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REPORT OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Situation of human rights in the Darfur region of the Sudan

**LETTER FROM THE ACTING UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS TO THE CHAIRPERSON OF THE COMMISSION
ON HUMAN RIGHTS**

Dear Mr. Chairman,

The Office of High Commissioner for Human Rights took the lead at the outset of the sixtieth session of the Commission on Human Rights in seeking to look into reports of massive and criminal violations of human rights in Darfur, in western Sudan.

As soon as we became alerted, I arranged for colleagues in the Office to start gathering information immediately with a view to the submission of an urgent report to the Commission. I approached the Permanent Mission of the Sudan to the United Nations Office at Geneva with a request for information and I followed up by asking for the concurrence of the Government for the dispatch of an urgent mission to Khartoum and Darfur.

The Sudanese officials advised me that my request for information and for the dispatch of a mission to the Sudan was being studied in Khartoum. In view of the urgency of the matter I arranged for a team of five officers to visit the border areas of Chad to where refugees from Darfur had fled. The mission spent a week interviewing the refugees and submitted a progress report to me on Monday, 19 April on the grave situation there. That very evening the Permanent Mission of the Sudan communicated to me a request for the mission to visit Khartoum and Darfur. I briefed the Expanded Bureau of the Commission on these developments on the morning of 20 April.

With a view to making sure that we had as full an understanding of the situation as possible, I arranged for three colleagues from the field with first-hand information to come to Geneva for consultations. I also dispatched the same mission that had visited Chad to Khartoum and Darfur. It left in the afternoon of 20 April, arrived in Khartoum on 21 April and, after meetings in Khartoum, it proceeded to undertake on-the-spot inquiries in different parts of Darfur. The team received full cooperation from the Sudanese authorities and were able to carry out their mission independently.

The team returned to Geneva on Monday, 3 May and submitted its final report to me on Thursday, 6 May. Based on its report and the information-gathering process described above, I have prepared the attached report which I now have the honour to submit to the Commission on Human Rights. At the same time as I submit this report, I shall, on Friday, 7 May, at the request of the Secretary-General, be briefing the Security Council on the situation.

In briefing the Security Council and in submitting this report to the Commission on Human Rights, I should like to emphasize the importance of the Sudanese authorities' bringing the militias in Darfur under immediate control; taking immediate measures to prevent the recurrence of the criminal violations of human rights that have taken place; acting immediately to alleviate the plight of the refugees and displaced persons and to provide redress for wrongs committed; and setting in place arrangements to bring the perpetrators of the criminal violations of human rights to justice.

Please accept, Mr. Chairman, the assurances of my highest consideration.

(Signed) Bertrand RAMCHARAN

Acting United Nations High Commissioner for Human Rights

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I. INTRODUCTION

1. Darfur is a large area, 256,000 square kilometres in size, constituting the western region of the Sudan. It is home to an estimated five million people, a population made up of a complex tribal mix. Large swathes of Darfur have been prone to drought and desertification, intensifying demands on its more fertile lands. In recent decades, areas of Darfur have been subject to sporadic inter-tribal clashes over use of resources.

2. Following mounting concerns regarding respect for human rights in Darfur, in early April I sought to send a mission to the Sudan to assess the situation on the ground in Darfur and to hold discussions with the Government of the Sudan. Permission for this mission to take place was granted by the Government of the Sudan on 19 April and on 20 April I dispatched a team to Khartoum and Darfur; they returned to Geneva on 3 May.

3. This same team had earlier visited Chad from 5 to 15 April. The purpose of this mission was primarily to visit the refugee camps and sites along the Chadian border with the Sudan in order to interview refugees in order to obtain a better understanding of the situation they had left in Darfur.

4. This report is a summary of the findings of the two missions. It concludes with a series of recommendations that I am putting forward with the purpose of seeking to assist all parties involved in finding a solution to the crisis. In framing these recommendations, I have placed above all other considerations the need to ensure that the suffering of the people of Darfur ends as quickly as possible, for the current situation cannot be permitted to continue.

5. Today, the people of Darfur continue to endure armed conflict and a severe human rights and humanitarian crisis. From early 2003 fighting intensified in the region following the emergence of two armed groups, the Sudan Liberation Army (SLA) and later the Justice and Equality Movement (JEM), and the commencement by them of hostilities against the Government. Broadly speaking, SLA and JEM share an ethnic background, coming primarily from the Zaghawa, Fur and Masaalit tribes. They also appear to share similar political demands, which are essentially for the Khartoum authorities to address the marginalization and underdevelopment of the region.

6. It is the manner of the response to this rebellion by the Government of the Sudan which has led to the current crisis in Darfur. Following a string of SLA victories in the first months of 2003, the Government of the Sudan appears to have sponsored a militia composed of a loose collection of fighters, apparently of Arab background, mainly from Darfur, known as the "Janjaweed". In other words, and worryingly, what appears to have been an ethnically based rebellion has been met with an ethnically based response, building in large part on long-standing, but largely hitherto contained, tribal rivalries. In certain areas of Darfur, the Janjaweed have supported the regular armed forces in attacking and targeting civilian populations suspected of supporting the rebellion, while in other locations it appears that the Janjaweed have played the primary role in such attacks with the military in support.

7. On 8 April, peace talks between the Government of the Sudan and SLA and JEM, under the auspices of President Idriss Déby of Chad and supported by the African Union, resulted in a commitment by both sides to a ceasefire of 45 days, open to renewal. The ceasefire, which began on 11 April, is to be monitored by a ceasefire commission, comprising representatives from all parties, the Chadian authorities and the international community; the details of this mechanism are in the process of being drawn up. It appears from discussions the mission had in both Chad and the Sudan that the ceasefire has, by and large, been holding, though not without incident, and that there is optimism that it will be renewed. To this end, it will be important that a credible monitoring mechanism is in place at the earliest possible opportunity.

8. In Chad, the mission held discussions in N'Djamena with the Minister for Public Security and Immigration, the Minister for Foreign Affairs and the Minister for Territorial Administration of the Government of Chad. The mission also met with the United Nations Country Team in N'Djamena as well as with members of the diplomatic community and a number of nationally based human rights and humanitarian non-governmental organizations.

9. From 8 to 13 April, the mission visited the northern portion of the border between Chad and the Sudan. It visited refugee camps and sites at Kounoungo, Tiné, Bahay and Farchana. In these places, and in the district towns of Abéché, Guéréda and Iriba, the mission met with local government officials, as well as with representatives from the Office of the United Nations High Commissioner for Refugees, UNICEF and non-governmental organizations assisting the refugees.

10. In the Sudan, the mission held discussions in Khartoum with the Minister for Foreign Affairs and the two State Ministers for Foreign Affairs, the Minister of Justice and the State Minister of the Interior. Meetings were also held with the United Nations Country Team, the United Nations High-Level Humanitarian Mission to the Sudan and a number of other national and international actors familiar with the situation in Darfur.

