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 **AFRICAN CENTRE**
FOR JUSTICE AND PEACE STUDIES

Will There Be Justice For Darfur?

Persisting impunity in the face of political change

Fact-finding mission report

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EXECUTIVE SUMMARY

Victims of Sexual Violence in Sudan Deserve Justice

When Sudanese security forces, mainly members of the Rapid Support Forces (RSF), attacked civilians participating in a peaceful sit-in outside the Ministry of Defence headquarters in Khartoum on 3 June 2019, at least 128 people were killed and 500 injured. The RSF reportedly used live ammunition against demonstrators, threw weighted bodies into the Nile and attacked hospitals and medical personnel. The attack also involved rape and other forms of sexual violence, with some doctors estimating that at least 70 people were raped, both women and men.

The perpetration of rape by RSF members was not a surprise. This branch of the armed forces, composed mostly of former *Janjaweed* militia members, is known to have committed serious crimes, including crimes of sexual violence, during the 2003 conflict in Darfur which opposed the Government of Sudan, the armed forces and their allies in the *Janjaweed* militias against rebel groups, causing more than 300,000 deaths and 3 million forced displacements. The RSF is headed by Mohamed Hamdan Dagalo, also known as “Hemeti”, a former influential *Janjaweed* leader, currently member of the Sovereign Council (SC) (the Transitional Government established in August 2019), former Deputy Chief of the Transitional Military Council (TMC) and former Government Security Advisor for Southern Darfur.

Sexual violence has been one of the essential components characterising the conflict in Darfur. It has been denounced by many NGOs and documented in the report published in 2005 by the UN Commission of Inquiry. During military raids launched by the Sudanese security forces and their *Janjaweed* militia allies on villages, women and girls, the principal victims of such violence, were raped, often gang-raped, in public, reduced to sexual slavery, subjected to the humiliation of forced nudity and sexually mutilated. Men were also subjected to sexual violence, including mutilation.

Some of these crimes are reflected in the International Criminal Court’s (ICC)’s arrest warrants issued between 2007 and 2010 against former Head of State Omar Al-Bashir, two former ministers, and a *Janjaweed* militia commander. Yet, more than 10 years later, while the same perpetrators are again using similar military strategies based on the perpetration of sexual violence against enemy groups, impunity for these atrocious crimes persists.

Indeed, there have been no convictions at the national level despite the establishment in 2005 of the Special Criminal Court on the Events in Darfur (SCCED). Such impunity is largely due to a lack of political will on the part of the authorities, which until recently protected the highest-ranking officials responsible for the crimes committed; the lack of independence of the judiciary; and the current legal framework, which includes a system of immunities that ensures that members of the defence and security forces cannot be held accountable. In addition, no decisions have been issued by regional or international courts or bodies to bring justice to the victims of Darfur, since trials before the ICC require the presence of the accused.

Since his dismissal on 11 April 2019, following 30 years of bloody dictatorship, criminal proceedings have been brought against Omar Al-Bashir before domestic courts mainly for corruption-related offences. The verdict in this case is expected in December 2019. However, none of the charges against him concern the crimes perpetrated during the Darfur conflict. The ongoing political transition represents an opportunity to advance the fight against impunity in Sudan. Given the state of the Sudanese judicial system and legal framework, at the current time, only the transfer of Omar Al-Bashir to the ICC, to face charges of war crimes, crimes against humanity and the crime of genocide, would provide real prospects of justice to survivors.

Most survivors have been internally displaced (there are an estimated 2.6 million internally displaced persons (IDPs) in Sudan), have taken refuge in neighbouring countries such as Chad (which hosts 300,000 Sudanese refugees), or in Europe. For 16 years, millions of people have thus been waiting for justice to be rendered and for reparations to be issued so that they can finally rebuild their lives. This report presents the testimonies and perspectives of hundreds of women and men who arrived in eastern Chad between 2003 and 2013 as victims of the conflict and refugees in two of the largest camps in the Goz Beida region: Djabal and Goz Amer. Most of the people interviewed by FIDH and ACJPS were subjected to sexual violence, including rape, gang rape, as well as other forms of sexual violence amounting to torture. In the absence of adequate healthcare, they are still suffering the physical and psychological consequences of this violence.

In the camps the situation of women and girls is of particular concern. Many women are victims of polygamy and have to run their households alone in extreme poverty, given the lack of access to employment and increasing restrictions on humanitarian assistance services. The prevalence of domestic violence has increased as a result of various factors such as the persistence of conflict-related trauma, itself linked to the lack of access to adequate psychological healthcare, conflicts related to polygamy and the lack of access to employment. Some women and girls have been victims of rape or witnesses to rape committed by men from the host communities in the vicinity of the camps while they were fetching firewood or water. Many girls are also victims of early marriages within their own communities and are therefore particularly vulnerable to sexual violence and early pregnancy. The lack of remedies available to refugees and obstacles to accessing the national justice system are further reinforced high illiteracy rates among Darfuri refugee women and girls.

Despite these difficulties, the vast majority of refugees interviewed by FIDH and ACJPS do not wish to return to Darfur and prefer to remain on the other side of the border, under the protection of the United Nations High Commissioner for Refugees (UNHCR), where they feel more secure. Indeed, media reports and testimonies from refugees who have been back to Darfur, as well as those of family members left behind, are unanimous about the security situation in the region. According to accounts provided by refugees and lawyers from South, West and North Darfur interviewed by FIDH and ACJPS, former *Janjaweed* militiamen still occupy the lands of members of the Fur, Massalit and Zaghawa ethnic groups who have been chased from their homeland over the past 16 years, and persecute those who have remained or return, including by perpetrating sexual violence.

In this context, FIDH and ACJPS observed a massive rejection of the voluntary return process implemented by UNHCR since April 2018, in accordance with the tripartite agreement signed in 2017 by UNHCR with the Chadian and Sudanese authorities. While the Sudanese authorities have attempted to demonstrate that the security situation in Darfur has improved, the refugees interviewed during the mission conveyed a completely different perception and set various conditions for their return to Darfur. In particular, they demand that those responsible for the crimes perpetrated against their ethnic groups be brought to justice, that their safety be ensured and that their lands be returned to them.

