

In addition to the 2005 Interim National Constitution of Sudan acknowledging the State's obligation to fulfil its commitments under international law, Chapter II, Part III of the 2007 Armed Forces Act expressly punishes members of armed groups, including the Police or National Security,

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<sup>22</sup> "In order to implement the duties and obligations provided for in this act, the police forces, in accordance with the provisions of the Criminal Procedure Act or any other law in force shall have the following powers: (j) use of reasonable force according to the safeguards determined by the Criminal Procedure Act, whenever it is deemed necessary."

for attacks against civilians, including killing or injuring of persons enjoying special protection, such as civilians<sup>23</sup>.

Despite these legal provisions, both the 2008 Police Act and 2007 Armed Forces Act grant immunity for offences committed by military and police members during the course of their duties. Additionally, the 1991 Sudanese Criminal Act contains provisions which may protect police and security forces from prosecution<sup>24</sup>. Both the Armed Forces Act and Police Act, however, provide procedures for the waiving of immunity, with the President of the Republic and Minister of Interior (respectively) being authorized to lift immunity<sup>25</sup>.

#### *b) International human rights law*

Under international human rights law, the right to life is a fundamental and non-derogable right which must be protected at all times. The right to life is enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Article 6 (1) of the ICCPR stipulates: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Under the ICCPR, this provision cannot be limited or derogated from under any circumstances, even in a time of public emergency that threatens the life of the nation. Sudan is a State party to the ICCPR, having ratified it on 18 March 1986.

Law enforcement officials are legally empowered to use lethal force in some circumstances. However, arbitrary and unlawful deprivation of life is expressly prohibited under international human rights law. While international law permits the use of force, including lethal force by law enforcement officials, it confines this possibility to “only when strictly necessary and to the extent required for the performance of their duty<sup>26</sup>”. Basic principles of the use of force during law enforcement operations demand the observation, at all times, of proportionality, legality, accountability and necessity.<sup>27</sup> In particular, Principle 9 of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.<sup>28</sup>

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<sup>23</sup> 2007 Armed Forces Act, Chapter II, Part III of the Act (articles 154 and 155).

<sup>24</sup> Article 11 of the 1991 Criminal Act states that “No act shall be deemed an offence if done by a person who is bound, or authorized to do it by law, or by a legal order issued from a competent authority, or who believes in good faith that he is bound, or authorized to do so”.

<sup>25</sup> Article 34 (2) of the 2007 Armed Forces Act states that “No proceedings shall be taken against any officer, or soldier, who commits an act, which constitutes an offence, which occurs in the course, or by reason of his/her discharge of his/her duties, or carrying out of any lawful order, issued thereto in his capacity thereof, and he/she shall not be tried, save upon permission, issued by the President of the Republic, or whoever he may authorize”. Article 45 (1) of the 2008 Police Act stipulates that “no, any criminal procedures shall be taken against any Policeman, who committed an act which is deemed to be an offence, during or because of executing his official duties and he may not be tried except by a permission issued by the Minister of Interior or whoever authorizes”.

<sup>26</sup> Article 3, Code of Conduct for Law Enforcement Officials

<sup>27</sup> See Articles 2, 3, 5 and 8 of the Code of Conduct for Law Enforcement Officials and Articles 1, 4, 5, 7, 15, 19, 20, 23, 24 and 26 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>28</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The state's obligation to protect life includes the responsibility to protect the right to life of security forces, namely, through ensuring that law enforcement officials have the necessary training, equipment, planning and command and control to ensure that the lives of law enforcement officials are duly protected. Properly equipped and effectively trained security forces will help prevent the unnecessary use of lethal force.

## **Conclusion**

OHCHR and UNAMID conclude that, despite the General Search Order for the operation carried out in Kalma and allegations of weapons and ammunition within the camp, the Government security forces failed to protect the right to life according to their obligations under international human rights law. The Government security forces used lethal force in an unnecessary, disproportionate and therefore unlawful manner when they opened fire into the crowd of IDPs.