11. From 24 to 30 April, the mission visited Darfur. It travelled to the three regional capitals: Nyala (South Darfur), El Fasher (North Darfur) and El Geneina (West Darfur). From each of these towns, the mission travelled to outlying locations to meet with, and interview, internally displaced persons (IDPs). These locations included: Kalma and Kass (South Darfur); Kutum (North Darfur); and Kundabe and Sisi (West Darfur). In each place visited, the mission held extensive discussions with officials from the regional and local administrations, as well as with the United Nations teams and others carrying out humanitarian work in Darfur.

12. I would like to thank all those with whom the mission met for their hospitality and advice on the complex situation in Darfur and the resulting refugee and humanitarian crisis. I am grateful to the Governments of both the Sudan and Chad for the full cooperation the mission received from the authorities in both countries; the mission was able to operate with complete independence. I would also like to commend the work of those individuals who are carrying out critical humanitarian work, in both Chad and the Sudan, in what are extremely trying circumstances.

13. The humanitarian consequences of the situation in Darfur, and by extension the border regions of Chad contiguous with Darfur, should not be underestimated. Inside Darfur, it is now estimated that there are just over one million IDPs, as compared with 250,000 in September 2003. Over half of these (some 570,000) are located in West Darfur, with the rest divided between North and South Darfur (some 290,000 and 140,000, respectively). Many more people are affected by the conflict as IDP concentrations have also impacted on the welfare of host communities. According to United Nations security standards, about 61 per cent of conflict-affected people can be accessed for the delivery of humanitarian assistance. Overall, however, huge gaps remain in terms of meeting the needs of these individuals, particularly as regards potable water, shelter, sanitation and immunization.

14. The number of humanitarian actors on the ground remains relatively small when compared to the scale of the crisis in terms of both numbers affected and the sheer size of Darfur. This is being addressed by the humanitarian community, though it will also require redoubled efforts on the part of the Sudanese authorities, including by simplifying a complex permit process, to ensure unfettered access to all parts of Darfur by humanitarian agencies, as well as more effective mechanisms to ensure the protection of IDPs and their ability to access assistance. The mission heard credible reports, for example from Kailek in South Darfur, of IDPs calling for a halt to assistance, the delivery of which they feared would only expose them to further risk of looting and violence at the hands of the Janjaweed.

15. At the time of the mission's visit to Chad, UNHCR had in the region of 22,500 registered refugees in camps near to the border with the Sudan. It is clear, however, that many thousands more have already crossed the border and are living in desperate circumstances with no guaranteed access to food, water and medicine. UNHCR is operating with a working figure of 110,000 refugees. Logistical difficulties, the harshness of the environment, the length of the joint border (some 800 km) and the relative mobility of some refugee groups present significant challenges to the humanitarian operation. It is also apparent that the arrival of so many refugees in what is a very impoverished region of Chad is placing a strain on limited national resources, as well as potentially heightening inter-tribal tensions. The mission heard, however, that the Government of Chad had been cooperating fully with UNHCR in its handling of the refugees.

16. The current situation among the refugees varies according to their location. Those who have been registered by UNHCR and are in properly constituted camps face considerably better conditions than those who have not yet been so dealt with. For this latter group – the majority – conditions are extremely tough. At several locations, the mission heard reports of rising malnutrition. In Tiné, it was reported that there had been over 25 cases of meningitis, above the epidemic threshold: a vaccination campaign was in the process of being launched. But whether in properly established camps or not, conditions for all refugees were extremely difficult given the environment and remoteness of the area in question. Many had walked for a considerable time to reach Chad. Many appeared traumatized. As with the IDPs, many had lost everything that they owned.

17. The advent of the rains within the next few weeks will render the situation significantly more problematic in both Darfur and Chad with access to many IDPs and refugees made much more difficult, if not impossible in many instances. Urgent action is required by the Government of the Sudan, the United Nations system and NGOs to ensure that appropriate measures are taken now to ensure an increased, and uninterrupted, delivery of assistance during the rainy season.

18. Currently, all of Darfur is under Phase three (Relocation) of the United Nations Security Management System. The three states are divided by the Office of the United Nations Security Coordinator (UNSECOORD) into "Go" and "No Go" areas for United Nations staff, and UNSECOORD is actively assessing areas and clearing them for operations as appropriate. The current ceasefire between the Government of the Sudan and the rebels is holding, albeit with some reports of infractions such as the reported killing of a local leader in Mujbat, North Darfur, around 29 April 2004.

19. "Go" areas are deemed safe for United Nations operations, but the situation is recognized as volatile and somewhat unpredictable as there is a proliferation of small arms (and no effective licensing mechanism) and a number of armed entities whose affiliations, motives and command structures in the areas visited were both claimed and disclaimed by the Government and the entities themselves. Since January 2004, there has been one reported incident of an attack by Janjaweed militia on an international organization's vehicle. In those areas that the Government does not fully control security needs to be assessed on a case-by-case basis.

20. The eastern area of Chad, that part of the country most affected by the Darfur crisis, is currently under Phase 1 (Precautionary) of the United Nations Security Management System. Although the direct threat to United Nations

staff is assessed to be low, the border region is potentially volatile with small arms widely available. On a number of occasions the Janjaweed have carried out raids into Chad from Darfur in order to steal cattle and harass and attack refugees. The Chadian military has, following an agreement with the Government of the Sudan, recently begun a policy of pursuing the Janjaweed back across the border and engaging in combat, including through the use of armoured vehicles. One such incident, on 6 April 2004, is reported to have led to the deaths of two Chadian military personnel and the wounding of one other. Increased patrols of the border by Chadian military, as by the Sudanese military, are also said to have recently commenced. Areas of this region are littered with unexploded ordnance and land mines, some of which are plainly visible on the desert surface.

II. OVERVIEW OF THE HUMAN RIGHTS SITUATION IN DARFUR

21. The mission met and spoke with many IDPs and refugees in all sites and camps that it visited in both the Sudan and Chad. These discussions either took place in the form of individual interviews or group meetings. The two missions were complementary of each other building up what is, in effect, a broad map outlining the main patterns of human rights violations that appear to be perpetrated in Darfur.

22. The mission to Chad involved primarily interviews with refugees from the Zaghawa tribe which straddles the border between Chad and the Sudan, with a particular concentration in the north. In addition to the Zaghawa, the mission also met with members of the Masaalit, Tama, Erenge, Fur and Midop tribes. The mission to Darfur provided OHCHR staff the opportunity to visit a number of sites of devastation as well as the chance to interview a large number of IDPs from the Fur tribe, among others, located largely in the southern areas of Darfur, who had not been present in large numbers in refugee locations in Chad. Also, and importantly, the mission to the Sudan afforded OHCHR a much better understanding of the views of the Government of the Sudan regarding the crisis in Darfur. Finally, the mission was able to obtain a clearer picture of the method of operations employed by the SLA/JEM rebels.