The violence perpetrated in the streets of Khartoum during the 3 June massacre, can be considered as repetition of the sexual violence committed by RSF during the conflict in Darfur and in other regions of Sudan, since it was committed by the same groups, using the same types of sexual abuse, as part of similar military strategies. These recent acts of violence reveal the extent to which widespread impunity provides fertile ground for the repetition of serious human rights violations. The recent violence demonstrates the absolute need to fight impunity in order to prevent the repetition of past crimes. It is essential that those responsible for institutionalising this form of brutality be brought to justice.

FIDH and ACJPS call on the new government to punish those responsible for sexual crimes in Sudan and to guarantee access to justice for survivors of the Darfur conflict, through the immediate transfer to The Hague of persons subject to ICC arrest warrants, including Omar Al-Bashir, so that he can be tried for the international crimes he committed. The fight against impunity also requires the Sudanese authorities to allow independent and effective investigations into violence, including sexual violence, committed in Sudan since the beginning of the protest movement in December 2018, and in particular during the 3 June massacre in Khartoum. Any commission of inquiry, whether national or international, must include women among its members as well as persons with expertise in investigating sexual violence, in order to be able to document such cases effectively and impartially, and make concrete recommendations to bring to justice those responsible and ensure reparation for the crimes committed.

Although the international community mobilised at the time of the eruption of the conflict in Darfur, it subsequently remained silent for several years, allowing the dictator Omar Al-Bashir, who was by then subject to an ICC arrest warrant, to travel extensively, including to States Parties to the ICC Statute, which mobilised within the African Union to shield him from prosecution by the ICC, or considered the Sudanese government as a potential partner, particularly in the fight against “illegal immigration” to Europe. While the international community’s attitude has changed since the uprising and in view of the gross human rights violations perpetrated by the authorities, it must increase pressure on the Sudanese authorities in order to facilitate access to justice and reparations for all victims, including victims of sexual violence.

LIST OF ACRONYMS

ACJPS	African Center for Justice and Peace Studies (Sudan)
ADES	Agence de développement économique et social
APLFT	Association pour la Promotion des Libertés fondamentales au Tchad
AU	African Union
CNARR	Commission Nationale d'Accueil, de Réinsertion des Réfugiés et des Rapatriés
DDPD	Doha Document for Peace in Darfur
DPHR	Détachement pour la Protection des Humanitaires et Réfugiés
EU	European Union
FIDH	International Federation for Human Rights
GoS	Government of Sudan
HIAS	Hebrew Immigrant Aid Society
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
JEM	Justice and Equality Movement
JRS	Jesuit Refugee Service
NCP	National Congress Party
NISS	National Intelligence and Security Services (today known as the GIS – General Intelligence Service)
PEACE	a model for investigation interviews (preparation and planning, engage and explain, account, closure and evaluate)
RSF	Rapid Support Forces
SAF	Sudan Armed Forces
SC	Sovereign Council
SCCEC	Special Criminal Court on the Events in Darfur
SGBV/SGBC	Sexual and gender-based violence / Sexual and gender-based crime
SHRM	Sudan Human Rights Monitor
SLA/AW	Sudan Liberation Army / Abdul Wahid al-Nur
SLA/MM	Sudan Liberation Army / Mini Minawi
SPA	Sudanese Professional Association
TMC	Transition Military Council
UNAMID	United Nations – African Union Hybrid Operation in Darfur
UNAMID	United Nations – African Union Hybrid Operation in Darfur
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs (OCHA)
UNSC	United Nations Security Council

METHODOLOGY

This report contains information from several sources, including testimonies from Darfuri refugees gathered during a fact-finding mission to eastern Chad in April 2018; information collected by local sources including lawyers assisting Internally Displaced Persons (IDPs) in Darfur and a journalist supporting victims of sexual violence in Khartoum during the 2018-2019 democratic uprising; desk research; and regular updates provided by the African Center for Justice and Peace Studies (ACJPS) and Sudan Human Rights Monitor (SHRM), FIDH member organisations in Sudan.

From 17 to 28 April 2018, FIDH and ACJPS conducted an investigation mission to eastern Chad. The mission delegation was composed of Arnold Tsunga, former FIDH Vice-President and current member of the Zimbabwe Human Rights Association (ZimRights), Ameir Suliman, ACJPS Legal Programme Director, Tchérina Jerolon, FIDH Africa Desk Deputy Director, and Daisy Schmitt, FIDH Women's Rights Program Officer. The delegation visited the two largest refugee camps of the Goz Beida locality in the Sila region: Djabal (more than 22,600 refugees) and Goz Amer (almost 35,000 refugees).¹

Scope of the fact-finding mission

The aim of the fact-finding mission was to:

- document the current situation of victims of the most serious crimes, in particular crimes of sexual violence, committed in Darfur between March 2003 and July 2008, including the living conditions of refugees in camps in eastern Chad, their access to basic services and possible human rights violations (in terms of access to security, health, employment, justice, etc.), including sexual and gender-based violence against women and girls;
- determine the measures adopted by the Sudanese and Chadian authorities, as well as other stakeholders such as the United Nations High Commissioner for Refugees (UNHCR), to address their situation and provide them with remedies; and identify the reasons why victims of the most serious crimes committed in Darfur have still not had access to justice and reparations since the outbreak of the conflict;
- identify the main priorities and expectations of refugees, particularly in terms of justice and reparation;
- collect information on refugees' assessment of the security situation in Darfur, the nature and scale of ongoing serious human rights violations against civilians and those responsible for these violations, as well as refugees' concerns in relation to UNHCR's voluntary return process to Darfur, in accordance with the tripartite agreement it signed with Chad and Sudan.

1. UNCHR, *Sudan: Voluntary Repatriation Update 2018*, 31 December 2018, <http://reporting.unhcr.org/sites/default/files/UNHCR%20Sudan%202018%20VolRep%20Update%20%28March%202019%29.pdf>; UNHCR, *Chiffres des Personnes relevant de la compétence du HCR au Tchad (Résumé)*, as of 30 November 2018, <https://data2.unhcr.org/en/documents/download/67195>.

The ultimate objective of the investigation was to revive the attention of the international community to the issue of impunity for the most serious crimes committed in Darfur, the situation of the victims, and survivors' recommendations on justice and reparation.