The principle of proportionality is enshrined in international human rights law. The use of force during security operations must be proportionate to the legitimate objective to be achieved. Obligation to avoid or, at the very least, to minimize 'collateral damage' during operations and to abstain from attacks with the potential for causing disproportionate impact to civilian communities are established rules of international human rights law relating to law enforcement and the use of force.

The findings support the conclusion that Governmental security forces failed to abide by international law principles of proportionality and of necessity. Witness testimonies confirmed that security forces shot arbitrarily at a large crowd of IDPs including women and children. Furthermore, it did not appear that the crowd posed any imminent threat to the security forces before they opened fire on the crowd.

Security forces, particularly police, are empowered by law to use force in order to protect the right to life. Police may, however, employ force only when necessary, and for a legitimate purpose when peaceful means have not and will not succeed. With the Kalma incident, the police and security forces failed to employ alternative peaceful means of crowd control before resorting to the use of lethal force. Arbitrary and unlawful use of force undermines the ability of the state to protect the fundamental right to life. The decision taken by security forces to open fire on a crowd of civilians amounts to a violation of the prohibition on arbitrary deprivation of life and constitutes a failure by the state to protect the right to life. Thus, in this particular case, even if provoked by some elements within the crowd, classifying a group of IDPs armed with mostly sticks and knives as a legitimate threat to life, and opening fire at the crowd, is contradictory to the principles of necessity, legality and proportionality.

## **Recommendations**

### **To the Government of the Sudan**

- As committed, ensure that investigations by state and national level investigative bodies are conducted in an impartial, transparent and comprehensive manner, in accordance with national and international human rights standards. The findings of all investigative bodies should be made public;
- Take substantive steps and the necessary measures to ensure that those who were involved directly, or through command responsibility, in serious human rights violations, during the 25 August 2008 incident, are investigated. Where evidence is found indicating their involvement in crimes, they should be prosecuted and punished. The Government should also take steps to ensure that the immunity from prosecution granted to officers for offences committed during performance of their duties is lifted;

- Ensure that victims and their families are provided with reparations and redress. Witnesses and victims of the incident should be duly protected;
- Conduct a thorough assessment of current operational practices aiming to review policy and ‘on the ground’ compliance with existing standards relating to the use of force and rules of engagement;
- Develop strategies to enable the improvement of conduct of security forces during operations, such as conducting better preparatory work, contingency planning and lawful use of force during operations;
- Implement the necessary policy, procedures and training to ensure compliance with basic principles of law enforcement and security relating to use of force, search procedures and investigation;
- Ensure that measures be taken to ensure that the Sudanese security forces are trained in and equipped for use of non-lethal measures which may be used in situations where lethal force is not required, e.g. riot shields;
- Ensure the unimpeded access of UNAMID and humanitarian agencies to populations under attack or under imminent threat of attack, or requiring medical or other urgent humanitarian assistance.
- Fully implement all the outstanding recommendations for human rights protection, humanitarian assistance, accountability and justice and monitoring compiled by the UN Group of Experts on Darfur .

#### **To IDP leaders**

- Review the factors motivating the most vulnerable IDPs from Kalma camp, namely, children, women (including pregnant women) and the elderly to assemble in an area facing a large number of heavily armed security forces; and
- Work with the Government, UNAMID and other relevant organizations to take the necessary measures to ensure that Kalma camp and other IDP camps function as weapons-free and protected civilian camps.

#### **To the international community**

- Develop strategies and mechanisms to create bridges between IDPs, humanitarian interlocutors and relevant Government bodies to ensure that IDP camps function as protected civilian communities. UNAMID should continue to play a leading role in this regard;
- As established at Kalma IDP camp after the incident, UNAMID should create task forces and maintain an increased presence through 24 hour patrols in other IDP camps of Darfur to serve as preventive measures to any future incidents of violence;
- Provide, without further delay, all the necessary resources, particularly the troops and logistical needs, to the newly established African Union – United Nations Hybrid Operation in Darfur (UNAMID), so that it can fulfil its mandate to protect civilians.