23. In the main, the refugees and IDPs with whom the mission met were agriculturalists, growing crops and raising livestock. On occasion, interviews were also held with merchants and teachers, many from the Masaalit community. A significant majority of the refugee population appeared to be comprised of women and children; at one site – Tiné – it was estimated that some 80 per cent of the refugee population was made up of this group. The mission was not able to establish a clear reason for the gender imbalance: possibilities include that the men had remained in Darfur either to salvage what they could of their possessions, or to seek to tend to their remaining livestock, or to participate in the rebellion. It is also possible that men have been more acutely targeted by the Government of the Sudan and the Janjaweed militia allied to it. Inside Darfur, although male IDPs were still the minority, this gender imbalance was less acute. Despite being a minority, men often spoke for the group. Discussion with female IDPs and refugees and, to a lesser extent, with minors was also possible.

24. In the time available to the mission, and within the logistical and security constraints prevailing in Darfur, the mission was not able to visit all locations. It is important to note that these omissions included many areas of Darfur, such as around Zalingei, Kornoi and Ambaru, in which numerous witness testimonies suggested that patterns of human rights violations had been particularly acute. Other localities which could not be accessed were those in which SLA and JEM were said to be operational in some strength.

25. Nonetheless, there was a remarkable consistency in the witness testimony received by the mission in all places visited on both sides of the Sudan/Chad border, from among individuals throughout Darfur who had been displaced both many months ago and more recently. Those with whom the mission met had, in some instances, been displaced for up to a year; in other cases, the mission met with individuals who had arrived at an IDP or refugee site only days before. The earliest reports of attacks about which the mission heard took place in March 2003 with the most recent having allegedly occurred in April 2004. Taken together, this testimony builds up a compelling picture. Within these consistent accounts, however, a number of interesting variations did emerge.

26. Perhaps the most significant difference is in the pattern of allegations that the Government of the Sudan utilized aircraft in attacks on villages and towns in Darfur. In Chad, the mission was invariably told by refugees that air strikes had been used on their villages in Darfur. The mission was informed that in one air raid bombs were dropped in Tiné, Chad, resulting in some 40-50 persons wounded; it was not clear if this attack was intentional or an error. In particular, there were frequent references to bombing raids by an Antonov aeroplane, which dropped crudely made bombs ("big barrels", in the words of one witness) on population locations often with what was described as a particular targeting of markets and wells. One witness mentioned that an Antonov was seen over Bahay as recently as 10 April; it did not attack but caused considerable disquiet among the refugees. Once a village or town was targeted, it was alleged that in many instances these air attacks took place on a regular basis: weekly or even daily. There were also many references to the use of helicopter gunships.

27. These allegations were considerably less frequently made to the mission by IDPs inside Darfur. But such allegations were made. For example, during a visit to the Sisi IDP site in West Darfur on 29 April, the mission

heard detailed testimony from a group of young IDPs alleging the use of a helicopter gunship in an attack on their village several months earlier.

28. The mission, itself, did not see evidence of air strikes on villages. However, the weight of witness testimony alleging the use of air attacks, often with much detail, raises considerable disquiet that the Government of the Sudan has, in certain locations, been using aircraft in indiscriminate attacks on population centres. It is not possible to explain with any certainty why such allegations were more frequently heard from refugees interviewed in Chad than from those IDPs with whom the mission met in Darfur. In the opinion of the mission, however, a credible explanation for this disparity is that airstrikes were used more intensely in those areas of Darfur in which the Sudanese military, as opposed to the Janjaweed, were at the forefront of operations. These areas were primarily in North Darfur, from which the refugees with whom the mission met had fled, and which were largely populated by the Zaghawa tribe who, according to the Government of the Sudan, formed the core of the rebels. United Nations security restrictions in place did not permit the mission to visit these locations.

29. Attacks on villages appear often to have taken place at night or in the early morning. Where there were alleged air raids, land attacks invariably shortly followed. These were carried out either by Janjaweed or Sudanese government soldiers, or a combination of both. The chief visible distinction between these two forces appears to be in their method of transport: Janjaweed were invariably said to use horses and camels, while government soldiers were described as travelling in military vehicles. Both were dressed in combat fatigues and both were well armed (AK-47s, G3s and rockets were often mentioned). From some descriptions, it appears that the Janjaweed were more active in attacks on villages with the military more prominent in attacks on towns, though the primary operational distinction appears to be that the military were significantly more active in the north and the Janjaweed in the south.

30. Attacks in the main involved the destruction of property, often through burning, as well as the destruction of essential supplies such as flour, millet and other crops; in certain instances, these supplies were fed to livestock. Also, and frequently, these livestock were stolen. In a number of cases, it was reported that attacks continued even as people were fleeing.

31. There were frequent reports – often eyewitness accounts – of killings. More specifically, a number of testimonies alleged that men, and even boys, were particular targets; those who were not able to flee – the disabled and elderly – also appear to have been at particular risk. Many witnesses were able to name individuals who had been killed. Some reported seeing dead bodies and some reported family members or other acquaintances as having disappeared. In many instances those with whom the mission met stated that they did not have the time to bury the dead before fleeing. A sizeable number reported having heard of killings and it was the fear of this – rather than actually having witnessed it – that seems to have triggered flight in many cases.

32. Other violations frequently reported to the mission both by refugees in Chad, and even more so by IDPs in Darfur, included sexual violence, and particularly rape. In the opinion of the mission, these allegations of rape were credible. The mission reached this conclusion based on the pervasiveness of the allegations, the detail provided, the evident distress of the witnesses and the fact that the social stigma attached to women who have been violated clearly made it extremely difficult for them to discuss their experiences. The mission fears that this practice has been both widespread and is ongoing for many IDPs who continue to remain vulnerable to attack. Finally, there were references by witnesses to torture and cruel or degrading treatment by their attackers, including severe whipping, as well as on occasion stripping victims of their clothes in what appears to have been an exercise in humiliation.

33. Those interviewed invariably described the Janjaweed as being exclusively “Arab”, as opposed to the victims who were described as “black” or “African”. What this distinction precisely entailed was difficult for the mission to establish, but that such a perception was held by those displaced is incontrovertible. Some suggested that the Janjaweed had been formally registered by the authorities and were housed in military camps. There were also frequent suggestions by the refugees that the Janjaweed and the Government of the Sudan were seeking to uproot certain groups in order to access their more fertile lands. In a number of cases witnesses alleged that they had heard their attackers instructing them to leave their villages and accusing them of using pejorative and racist language when speaking to villagers. In other instances, those spoken to had no explanation for the attacks. Many alleged that the authorities in Khartoum had left Darfur underdeveloped and marginalized.