Interview methodology

The delegation conducted group and individual interviews with approximately one hundred people, a slightly higher proportion of whom were women. All were victims of sexual and gender-based violence. Most of the women had survived sexual violence during the Darfur conflict and almost all women had experienced various forms of gender-based violence after their arrival in Chad.

The group and individual interviews were conducted using the PEACE Model of investigative interviewing. This methodology, considered as best practice in the international field, provides a framework to conduct interviews using a conversational rather than confrontational approach and facilitates the giving of a detailed account while reducing risks of re-traumatising the interviewee or missing important pieces of information. The person in charge of conducting the interview is required to follow the five steps defined in the methodology: plan and prepare the interview, including the location, duration, security, methods of recording the testimony, etc.; provide explanations to the witness about the conduct of the interview, the objectives, obtain his or her consent; listen to the witness's account and ask simple and open questions, without guiding the account; close the interview by ensuring the accuracy and clarity of the testimony; evaluate the quality of her/his own performance and measure the achievement of the results set.

Information collected by local sources

During the fact-finding mission, FIDH and ACJPS also met with representatives of local authorities in the Sila region and the *Commission nationale d'Accueil, de Réinsertion des Réfugiés et des Rapatriés* (CNARR), representatives of UNHCR in Ndjamena and Goz Beida, and UNHCR partner NGOs, including the Jesuit Refugee Service (JRS), *Association pour la Promotion des Libertés Fondamentales au Tchad* (APLFT), *Agence de développement économique et social* (ADES), Hebrew Immigrant Aid Society (HIAS), International Committee of the Red Cross (ICRC) and health professionals from the Goz Beida district hospitals and medical centres within the camps.

In the summer of 2018, FIDH and ACJPS mandated three lawyers, from South, West and North Darfur, to gather information about the security situation in their respective regions, including incidents of violence, especially sexual violence, committed against IDPs. In October 2018, FIDH organised a workshop in Nairobi to enable the lawyers to report back on their findings. The information provided included testimonies from IDPs who had been assaulted, including sexually, by members of the security forces or militias, assessments of the effectiveness of the national justice system and information on the whereabouts of the International Criminal Court's suspects.

In June 2019, FIDH met with a Sudanese journalist involved in the pro-democracy peaceful protest movement who provides assistance to victims of sexual violence, including rapes perpetrated on 3 June 2019. The journalist shared the information in her possession with FIDH.

FIDH and ACJPS sincerely thank all those who contributed to this report, for their time and dedication.



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INTRODUCTION

“We want freedom, peace and justice”

On 11 April 2019, Omar Al-Bashir was removed from his position as President of Sudan, ending his 30-year dictatorial regime. A transitional government, the Sovereign Council (SC), was established after the signing of a power-sharing agreement on 17 August 2019. Under the agreement, the SC is to be headed by the military for the first 21 months of the transition period, and civilian-led for the final 18 months.

Al-Bashir’s fall was the result of four months of unprecedented and widespread peaceful protests which broke out across the country and brought together thousands of citizens. While initially focused

on denouncing the increase in prices of basic commodities, protests quickly evolved into calls for Omar Al-Bashir to step down, with demonstrators demanding “*freedom, peace and justice*”.

Omar Al-Bashir rose to power during a military coup in 1989. For 30 years, his regime was marred by serious and widespread human rights violations – most amounting to international crimes – throughout the country, including in the conflict areas of Darfur, South Kordofan² and Blue Nile, where thousands of civilians were the principal targets of large-scale killings, rapes and other forms of sexual violence, forced displacement, destruction of villages and properties, pillaging, abductions, acts of torture and indiscriminate aerial bombardments. In other areas, civilians were the target of serious restrictions to their fundamental rights and freedoms, with human rights defenders,³ journalists and political opponents facing recurring arbitrary arrests and detentions, acts of torture and judicial harassment.⁴

In respect of most of these violations, complete disregard for the victims and impunity for those responsible has been the rule.⁵ A lack of political will, the absence of an independent national judicial system, as well as the existence of a legal framework which guarantees immunity for most members of the defence and security forces, have contributed to entrenching total impunity, primarily for those responsible for the most serious crimes.

The current situation reflects the international community's half-hearted commitment to accountability

Following Al-Bashir's removal from power, demands to have him transferred to the Hague to stand trial before the International Criminal Court (ICC) were invigorated.⁶ Ten years earlier, on 4 March 2009, the ICC had issued an arrest warrant against him, for his alleged responsibility for war crimes and crimes against humanity committed during the conflict in Darfur, ongoing since 2003.⁷ In July 2010, the ICC issued a second arrest warrant against Al-Bashir for genocide committed in the same region.⁸ UN agencies estimate that over 300,000 people have died as a result of the conflict in Darfur and nearly 3 million have been forcibly displaced, fleeing violations committed mainly by the Sudanese security forces and their proxies from the Janjaweed militia.

The nature, scale and gravity of the crimes committed in Darfur, mostly against civilians from the Fur, Zagawa and Massalit communities, initially prompted multiple efforts by the international community to end the conflict and bring justice to the victims. The ICC arrest warrants against Al-Bashir were unprecedented. It was the first time the Court targeted a sitting Head of State. Moreover, since Sudan

2. FIDH, ACJPS and SHRM, “Conflict in South Kordofan: The International Community Must Take Action Now. The Parties Must Immediately Put an End to Serious Violations”, 22 July 2011, <https://www.fidh.org/en/region/Africa/sudan/Conflict-in-South-Kordofan-The>.

3. See the joint report of the Observatory for the protection of human rights defenders (FIDH and OMCT) and ACJPS, *Target one to silence a hundred: the repression of human rights lawyers in Sudan*, October 2018, https://www.fidh.org/IMG/pdf/sudan_joint_report_web_version.pdf.

4. See the ACJPS, FIDH and IRRI joint submission to the Universal Periodic Review of Sudan which provides an account of the general human rights situation in Sudan, 21 September 2015, <http://www.acjps.org/wp-content/uploads/2016/03/ACJPS-FIDH-and-IRRI-joint-submission-UPR-Sudan-2016-ENGLISH.pdf>.

5. FIDH, ACJPS and SHRM, “On the anniversary of protest massacres, the international community must take a strong stand on impunity for widespread human rights abuses in Sudan”, 23 September 2015, <https://www.fidh.org/en/region/Africa/sudan/on-the-anniversary-of-protest-massacres-the-international-community>.