34. In virtually every interview it was alleged that the local authorities were of no assistance. The only exception to this was the police, often from the same tribe as the displaced, who were reported on a number of occasions to have attempted to resist militia and military attacks on towns and villages but who were invariably outnumbered, ill-equipped and easily overrun.

35. There was a striking silence, in discussions with those displaced, on the matter of the SLA and JEM rebels. The vast majority of people with whom the mission spoke claimed that there had been no armed men among their communities. This was not exclusively the case, however, and the mission did meet with one eyewitness who alleged that a village, which was subsequently burnt by the Janjaweed, had housed three rebels. The mission also

visited Kutum, which had been the scene of a rebel attack. Finally, the mission received detailed allegations of rebel attacks from officials of the Government of the Sudan.

36. It is clear from the findings of the mission that a climate of impunity has prevailed, and continues today to prevail, in Darfur. While the Government of the Sudan maintained that it was making a concerted effort to re-establish law and order and effective accountability in the region but that it was being undermined in these efforts by the actions of the rebels, this was not, in the opinion of the mission, borne out by realities on the ground. Near-universal witness testimony from among refugees and IDPs paints a picture in which the State did nothing to prevent attacks on civilians by the Janjaweed, failed to make any meaningful attempt to bring the perpetrators of such violence to justice, and continues to permit the Janjaweed to exercise a reign of terror over those displaced and inside Darfur. There is widespread denial of protection of civilians in Darfur.

III. INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

37. Fundamental human rights must be respected in times of peace and in times of armed conflict. While international law recognizes the right of States to take measures to maintain or re-establish their authority and law and order, or defend their territorial integrity, it requires that measures taken must be consistent with human rights and humanitarian law.

38. The Sudan is a party to several core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), and the African Charter on Human and Peoples' Rights. On 8 September 2000, the Sudan signed the Rome Statute of the International Criminal Court (ICC) but has yet to ratify it. As a signatory, the Sudan must refrain from acts that are contrary to the object and purpose of the ICC Statute.

39. International law, particularly ICCPR, regulates States' behaviour in the context of a state of emergency. President Omar Al Bashir sent a message to the National Assembly of the Sudan on 23 December 2003 requesting it to renew the state of emergency for one more year, until December 2004. The National Assembly approved a one-year extension on the grounds that the Sudan's political and security situation remained a concern. Media reports stated that the National Assembly's legislative and security committees linked the renewal to the armed conflict in Darfur. The Sudan has been under a continuous state of emergency since 1999.

40. While the Sudan, as a State party, may take measures to derogate from certain rights listed in ICCPR in times of an emergency that threatens the life of a nation, there are some procedural and substantive requirements that must be followed in so doing. These include notifying other States parties, through the Secretary-General, of the provisions from which it has derogated. The measures taken must be only to the extent strictly required by the exigencies of the situation. They must be consistent with the Sudan's other obligations under international law, and they must not involve discrimination solely on the ground of race, colour, sex, language, or social origin.

41. Most importantly, ICCPR lists a number of core rights that can never be subject to derogation. These include the right to life; the prohibition of torture or cruel, inhuman or degrading punishment; the prohibition of slavery, the slave trade and servitude; and freedom of thought, conscience and religion. Also, according to general comment No. 29 of the United Nations Human Rights Committee, there are other elements of ICCPR that cannot be subject to lawful derogations. These include: that all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person; prohibitions against taking hostages, abductions, or unacknowledged detention; the international protection of the rights of persons belonging to minorities against genocide and discrimination; deportation or forcible transfer of populations without grounds under international law; and forced displacement by expulsion or other coercive means from the area in which the persons are lawfully present.

42. All parties to the conflict in Darfur are also bound by the provisions of international humanitarian law laid out in common article 3 to the four Geneva Conventions of 12 August 1949, which applies "in the case of armed conflict not of an international character". It provides for the protection of persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause. This key provision, which is now considered as part of customary international law, prohibits, inter alia, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; and hostage-taking.

43. Although the Sudan is not a party to the two Additional Protocols to the Geneva Conventions, significant provisions of these are now considered to constitute customary international law. Amongst the customary provisions are the prohibitions of attacks against the civilian population and civilian objects; collective punishments; acts of terrorism, pillage, rape, enforced prostitution and any form of indecent assault.

44. ICERD requires States party to take measures to eliminate all distinctions, exclusion, or restriction or preference based on race, colour, descent, or national or ethnic origin. Moreover,

acts that are committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such constitute genocide, as is deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. While the Sudan is not a party to the Convention on the Prevention and Punishment of the Crime of Genocide, it is now widely accepted that acts of genocide are crimes under customary international law. Individuals suspected of committing, conspiring to commit, directing, publicly inciting, attempting, or of being complicit in acts of genocide may be held criminally responsible for their acts.

45. It is widely recognized that systematic or widespread violations of human rights and humanitarian law may constitute crimes against humanity and/or war crimes. The Rome Statute of ICC, in articles 6, 7 and 8, details acts that give rise to individual criminal responsibility concerning genocide, war crimes or crimes against humanity.

IV. SYSTEMATIC OR WIDESPREAD PATTERN OF VIOLATIONS

46. A disturbing pattern of disregard for basic principles of human rights and humanitarian law is taking place in Darfur, for which both the armed forces of the Sudan and its proxy militia known as the Janjaweed are responsible. Government officials acknowledged to the mission that serious violations are taking place. They contended, however, that such violations represented individual excesses rather than a State policy, and that they were the natural, or inevitable, consequences of an armed conflict which would end with the end of conflict. They also contended that many of these violations were perpetrated by the rebels.

47. The rebel forces also appear to violate human rights and humanitarian law. However, for several reasons, it was difficult for the mission to ascertain the extent of these violations. This was due to the fact that the United Nations security system considers much of the areas where the rebels operate as "No Go" zones for United Nations staff, because they remain active conflict zones. There is also little refugee and IDP testimony on rebel action. In addition, the mission did not knowingly talk to any rebels. Most information on rebel activities came from the Government of the Sudan.

Rebel action

48. There is little doubt that the conflict in Darfur commenced as a result of rebel forces, SLA and JEM, launching attacks against military and government installations. The mission did not obtain sufficient information to be able to distinguish between the activities of SLA and JEM. Rebel attacks on Tiné, El Fashir and Kutum in March and April 2003, where tens of soldiers were reportedly killed, injured or taken hostage, and military installations and government buildings destroyed, appear to have motivated the Government to act swiftly and forcefully to crush the rebellion and its perceived supporters.

49. Rebels appear to employ a strategy of guerrilla warfare. There are some claims that they operate from or near civilian areas and rely on towns and villages composed of certain ethnicities for support and supplies. This has endangered civilians in many areas and appears to feed into certain ethnic groups being considered as hostile to the Government. The mission visited one village in North Darfur, between Kutum and Faturno, which had been almost entirely razed in early March 2004, and spoke to one witness to the attack. She alleged that the village had provided refuge to three armed rebels and that it had been attacked by Janjaweed who were in pursuit of them. The extent of the attack appears to have amounted to an instance of collective punishment.

50. Numerous government officials provided information to the mission regarding attacks by rebels. The Government of the Sudan accused the rebels of being behind many of the human rights violations that were being reported from Darfur. It also accused the rebels of numerous execution-style killings of State employees or supporters and of so weakening the police in Darfur through constant attacks that the Government was no longer in a position to be able adequately to protect its citizens in that region. The Governor of North Darfur, for instance, told the mission that the rebels attacked towns and villages. He provided the mission with a list of names of police and army officers, government officials and civilians in his region who had reportedly been killed or kidnapped. He also reported the carjacking of more than 50 civilian cars and 30 government vehicles and the looting of food, goods, and medical and humanitarian supplies. Rebels were also accused of banditry and of spoiling water supplies by dropping dead animals in them.

51. The mission visited Kutum and its hospital, which was the scene of a rebel attack. Eyewitnesses told the mission that the rebels had used the hospital grounds to launch an attack on nearby government buildings. They said that a fierce battle had ensued between the rebels and the government forces in which both sides reportedly sustained serious casualties. When the rebels attempted to loot the outpatient clinic, a government helicopter gunship apparently fired on the clinic. The mission was able to see the destruction of the building. At least one civilian was killed in this episode.

52. The Government particularly accused the rebels of kidnapping and recruiting children as soldiers. On two occasions, in El Fasher and Kass, senior government officials presented two children, aged 15 and 17, who had reportedly been kidnapped by the rebels. One child reported that there were about 60 other children in the rebel camp in which he had been held. The two children reported that they had been mistreated at the hands of their captives. They were hand-cuffed for weeks and were given little food or water. Both were subjected to elementary military training. Both children managed to escape. They were first detained by government forces and then released and taken to work as assistant drivers for senior officials. While the two children reported that they were presently being well treated by the officials, it was clear that the children were also being used to expose rebels' abuses of child rights.

53. On 29 April 2004, Abdel Rahman Mohammain, a Zaghawa tribal king of Ambaru, was reportedly kidnapped and later killed by SLA rebels. The king had apparently accepted 170 tonnes of food supplies from the Government for distribution to his people, despite warnings from SLA against accepting government assistance. As the king was meeting local leaders in Urshi, SLA reportedly kidnapped him and his aides and looted 30 tonnes of grain. SLA reportedly took the captives to Mujbat, about 60 kilometres from Ambaru, where they were killed. This incident appears to have been aimed at intimidating and deterring those local leaders who cooperate with the Government.

Government action

54. The Government of the Sudan is responsible not only for the actions of its regular armed forces and law enforcement officials, but also for the actions of all irregular forces that it sponsors and supports. The responsibility of the Government for the actions of the Janjaweed, also sometimes referred to as the “Fursan” or “Peshmerga”, deserves particular attention.

55. Many with whom the mission spoke, including senior government officials, stated that the Government had recruited, uniformed, armed, supported and sponsored militias. The Government’s strategy appears to have been, in effect, to seek to fight a guerrilla war by establishing its own guerrilla force. It was reported to the mission by a number of government officials that the Government had requested those loyal to it in Darfur to assist in quelling the rebellion; such groups were said to coordinate their actions with the military and operate under its general command. The Commissioner of Kass, a town in South Darfur, described to the mission how he had integrated the Janjaweed into the regular armed forces. Several other officials confirmed that there had been a general call for volunteers to enlist in popular defence forces to support the regular army. This call was apparently answered by some tribes that already had animosities towards those tribes from which the rebels came.

56. At one IDP location, the mission interviewed a number of individuals who referred to themselves as Fursan. They were uniformed in military fatigues and were on horses. The Fursan said that they were all Arabs and that they had been armed and were paid by the Government. They said that they acted upon government instructions. Significantly, the mission met the Fursan, a group totalling 17, in the local police station. They outnumbered the three police present. They were also better equipped than the police, who had no means of communication or transportation. In the opinion of the mission, the police were visibly intimidated by the presence of the Fursan.

A. Indiscriminate attacks against civilians

57. Civilians constitute the main victims of the armed conflict in Darfur. While the Government appears to employ different tactics to counter the rebellion, there seems to be a consistency of allegations that civilians who belonged to those ethnicities perceived to be members or supporters of the rebel groups were targeted by the armed forces as well as the Janjaweed. Civilians often appear to have been the subject of collective punishment.

58. Numerous Zaghawa and Masaalit refugees interviewed in Chad who came from areas in North Darfur close to the Sudan-Chad border described a pattern of attacks beginning with air bombardments using an Antonov military plane. They said that bombs were sometimes dropped on crowded areas such as markets or communal wells; homes, shops and fields were also destroyed. Some refugees alleged that they were the object of such aerial attacks, sometimes by helicopter gunships, even as they were fleeing. These attacks terrorized the population. In every instance recounted to the mission, there was no warning that an attack was coming.

59. Refugees in Chad reported that bombardments were invariably followed by ground assaults by the military, the Janjaweed, or by combinations of the two. The Janjaweed were uniformed in khaki and those interviewed could not distinguish them from the regular armed forces except by the fact that they often travelled on horses or camels, with the military using mechanized transport. In the eyes of many refugees, there appeared to be little or no difference between the regular army and the Janjaweed.

60. Refugees said that these forces indiscriminately attacked those who had not fled, such as the elderly and disabled. The testimony also suggests that men and boys were particular targets. Several individuals interviewed reported that their spouses, children and/or members of their extended families were killed by the Janjaweed. In some instances the Janjaweed returned to villages several days later and carried out additional attacks on those remaining.

61. The IDPs, primarily Fur, interviewed in the Sudan mostly described attacks by uniformed Janjaweed militia on horses or camels. There was less mention of air strikes, though such allegations were made. Typically, civilians heard gunfire or saw persons on horses or camels entering their villages in great numbers. These armed militias

would attack and beat individuals, destroy and loot property and burn houses. Sometimes it was reported that the militias were accompanied by vehicles. The population of the village would flee in fear. Numerous witnesses reported seeing individuals being killed during these attacks or while fleeing. Frequently, witnesses would report spending the night outside their villages; if they tried to return to their homes in the following days, they frequently reported further attacks.

62. While it was difficult for the mission to ascertain whether there were armed rebels in the vicinity of those areas that were attacked, a considerable majority of those who were attacked were civilians: women, children and the elderly. It is also clear that the armed forces and their proxy militias punished certain populations collectively for belonging to the same ethnic group as the rebels, and inflicted terror amongst them.