6. France 24, “Sudan's Bashir should be handed over or stand trial, says ICC Prosecutor”, 19 June 2019, <https://www.france24.com/en/20190619-international-court-sudan-bashir-trial-darfur-mass-killings-icc-army-protests-talks>.

7. FIDH and ACJPS, “Darfur, 10 years after Al-Bashir's indictment: will the international community continue failing victims?”, 4 March 2019, <https://www.fidh.org/en/region/Africa/sudan/darfur-10-years-after-al-bashir-s-indictment-will-the-international>.

8. FIDH, “President Omar Al-Bashir must be arrested”, 17 July 2010, <https://www.fidh.org/en/region/Africa/sudan/President-Omar-Al-Bashir-must-be>.

is not a State Party to the Rome Statute, the United Nations Security Council (UNSC) had to refer the situation to the Court in order for it to have jurisdiction over crimes committed in Darfur. It was the first time the UNSC decided to use this prerogative. At the time, these actions suggested that international outrage could help put an end to the worst crimes and bring perpetrators to justice.

Yet, despite the international community's involvement and the unprecedented action taken in favour of accountability, there have only been lost opportunities for the victims of the Darfur conflict to obtain truth, justice and reparation since the issuance of the ICC arrest warrants. Their fate has been the result of collective failure. Over the past ten years, Omar Al-Bashir has defied the warrants issued against him and travelled throughout the world, including to States Parties to the ICC Statute which failed to comply with their obligation to arrest and surrender him to the seat of the Court.

In parallel, Sudan progressively regained respectability among international actors. The country received significant political support from the African Union (AU), which ceaselessly denounced the ICC proceedings;⁹ it embarked on a strategic and operational partnership with the European Union (EU) for the management of migratory routes;¹⁰ it sided with the regional power of Saudi Arabia regarding the conflict in Yemen in which it played an active role including through the dispatch of troops.¹¹ The initial mobilisation of the international community, commensurate with the gravity of the crimes committed against civilians in Darfur, soon gave way to political and economic interests and, *de facto*, generalised silence.

Impunity for the crimes in Darfur continues to threaten nation-wide stability

This silence was broken following Al-Bashir's removal from power. Soon after the outset of the massive protests in December 2018, the apparent signs of divisions within the ruling party and the army, and the progressive isolation of Al-Bashir, prompted States and institutions to openly denounce the bloody repression of demonstrations. This collective denunciation escalated on 3 June 2019 when elements of the Rapid Support Forces (RSF, former Janjaweed), riot police and national security officials reportedly blocked exit routes and used live ammunition against protesters who had been participating in peaceful sit-ins in front of the army headquarters in Khartoum. RSF and other forces killed at least 128 people, wounded hundreds more, committed rapes and other forms of sexual violence, threw bodies into the Nile weighing them down with bricks and attacked at least three hospitals.¹²

In the aftermath of the 3 June massacre, international condemnation was unanimous. The African Union (AU) suspended Sudan, until the transfer of power from the Transition Military Council (TMC) to a civilian-led authority,¹³ the UNSC called for the immediate cessation of violence against civilians,¹⁴

9. FIDH, "AU resolution in support of al-Bashir: African Heads of State fall into disrepute in Sirte", 5 July 2009, <https://www.fidh.org/en/region/Africa/sudan/AU-resolution-in-support-of-al>; FIDH, ACJPS and SHRM, "The African Union defies the International Criminal Court and dares trample on the memory of Darfuri victims!", 30 July 2010, <https://www.fidh.org/en/region/Africa/sudan/The-African-Union-defies-the>.

10. FIDH and ACJPS, "Sudan: European Parliament calls for transparency and safeguards in migration cooperation", 10 October 2016, <https://www.fidh.org/en/impacts/sudan-european-parliament-calls-for-transparency-and-safeguards-in>.

11. *The New York Times*, "On the Front Line of the Saudi War in Yemen: Child Soldiers From Darfur", 28 December 2018, <https://www.nytimes.com/2018/12/28/world/africa/saudi-sudan-yemen-child-fighters.html>.

12. FIDH and ACJPS, "Sudan: Violent Crackdown on Protesters Requires Urgent Action by International Community", 5 June 2019, <https://www.fidh.org/en/region/Africa/sudan/sudan-violent-crackdown-on-protesters-requires-urgent-action-by>.

13. African Union Peace and Security Council, Communiqué on the situation in the Sudan, 854th meeting, 6 June 2019, PSC/PR/COMM.(DCCCXLIV), <http://www.peaceau.org/uploads/psc.854.comm.sudan.6.6.19.pdf>.

14. In a press statement dated 11 June 2019, the UNSC "called for the immediate cessation of violence against civilians and emphasized the importance of respect for human rights and of ensuring full protection of civilians, accountability and justice". SC/13836, <https://www.un.org/press/en/2019/sc13836.doc.htm>.



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the UN High Commissioner for Human Rights proposed the rapid deployment of a UN human rights monitoring team to examine the violations committed since 3 June 2019,¹⁵ UN Human Rights experts called upon the Human Rights Council to establish an independent investigation into the violations,¹⁶ the EU called for a transfer of power to a civilian-led authority, indicating that such authority would be the only partner with which EU-Sudan relations could be normalised.¹⁷

In addition to condemnation, voices were raised to stress that the RSF was mostly composed of former Janjaweed militias who were officially integrated into the Sudanese armed forces from 2013, without any form of vetting process. The RSF are led by Mohamed Hamdan Dagalo, also known as “Hemeti”, former deputy head of the TMC and a current military member of the SC. Hemeti is known for being a former influential Janjaweed leader who also held the position of security advisor to the Government for South Darfur.¹⁸

15. See in particular, OHCHR, UN Human Rights Chief deplores killings and detentions amid peaceful protests in Sudan, 3 June 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24672&LangID=E>; Press briefing note on Sudan, 7 June 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24682&LangID=E>.

16. “Sudan: UN human rights experts call for independent investigation into violations”, 12 June 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24689&LangID=E>.