63. Many refugees and IDPs reported that they had fled without being able to bury their dead. It is unclear how many dead there are and how these corpses, in many instances, have been dealt with.

64. Arbitrary deprivation of life is prohibited under article 6 of ICCPR. Moreover, violence to life and person, in particular murder of persons not taking part in hostilities, is prohibited by common article 3 to the four Geneva Conventions. Acts of murder may also constitute crimes against humanity when they are committed as part of a widespread or systematic attack directed against the civilian population. Intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities may also be regarded as war crimes. Collective punishments and acts of terrorism are also prohibited under customary international law, in particular article 4 of Additional Protocol II to the Geneva Conventions.

B. Rape and other serious forms of sexual violence

65. There are consistent reports among refugee and IDP women from various locations that “men in uniform” raped and abused women and young girls. Most allegations were against the Janjaweed. While there is no doubt that rape is widespread, because of the trauma and stigma associated with rape and other forms of sexual violence, it was not possible for the mission to establish the full extent of this practice.

66. The mission interviewed tens of refugee and IDP women who said they had been raped. Many more suspected cases were brought to the mission’s attention. Rape was often multiple, carried out by more than one man, and it was associated with additional severe violence including beating with guns and whipping. Rape often appears to have taken place while victims were restrained, often at gunpoint, and at times in front of family members. The mission was informed that several women have become pregnant as a result of rape.

67. Rape and other forms of sexual abuse by the Janjaweed was widely alleged to be continuing inside and around IDP sites. Women often reported that they would be kidnapped and raped if they went any further than 1½ kilometres away from their camp to collect wood or to tend their vegetable gardens in their home village. Rape represents a policy that is employed to intimidate and humiliate the IDP population and to prevent them from leaving the vicinity of the IDP sites.

68. Government officials refuted allegations of widespread rape. The Government often stated to the mission that there had been no official complaints of such crimes and that such complaints were needed if the legal system was to be in a position adequately to investigate the allegations and punish the perpetrators. They also often cited the lack of medical reports to support the allegations. The mission, however, did interview doctors, nurses and midwives who supported the allegations of rape. The mission interviewed family members and others who claimed to have witnessed rape. It was clear to the mission that given the lack of confidence in the State apparatus and the social stigma associated with rape, women were very reluctant to submit official complaints. The mission told the Government that, in its opinion, such allegations were too frequent, too consistent and too credible to be dismissed.

69. Rape and other forms of sexual violence as described above are considered a form of torture and cruel, inhuman and degrading treatment. These are serious violations of ICCPR. They also constitute outrages upon personal dignity, prohibited by common article 3 of the Geneva Conventions, and are considered war crimes. Rape, sexual slavery, enforced prostitution, and forced pregnancy also constitute a crime against humanity when committed as part of a widespread or systematic attack directed against the civilian population.

C. Destruction of property and pillage

70. Destruction of private homes, huts, crops and agricultural areas, wells, shops and entire civilian locations appears to have systematically taken place without military justification. Foodstuffs and livestock appear to have been systematically looted or destroyed. Almost every person interviewed by the mission reported the pillage and looting of his or her private property. Many reported that they saw their homes being torched. Many have lost all their possessions.

71. The mission received over 100 lists of personal belongings allegedly looted by either the army or the Janjaweed. Women often spoke of losing the entirety of their family belongings, reported, for example, by one interviewee as constituting three beds, four mattresses, eight changes of clothes, six glasses, two cooking pans, three plates and four dishes. They all reported the looting of their livestock, including, cows, goats and camels.

72. The mission visited a number of villages in Darfur that had been burned. Those living in these villages had fled. In two locations, however, the mission was able to find a few individuals who had stayed on; they were either too elderly to leave or, in one case, were compelled to return to their village to irrigate the crops which constituted their families' only means of sustenance. Those interviewed told a consistent story of attacks by a large number of uniformed men on horses or camels who killed, destroyed and looted. It will be almost impossible for people to return to these locations until security and protection are fully established and effective programmes of compensation, rehabilitation and reconstruction are put in place.

73. These acts violate basic international humanitarian law. Article 14 of Additional Protocol II to the Geneva Conventions stipulates that it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population. It specifically prohibits attacks on foodstuffs, agricultural areas, crops, livestock and drinking water installations. Moreover, pillaging a town or place, even when taken by assault, is an absolutely prohibited act under international humanitarian law. It may constitute a war crime when it takes place in the context of an internal armed conflict. The destruction or seizure of the property of an adversary, unless such destruction or seizure is imperatively demanded by the necessities of the conflict, may also constitute a war crime.

D. Forced displacement

74. The inevitable consequence of the killings, rape, burning and looting of villages has been massive displacement, within the Sudan and across the border to Chad. These policies appear to be directly aimed at preventing the villagers from returning to their homes or being in a position to provide any support to the rebels. Many refugees and IDPs left for fear of aerial bombardments and attacks by the armed forces and Janjaweed. Many of those who did return were reportedly killed or detained. There are also reports that the Janjaweed and government military have been preventing people from crossing into Chad.

75. These policies have resulted in a dire human rights and humanitarian crisis. Humanitarian agencies report that there are currently some one million internally displaced persons in Darfur. Humanitarian assistance to these IDPs has been severely restricted. Earlier this year, the President of the International Committee of the Red Cross, following his mission to the Sudan, expressed his "serious concerns regarding the situation in Darfur" and the fact that given the present circumstances, there are some difficulties in carrying "out a meaningful humanitarian operation". Although impediments to access have been eased somewhat, it was reported to the mission from a number of sources that serious problems remain in the way of ensuring full, unrestricted humanitarian access to all parts of Darfur.

76. Particularly worrying to the mission was that reports of attacks on IDPs and, to a lesser extent, of cross-border raids on refugees were ongoing, suggesting that the violence was continuing largely unabated. In several locations, IDPs reported in particular that uniformed armed men continued to loot and attack individuals, especially at night. In several IDP locations, the mission witnessed what clearly appeared to be armed militia, either on foot or riding camels. Women universally feared leaving the vicinity of their camps because of the risk of abduction and rape.

77. The case of Kailek provides a graphic example of the situation prevailing in Darfur for many IDPs. There are currently an estimated 1,700 IDPs inside Kailek town. The mission was informed that the town was surrounded by a group of well-armed men and boys in army fatigues, who called themselves Fursan and who are thought to be Janjaweed. The Janjaweed claimed that they were "protecting" the IDPs. Humanitarian agencies report that the IDPs feel that they are imprisoned and are present in Kailek against their will. They are allegedly prevented from leaving Kailek by virtue of a decree from the Commissioner of Kass. Fearing the Janjaweed, they were also confined to their temporary homes. Women reported instances and widespread fear of rape and other forms of sexual assault. IDPs said that men were escorted by the Janjaweed outside Kailek to the nearby hills to find food, wood and other essentials. It seems that an exit fee must be paid to the Janjaweed by anyone leaving the town. Despite the dire needs and serious cases of malnutrition, particularly amongst children, the IDPs requested that they not be given any food rations or similar assistance as that would result in more violence and attacks from the Janjaweed. Infant mortality rates were said to be climbing. This case highlights the importance of monitoring food delivery and enhancing the protection dimension of humanitarian assistance to minimize and reduce further vulnerability.