17. EU Spokesperson for Foreign Affairs and Security Policy, Statement by the Spokesperson on the current situation in Sudan, 3 June 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/63595/statement-spokesperson-current-situation-sudan_en.

18. United States Institute of Peace, “Chad, and Darfur, after Bashir”, Jérôme Tubiana and Aly Verjee, 2 May 2019, <https://www.usip.org/publications/2019/05/chad-and-darfur-after-bashir>. In her 20th report to the United Nations Security Council, the ICC Prosecutor raised concerns over continuing ground attacks against civilians in Darfur and highlighted the responsibility

The 3 June massacre committed in the streets of Khartoum is an extension of the serious crimes committed by the RSF in the Darfur region since 2003. This massacre reminds us once again that deeply entrenched impunity in Sudan, in particular in respect of the crimes committed in Darfur, has constituted fertile ground for the continued perpetration of serious human rights violations.

Since the outbreak of the conflict in Darfur, the national authorities have not taken a single effective justice measure to bring the crimes to an end, to ensure accountability and to provide reparation to victims. Even the special court established by the authorities to investigate and prosecute those responsible for crimes committed in Darfur had no other task than to prosecute ordinary crimes.

Recent commitments announced by the transitional government may represent a first step towards justice. On 23 September 2019, the SC announced the creation of an investigation committee to shed light on the 3 June massacre which took place in the vicinity of the Defence Ministry in Khartoum. However, the committee includes a representative from the Ministry of Defence and Interior, which oversees all armed forces, including the RSF, which were responsible for a wide range of abuses that took place just outside of the ministry's buildings on 3 June. In addition, there are no women or experts on sexual violence in the committee.¹⁹ With the new transitional government in place, Sudan is now at a crossroads, with an opportunity to depart from its previous policy of total impunity, and to embark on a new chapter, by committing to accountability for the victims of the Darfur conflict, as well as the victims of the recent nation-wide protests, ensuring a genuinely independent and impartial committee.

Meanwhile, to date, more than 300,000 refugees continue to live in the 12 camps established in eastern Chad, and there are still approximately 2.6 million IDPs in Darfur. Refugees and IDPs continue to have limited access to education, healthcare and land, while the security situation in the region remains precarious. Although armed clashes have decreased in various parts of Darfur, they have remained, until recently, particularly acute in others, including in the Jebel Marra, causing casualties, mainly among civilians.

In April 2018, a voluntary repatriation process was initiated for Darfur refugees living in eastern Chad. The process was based on the aim of the Sudanese authorities to demonstrate that the security and political situation in Darfur had normalised. However, during the mission conducted in April 2018 in eastern Chad, FIDH and ACJPS spoke to approximately one hundred refugees from Darfur who expressed different views and expectations to those of the authorities with regard to the voluntary repatriation process and the security situation in the region. In October 2018, FIDH and ACJPS also conducted a series of interviews with lawyers and civil society activists providing assistance to civilians in North, South and West Darfur.

This report reiterates the concerns raised by refugees, lawyers and activists interviewed during both missions. It reveals that access to humanitarian assistance, security, justice and reparation remain among the main demands of interviewees. Those interviewed almost unanimously pointed to the lack of stabilisation of the security situation, the unwillingness of the Sudanese authorities to admit the gravity of the crimes committed against civilians and to provide justice and reparation to victims, as well as the presence of those responsible throughout the region, including within the government itself, as major obstacles to any genuine repatriation process. Most importantly, the testimonies collected demonstrate the ways in which the international community's growing disregard for the serious crimes committed in Darfur has, throughout the years, exacerbated the plight of victims.

of RSF elements, whom she considered to be commanded by Hemeti, 12 December 2014, <https://www.icc-cpi.int/iccdocs/otp/20th-UNSC-Darfur-report-ENG.PDF>.

19. Human Rights Watch, "Sudan's new investigation committee raises concerns", 24 September 2019, <https://www.hrw.org/news/2019/09/24/sudans-new-investigation-committee-raises-concerns>.

Today, as Sudan runs the risk of sinking into a spiral of violence, demands for *“freedom, peace and justice”* are rendered more acute and must urgently be translated into action. Omar Al-Bashir, who remains under arrest in the Kober prison, has been charged by Sudan's public prosecutor with corruption and illegal acquisition and use of foreign funds. So far, the recently appointed SC had yet to indicate whether it would extradite Al-Bashir to the Netherlands.

BACKGROUND

At least 300,000 people died as a result of the conflict in Darfur

Almost 3 million were forcibly displaced

Throughout the conflict, rape and other forms of sexual violence were widespread

CHRONOLOGY



1. 2003: Outbreak of the conflict in Darfur

The conflict which erupted in Darfur in 2003 mainly opposed two rebel groups, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) against the Government of Sudan (GoS) and its proxies from the *Janjaweed* militias. The rebels accused authorities in Khartoum of marginalising the Darfur region by excluding its population from governing positions and failing to ensure fair distribution of the country's wealth.

2. 2005 (25 January): The UN Commission of Inquiry (CoI) on Darfur publishes its report

The CoI found that the Government of Sudan (GoS) and *Janjaweed* militias were responsible for serious violations in Darfur that may amount to war crimes and crimes against humanity and recommended that the UNSC refer the situation in Darfur to the ICC.

3. 2005 (31 March): The UNSC refers the situation in Darfur to the ICC Prosecutor

On 31 March, acting under Chapter VII of the Charter of the United Nations, the UNSC decided to refer the situation in Darfur to the ICC. In June 2005, the ICC opened an investigation on alleged genocide, war crimes and crimes against humanity committed in the region. This was the first ICC investigation on the territory of a non-State Party to the ICC Statute.

4. 2005: Sudan establishes a Special Court for the crimes committed in Darfur

Sudan established the Special Criminal Court on the Events in Darfur (SCCED) to try those responsible for crimes committed in Darfur. However, many international reports (especially those of the UN and international NGOs), as well as FIDH's recent investigation have revealed that this Court has only addressed a few cases which were unrelated to the serious crimes committed in Darfur over the past 16 years.

5. 2007 (27 April): The ICC delivers its first two arrest warrants (against Ahmad Harun and Ali Kushayb)

After nearly two years of investigation, the ICC issued its first two arrest warrants in the Darfur situation, against a GoS official – Ahmad Harun – and a *Janjaweed* commander – Ali Kushayb, for crimes against humanity and war crimes.

6. 2008 (November): Prominent human rights defenders Ameir Suliman, Osman Hummeida and Monim Elgak face torture at the hands of Sudan's NISS (known today as the GIS) for their alleged support to the ICC

On 24 November 2008, the National Intelligence and Security Services (NISS) offices in Khartoum arrested three prominent human rights defenders, Osman Hummeida, Monim Elgak and Ameir Mohamed Suliman, for interrogation purposes related to their human rights activities in Sudan and their relationship with the ICC. The three human rights defenders were interrogated in the absence of any legal counsel, threatened and two of them were subjected to acts of torture and ill-treatment, including water-boarding and severe beatings, until they agreed to hand over their property, i.e. computers and documents.

In November 2009, the three activists, represented by FIDH and the *Organisation mondiale contre la torture* (OMCT) filed a complaint before the African Commission on Human and Peoples' Rights (ACHPR). In February 2015, the ACHPR issued its decision finding that Sudan had violated the defenders' rights and requested that Sudan pay them adequate compensation and investigate and prosecute all those responsible. The decision is yet to be implemented by the Sudanese authorities.

7. 2009: (4 March): The ICC issues its first arrest warrant against Omar Al-Bashir for war crimes and crimes against humanity

Omar Al-Bashir was the first sitting Head of State to be indicted by the ICC. He is accused of five counts of crimes against humanity and two counts of war crimes, including, but not limited to murder, extermination, forcible transfer, rape, torture and pillaging. On 12 July 2010, the ICC issued a second arrest warrant against Omar Al-Bashir for genocide committed against the Massalit, Fur and Zaghawa ethnic groups.

8. 2009 (3 July): The African Union adopts a resolution supporting Al-Bashir and criticizing the ICC

On 3 July 2009, at the African Union (AU) Summit in Sirte, Libya, Heads of State agreed to support Al-Bashir, just a few months after the ICC had issued a warrant for his arrest. In their decision, AU Heads of States refused to cooperate with the Court, criticised the non-opposability of the right to immunity before the ICC and requested that the UNSC apply Article 16 of the ICC Statute to suspend the proceedings against Al-Bashir.

9. 2014 (December): ICC Prosecutor announces that she is "hibernating" the cases

On 12 December 2014, the ICC Prosecutor Fatou Bensouda presented the 20th report of her Office to the UNSC on the state of investigations and prosecutions in Darfur. She stated that: *"faced with an environment where my Office's limited resources for investigations are already overstretched, and given this [UN Security] Council's lack of foresight on what should happen in Darfur, I am left with no choice but to hibernate investigative activities in Darfur as I shift resources to other urgent cases, especially those in which trial is approaching"*. However, "hibernation", does not mean that the Prosecutor dropped charges or closed the cases against the targeted suspects.

10. 2017 (May): Tripartite agreement between Chad, Sudan and UNHCR for the voluntary repatriation of refugees

On 31 May 2017, Sudan, Chad and the UN Refugee Agency (UNHCR) signed a tripartite agreement to organise the voluntary return of the hundreds of thousands of Darfuri refugees living in camps in eastern Chad. As of October 2018, UNHCR had assisted approximately 6,000 refugees to return to Darfur.

11. 2018: UNSC Resolution drastically reducing UNAMID forces

The African Union - United Nations Hybrid Operation in Darfur (UNAMID) was established on 31 July 2007 by the UNSC to protect civilians and humanitarian personnel and contribute to the promotion of human rights and the rule of law. In 2018, UNSC adopted a new resolution to extend UNAMID's mandate but to reduce by more than half the number of its troops.

12. 2018 (January): Antonio Guterres meets Omar Al-Bashir

On 29 January 2018, UN Secretary-General Antonio Guterres met with Omar Al-Bashir on the margins of the African Union Summit in Addis Ababa. This meeting was justified by the United Nations as being of "operational necessity", while UN policy has stated that contact with ICC indictees would be kept to an absolute minimum.

13. 2018 (December): Widespread protests break out across Sudan, demanding Al-Bashir's resignation

Protests broke out across Sudan on 19 December 2018. While initially focused on denouncing increases in the prices of basic commodities, the Sudanese revolution quickly evolved into calls for Omar Al-Bashir's resignation, leading to a violent response from security agencies. At least 225 people were killed and thousands more were arrested, some of whom were allegedly subjected to torture. Soon after the outset of the protests, Omar Al-Bashir tried to blame the revolt on Darfuris.

14. 2019 (11 April): Omar Al-Bashir is removed from power after 30 years of dictatorial regime

On 11 April 2019, Omar Al-Bashir was forcibly removed from power, ousted by his own lieutenants. He was detained in Kober prison and later charged by Sudan's public prosecutor with money laundering and other financial crimes, as well as in connection with his role in the killing of protesters during the demonstrations that led to his removal. Leaders of the TMC indicated that Al-Bashir would not be transferred to the ICC and that he would instead face justice before national courts.

15. 2019 (3 June): Security forces massacre peaceful protesters

On 3 June, at dawn, elements of the Rapid Support Forces (RSF), riot police and national security officials reportedly blocked exit routes and used live ammunition against protesters who had been participating in peaceful sit-ins in front of the army headquarters in Khartoum. RSF and other forces killed at least 128 persons, wounded hundreds more, raped at least 70 women and men and committed other forms of sexual violence, threw bodies into the Nile weighing them down with bricks, and attacked at least three hospitals. The RSF are mostly composed of former *Janjaweed* militias, responsible for the serious crimes committed in Darfur.

16. 2019 (20 August): The Sovereign Council of Sudan

A transitional government, the Sovereign Council (SC), was established after the signing of the 17 August 2019 power-sharing agreement. According to the agreement, the SC is to be headed by the military for the first 21 months of the transition period, and civilian-led for the final 18 months.