78. Although the Government indicated that it would like to encourage the return of IDPs and refugees to their villages, that will be difficult to achieve because of the general lack of security and protection, a lack of confidence in the State apparatus, the extent of the destruction of many villages, and the requirement that returns must only take place on a voluntary basis. The IDPs with whom the mission met were invariably adamant that they did not feel safe returning home; many said that they would seek to enter Chad if there were attempts to force them to return to their villages.

79. The Government of Chad has generously received Sudanese refugees, despite the burden they clearly place on the basic infrastructure of Chadian frontier towns and villages. Humanitarian agencies estimate that there may be

110,000 refugees in Chad, although those registered and located in official camps amount to only some 22,500. The humanitarian operation, including ongoing registration of refugees, is hindered by the inhospitable nature of the terrain (the scarcity of pasture and water), the length of the Chad-Sudan border, poor transport networks, and the nomadic nature of much of the refugee population.

80. The Government of the Sudan has attempted to negotiate the return of refugees after President Omar Al Bashir announced the ending of military hostilities earlier this year. Refugees informed the mission, however, that they feared returning to the Sudan at this stage. They invariably expressed willingness to return to their homes once security had been established and they had been compensated for their losses.

81. Ordering the displacement of the civilian population for reasons related to the conflict constitutes a war crime, unless the security of the civilians involved or imperative military reasons so demand such action. Furthermore, the forcible transfer of populations constitutes a crime against humanity when carried out as part of a widespread or systematic attack directed against the civilian population. Also, as principle 15 of the United Nations Guiding Principles on Internal Displacement states, IDPs have the right to be protected against forcible return to, or resettlement in, any place where their life, safety, liberty and/or health would be at risk.

E. Disappearances

82. Most refugees and IDPs are women and children. A large number of them reported that they did not know the fate of other family members. Spouses reported that they had fled in haste and fear without their partners. In several instances, mothers and fathers reported that they had left without taking all their children with them. The imperatives of flight have resulted in families becoming dispersed, making their reunification extremely difficult to ensure in what is a huge area, with a long border and poor roads. Polygamy is practised, and several men reported that they did not know the whereabouts of some of their wives and children.

83. Some of those who have disappeared may have been combatants who were killed or detained during the fighting. The majority, however, appear to have been civilians: women, children, the elderly, and the sick, disabled and wounded who were unable to flee. There were also reports of detention centres being administered by the army as well as the Janjaweed. Several refugees suspected that they thought their relatives had been taken to such centres; however, they did not know their exact whereabouts. There were also some specific reports of abductions, particularly by the Janjaweed. In one case, the mission interviewed a 22-year-old IDP from West Darfur who alleged that her 9-month-old twins had been taken. UNICEF reported that there were many cases of separated children in both refugee and IDP camps.

84. Enforced disappearances constitute a crime against humanity when they are committed as part of a widespread or systematic attack directed against the civilian population.

F. Persecution and discrimination

85. The conflict in Darfur appears to be rooted in the structural imbalances in the Sudan in terms of governance and economic development between the centre and the rest of the country. Its current manifestations appear to have developed worrying ethnic, if not racial, dimensions.

86. Most of those with whom the mission met spoke of a pattern of persecution by the regular armed forces and the Janjaweed. What was clear from the interviews was the consistent perception that the Government had mobilized, allegedly from among "Arab" tribes, what has become known as the Janjaweed to support its campaign of targeting and attacking civilian populations suspected of supporting the rebellion. This campaign has translated mostly into attacks on Fur, Masaalit and Zaghawa villages.

87. Government officials described the conflict as tribal. They repeatedly presented to the mission officials from mixed tribal and ethnic backgrounds to demonstrate its policy of inclusive governance. They also presented to the mission statistics regarding their attempts to enhance services in Darfur for all citizens. Officials repeatedly spoke about the negative impact of desertification on both nomads, who happen to be mostly Arab, and farmers, who happen to come primarily from the Fur and Masaalit communities. The desertification of large swathes of land has reduced those areas in which nomads can graze their livestock, leading them to trespass on the land of the more settled farmers. It was said that while traditional conflict-resolution mechanisms had been able to address these problems in earlier years, they were no longer capable of doing so in the face of the increasingly acute environmental impact of desertification. Nonetheless, the Government said that it would revive and strengthen these traditional conflict-resolution and -reconciliation mechanisms, as well as initiate new development programmes.

88. Although the mission accepts that there are complex tribal and resource dimensions permeating the current conflict, it considers that there are other powerful undercurrents rooted in the systematic marginalization of certain groups. The sense of injustice, discrimination and marginalization was so deep amongst refugees and IDPs that it cannot be ignored. Both refugees and IDPs felt that they were being persecuted for belonging to certain communities. They expressed a lack of confidence in the objectivity and fairness of government structures in paying due attention to their concerns.

89. Three examples seem to confirm the general assessment of the IDPs and refugees. First, it was remarkable how keen government officials were to dismiss allegations of rape, without evincing any real willingness to accept how widespread this fear was among those who had been displaced. Officials often said that these concerns had to be dealt with by relevant government structures, notably, the police, prosecution and judicial authorities. There was little appreciation of the fact that the refugees and IDPs had no confidence in these structures and they were therefore extremely reluctant to invoke them. The second is the determination of government officials to refute the Arab character of the Janjaweed. Little attention was devoted to addressing the main concern of the population: that the Janjaweed were committing atrocities that had to be stopped, the perpetrators brought to justice and the victims duly compensated. Third, in addressing the future of the Janjaweed, the Government saw promise in programmes to trade weapons for development and did not seem concerned that such programmes might appear to constitute a reward for its allies. Given these examples of how the Government was seeking to address the serious concerns of certain communities in Darfur, the IDP and refugee sentiments of deep injustice, neglect and marginalization appear to be based on solid grounds.

90. As a party to ICERD, the Sudan is required under law to take measures to eliminate all distinctions, exclusion, or restriction or preference based on race, colour, descent, or national or ethnic origin.

Persecution of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds constitutes a crime against humanity when it is committed as part of a widespread or systematic attack directed against the civilian population.