I. CIVILIANS IN DARFUR CONTINUE TO BEAR THE BRUNT OF INSECURITY

*"I went back to Geneina, Zalinge, Gosile, Doram in March [2018].
I had been told the situation had changed, but nothing has changed.
Women continue to be raped. [...] What are we going to do if we go back to Darfur?
Going back is impossible for now. I don't even dream of going back. [...] Before we go back to Darfur, the criminals who attacked us must leave the country.
For now, they are still there. None of them have been prosecuted by the ICC. [...] The way back to Sudan is closed. Some say they want to go back, but they never do".*

A.A., woman interviewed in the Djabal refugee camp, April 2018

Prior to the outbreak of the December 2018 protests and the removal of Omar Al-Bashir from power, the Government of Sudan's political narrative on Darfur was intended to persuade the population that, following a long-running armed conflict which caused multiple casualties amongst civilians, the security situation in the region had normalised.²⁰ Citing this purported stabilisation, the Sudanese authorities called for the voluntary repatriation of the 343,000 refugees²¹ living in eastern Chad²² and the dismantling of IDP camps or settlements where approximately 2.6 million people are still living.²³

However, the reality is much more complex, and the various arguments put forward by the authorities to legitimate their "stability discourse" suffer from serious fragility. Security remains a major challenge in Darfur, where armed and political violence continued until recently, at significant levels. While the major armed groups have ceased military operations in the region, previous peace negotiations with the Government of Sudan (GoS) have failed to provide concrete and long-lasting achievements, and it is too early to predict the outcomes of the current South Sudan-sponsored talks in Juba that began in October between the transitional government, the rebel SPLM-North faction and two smaller Sudanese rebel groups.²⁴

20. Reliefweb, *Chad, Sudan and UNHCR first ever Tripartite Commission Meeting resolves to resume voluntary return of Sudanese refugees from Chad in November*, 14 September 2018. On the occasion of the first Tripartite Commission meeting, Sudanese authorities declared that they had taken measures to improve the security conditions in areas of return, including the training of 1,300 police officers to assist the Commission of Refugees (COR) as well as a commission to assist in resolving issues of access to land. They further declared that Sudanese refugees could now return to Darfur "with dignity". <https://reliefweb.int/report/chad/chad-sudan-and-unhcr-first-ever-tripartite-commission-meeting-resolves-resume-voluntary>.

21. As of 30 June 2019, UNHCR estimated the number of Sudanese refugees in Chad at 343,591 persons. <https://data2.unhcr.org/en/country/tcd> (consulted on 25 July 2019).

22. Radio Dabanga, "Al Bashir: 'Repatriation of refugees in and from Chad must be accelerated'", 25 January 2018, <https://www.dabangasudan.org/en/all-news/article/al-bashir-repatriation-of-refugees-in-and-from-chad-must-be-accelerated>.

23. OCHA, *Sudan humanitarian needs overview*, 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_2017_Humanitarian_Needs_Overview.pdf "In Darfur some 1.6 million displaced people are registered as living in camps. For unregistered IDPs i.e. displaced people living in rural settlements and urban areas, estimates vary considerably, especially as there is no systematic registration of displacement outside camps. The official government estimate is that an additional 0.5 million internally displaced persons live outside camps in Darfur [...] The UN and partners estimate that a further half a million displaced people live in host communities and settlements in Darfur".

24. VOA, "Sudan peace talks with rebels begin in Juba", 18 October 2019, <https://www.voanews.com/africa/sudan-peace-talks-rebels-begin-juba>.

Armed clashes continue in the **Jebel Marra**, mainly with elements from the Sudan Liberation Army/ Abdul Wahid al-Nur (SLA/AW), and the region remains home to multiple armed militias. Inter-communal violence continues unabated, causing severe civilian casualties. The **disarmament campaign** launched by the authorities in August 2017 is seen by several observers as a cosmetic measure with no significant impact on the restoration of stability and security. Besides, until recently, Sudanese authorities used **political violence** against Darfuri people, including arbitrary arrests and detention, acts of torture and other serious human rights violations against students, human rights defenders and political opponents. Such violence was particularly acute during the outbreak of the protests in December 2018.

1. Jebel Marra: the epicentre of violence primarily affecting civilians since 2003

In 2018, heavy armed clashes were reported on several occasions in south-eastern, western and northern Jebel Marra²⁵ between the SLA/AW – the remaining active armed group in Darfur – and Government forces. According to the UN Panel of Experts on the Sudan, “SLA/AW, which controls mountainous, remote territories that are difficult for Government forces to access, has engaged in **repeated hit-and-run attacks and ambushes** on convoys and advanced bases of the security forces. The Government, for its part, has launched several **military operations** to dislodge the group from its remaining strongholds, using a combination of Sudanese Armed Forces (SAF), Rapid Support Forces (RSF) and local Arab militias”.²⁶ The region also remains the scene of continuing infighting within the SLA/AW.²⁷

These clashes have **primarily affected civilians** in the Jebel Marra. In October 2018, in a statement delivered to the UNSC, the Chairperson of the Sanction Committee on Sudan declared that “*civilians in Darfur continued to suffer the effects of a lack of progress in the peace process there [...] On-going clashes between the Government of Sudan and pro-Government militia groups and members of the Sudan Liberation Army/Abdul Wahid al-Nur in the Jebel Marra area as well as ongoing inter-communal conflicts have had a negative impact on the civilian population, including various human rights violations and abuses*”. She also stressed that the Panel’s report showed that human rights violations, including sexual and gender-based violence against returnees, took place across Darfur.²⁸

According to the United Nations Panel of Experts on the Sudan, “*clashes in Jebel Marra have resulted in new displacement, humanitarian crisis and human rights abuses. Across Darfur, women and girls continue to be subjected to conflict-related sexual violence. Returns of internally displaced persons have also been fraught with challenges including land disputes and lack of basic services*”.²⁹

“I have been thinking of going back to Darfur. When the situation is fixed, I will. Until then, I won’t. We get information telling us that the situation remains insecure.”

A.E., woman interviewed in the Djabal refugee camp, April 2018

25. Fighting between Government forces and non-State armed groups in Darfur’s Jebel Marra area resulted in the displacement of some 24,000 people between January and September 2018. See: https://reliefweb.int/sites/reliefweb.int/files/resources/DRAFT_Sudan_2019_HNO_13Mar20.pdf.

26. *Report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005) addressed to the President of the Security Council*, p. 12, 10 January 2019, S/2019/34, <https://reliefweb.int/sites/reliefweb.int/files/resources/Final%20report%20of%20the%20Panel%20of%20Experts%20on%20the%20Sudan%20established-10jan2019.pdf>.