V. CONCLUSION

91. While the mandate of the OHCHR mission was to focus on the human rights situation in Darfur rarely can human rights be looked at in isolation from the pervading political context; the situation in Darfur is no exception. It is clear to the mission that a resolution to the crisis in Darfur will be unlikely for as long as the basic demands of its people for justice, equality and development – refrains the mission heard often from the displaced – are not met. The Government of the Sudan has a legal responsibility to uphold the rule of law in Darfur and to protect all its citizens in that part of the country. The ceasefire, however, is a welcome first step which must be consolidated in order to allow for full humanitarian access to Darfur.

92. The current conflict in Darfur was initiated by the rebel forces, primarily constituted from the Zaghawa, Fur and Masaalit tribes. Rebel forces appear to have violated human rights and humanitarian law. Notwithstanding that fact, the mission identified disturbing patterns of massive human rights violations in Darfur perpetrated by the Government of the Sudan and its proxy militia, many of which may constitute war crimes and/or crimes against humanity. According to information collected, it is clear that there is a reign of terror in Darfur the following elements of which should be highlighted:

(a) Repeated attacks on civilians by the military forces of the Government of the Sudan and its proxy militia;

(b) The use of indiscriminate aerial bombardments and ground attacks on unarmed civilians;

(c) The use of disproportionate force by government and Janjaweed forces;

(d) That the Janjaweed have operated with total impunity and in close coordination with the forces of the Government of the Sudan;

(e) That the attacks appear to have been largely ethnically based with the groups targeted being essentially the Zaghawa, Masaalit and Fur tribes, which are reportedly of African origin. Men and young boys appear to have been particularly targeted in ground attacks;

(f) The pattern of attacks on civilians includes killing, rape, pillage, including of livestock, and destruction of property, including water sources; and

(g) That there has been massive, often forced, displacement of much of the population of Darfur.

93. The patterns of violence point to an intent on the part of the Sudanese authorities to subjugate those populations perceived to be providing a support base for the rebels. In some instances, there were reports of actions by the Government of the Sudan and the militia to prevent the populations from crossing international borders.

94. Numerous individuals interviewed by the mission were convinced that the Government of the Sudan had neglected them for many years and that it now wanted to exclude them from Darfur in order to enable Government-allied militia to seize control of their land.

95. It is clear that the current pattern of massive and gross human rights violations as reported by the displaced raises very serious concerns as to their survival, security and human dignity. Ongoing problems of humanitarian access in Darfur makes the situation of IDPs increasingly untenable, particularly if the current ceasefire is not observed by all combatants.

96. Finally, it was clear to the mission that the influx of so many refugees into Chad constituted a source of concern for peace and security in the region. The composition of the Chadian population in the border region with the Sudan, coupled with the tribal mix of the refugees crossing the border into Chad, constitutes a potentially destabilizing factor, as does the practice of the Janjaweed of pursuing Sudanese refugees into Chad.

VI. RECOMMENDATIONS

97. The Government of the Sudan should, at the highest levels, publicly and unequivocally condemn all actions and crimes committed by the Janjaweed and ensure that all militias are immediately disarmed and disbanded. Violations of human rights and international humanitarian law must be thoroughly and swiftly investigated and perpetrators must be brought to justice.

98. Humanitarian workers must be given full and unimpeded access to Darfur in order to ensure that there is no blockage in the delivery of much-needed humanitarian assistance. Such measures are urgent given the fact that the rainy season is approaching. The international community should ensure that the Consolidated Appeal for Chad (2004), aimed at assisting this country in facing the crisis in Darfur, is met in full and on time.

99. The Government of the Sudan should pursue a policy of national reconciliation for Darfur, end impunity, promote the rule of law based on non-discrimination and the effective protection of minorities and indigenous populations, as well as the participation of all in public life and actively promote development programmes for Darfur. Although officials in Khartoum stated that more prosecutors and police were being deployed to Darfur, the mission saw little evidence that this was the case. It is important that such officials, well trained and properly empowered, are deployed as soon as possible. It is particularly important that the police be publicly empowered to carry out their responsibilities in maintaining law and order, including by bringing other armed elements to justice.

100. Refugees and displaced persons should have the possibility of voluntarily returning home without fear for their lives and personal security. They should be able to reacquire their lands. Restitution, or fair compensation and reparations should be extended to all victims of the conflict in Darfur with particular attention paid to the situation of women victims of gender-based violence, and to children, the elderly and the disabled. The Government of the Sudan should implement an appropriate programme for the reintegration and return of the population to Darfur. In the meantime, the Government of the Sudan should treat the IDP population in a manner consistent with the Guiding Principles on Internal Displacement. Importantly, the Government of the Sudan should ensure the immediate end by the Janjaweed of siege-like conditions at numerous IDP sites in Darfur.

101. The Government of the Sudan should put in place measures to ensure that human rights abuses, war crimes and crimes against humanity are not repeated in the future and that the rule of law is restored in Darfur in conformity with internationally agreed standards.

102. To the extent that the Government of the Sudan seeks to establish programmes of reintegration of armed militias into its national armed forces, such programmes must include a vetting process to ensure that those individuals who have committed serious violations of international humanitarian and human rights law are brought to justice.

103. An international commission of inquiry is required, given the gravity of the allegations of human rights violations in Darfur and the failure of the national legal system to address the problem. To be credible, such a commission must be, and must be seen to be, independent. The Government of the Sudan should cooperate with this commission.

104. The commission should be authorized:

(a) To examine the actions of those elements of the regular Sudanese army engaged in the conflict in the Sudan;

(b) To examine the actions of the Janjaweed militia;

(c) To seek to identify precisely what crimes have been committed, as well as the perpetrators of these crimes, their commanders and their accomplices;

(d) To seek to assess the extent to which national, regional and local authorities have encouraged and supported, directly or indirectly, the perpetration of human rights violations, war crimes and crimes against humanity;

(e) To examine the activities of the Sudanese rebels operating in Darfur, as well as the nature of their interaction with civilians in that region;

- (f) To assess the extent to which the belligerents on both sides of the conflict have complied with their respective responsibilities under international law;
- (g) To make recommendations on ensuring that there is an appropriate process of accountability for crimes committed on both sides of the conflict;
- (h) To recommend any measure designed to promote the rule of law and reconciliation and prevent a repetition of the current conflict and its human rights violations; and
- (i) To issue a public report on its findings.

105. There is a need for continuous monitoring of the human rights situation in Darfur. To this end, the Government of the Sudan should permit the deployment by the United Nations, and the African Union if desired, of human rights monitors in Darfur.

106. The Government of the Sudan should issue an open invitation to all special procedures of the Commission on Human Rights to visit the Sudan at any time. It should facilitate their visit to Darfur as early as possible. In this regard, the visit to the Sudan in June by the Special Rapporteur on extrajudicial, summary or arbitrary executions is an important move.

107. Finally, I call on the Government of the Sudan to utilize the Guiding Principles on Internal Displacement as a means of resolving the current IDP crisis in Darfur.