27. *Ibid.*, p. 12.

28. “Civilians in Darfur suffering human rights abuses amid ongoing clashes between Government, rebel groups, Sanctions Committee Chair tells Security Council”, 3 October 2018, SC/13530, <https://www.un.org/press/en/2018/sc13530.doc.htm>, accessed on 28 January 2019.

29. *Report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, *op. cit.*, p. 2.



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Between March and April 2018, ACJPS documented multiple attacks of villages which specifically targeted civilians.³⁰ These attacks were perpetrated mostly by the SAF, the RSF and other government-sponsored militias, in retaliation for clashes between Government forces and the SLA/AW. Information collected by the United Nations Panel of Experts on the Sudan in the Jebel Marra led to the following conclusion: *“According to local sources, in the usual modus operandi, the SAF troops stay behind, occasionally engaging in artillery shelling; the RSF elements, in vehicles, enter the targeted village; and the tribal militias, on horses and camels, roam the outskirts of the village, attacking civilians before looting the village”*.³¹ During these attacks, serious violations against civilians have included **killings, rapes and other forms of sexual violence, acts of torture, looting, burning of villages and forced displacement**.³²

30. ACJPS, *Attacks by Sudanese government forces on civilians in Jebel Marra in South Darfur*, 18 April 2018, <http://www.acjps.org/attacks-by-sudanese-government-forces-on-civilians-in-jebel-marra-in-south-darfur/>.

31. *Ibid.*, p. 16.

32. The United Nations Panel of Experts on the Sudan has also reported such violations. In a report released in October 2018, the Panel stated that: “Some armed forces of the Government of the Sudan continue to initiate clashes with civilians and carry out indiscriminate shootings and looting and burning of homes and villages. Most of these attacks are alleged to have been carried out by members of RSF. In addition to reported cases of rape and other sexual assaults against women and girls, RSF has been implicated in acts of torture, inhumane and degrading treatment of civilians and excessive use of force”. *Op. cit.*, p. 18.

On 28 March 2018, ACJPS documented that Government forces attacked at least 10 villages in East Jebel Marra,³³ during which at least 3 civilians were killed, and 12 others were injured. The same day, at least two civilians were seriously wounded when a bomb hit their house in the Sawani area of East Jebel Marra.

On the morning of 31 March 2018, members of the RSF, travelling in more than 20 vehicles and dozens of motorcycles, backed by government-sponsored militias riding camels and horses, launched another attack against villages in the area of Sawani and Rakoona, during which at least 16 civilians were killed, and others were severely injured. Livestock was also looted in both areas.

In April 2018, attacks were perpetrated against at least 10 villages in East Jebel Marra.³⁴ At least 23 civilians were killed, 10 seriously injured and several villages were burnt, leading to the forced displacement of more than 15,000 persons.

Similar attacks against civilians were carried out throughout 2018, with reports also pointing out the involvement of SLA/AW in serious human rights violations committed against civilians.³⁵

"In Darfur, the situation has not changed. We hear reports that the situation has not changed. We recently heard that the chief of a village was killed by the Janjaweed in the last two weeks."

A.I., woman interviewed in the Djabal refugee camp, April 2018

Clashes between Sudanese armed forces and SLA/AW as well as infighting within SLA/AW have also been reported since early 2019.³⁶ Such clashes continued to primarily affect civilians who are forcibly displaced, often on multiple occasions, in search for shelter, food, medical care and other basic services. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that, as of 26 May 2019, an estimated 6,000 new IDPs had arrived from East Jebel Marra at the South Darfur's Otash IDP camp, which constituted an *"unusual increase in the number of IDPs who arrived [in the camp]"*.³⁷ These new arrivals were direct consequences of clashes that occurred in June 2018, which had already forced thousands of civilians to flee. However, *"lack of food and hunger forced them to seek refuge and assistance in Otash IDP camp, their second displacement"*.³⁸

In other areas of Darfur, while clashes between armed forces have diminished, violence against civilians remains unabated. Cases of killings, rape and other forms of sexual violence, acts of torture, looting, mainly targeting civilians, continue to be reported throughout the region.

One of the latest examples is the attacks in the area of Deleig (Central Darfur). On 9 and 10 June 2019, 8 villages were reportedly attacked multiple times by RSF troops, riding in vehicles, on camels and horses. The attacks allegedly led to the death of at least 11 persons – among whom 9 were shot dead

33. In the villages of Feina, Dalo, Dawa, Dolda, Libei, Sawani, Rakoona, Fouli, Duwa and Kidineer in East Jebel Marra.

34. Feina, Dalo, Dawa, Dolda, Libei, Sawani, Rakoona, Fouli, Duwa and Kidineer.

35. UNSC, *African Union-United Nations Hybrid Operation in Darfur*, Report of the Secretary General, 10 April 2019, <https://undocs.org/en/S/2019/305>.

36. *Ibid.*

37. OCHA, *Humanitarian Bulletin*, 25 March-12 May 2019, https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_Sudan_Humanitarian_Bulletin_Issue_04_%2825_March_-_12_May_2019%29.pdf.

38. *Ibid.*

– and left at least 20 wounded. Houses and shops were burnt, and civilians were looted.³⁹ Such attacks remain frequent.

“Since I arrived here [in 2010], I have never been back to Darfur. But according to the information we receive, they continue to rape, to kill people, all that continues. The Arabs are settled in our village. We cannot return. We don’t even think about it.”

A.O., woman interviewed in the Djabal refugee camp, April 2018

While other major armed groups, including the Sudan Liberation Army/Mini Minawi (SLA/MM) and the Justice and Equality Movement (JEM), have for the moment ceased their military operations in Darfur, they remain active in neighbouring countries, notably in Libya, where the ongoing conflict continues to attract fighters in search of money, weapons and equipment. Concerns have been raised regarding attempts by Darfurian armed groups to build their military capabilities in Libya, with the view to establishing a balance of power that could enable them to resume activities in Sudan, in particular in the event that peace negotiations with the authorities fail.⁴⁰

So far, these negotiations have progressed at a slow pace. The GoS continues to consider the 2011 Doha Document for Peace in Darfur (DDPD) as the unique basis of its discussions with armed groups. Until recently, SLA/MM and JEM refused to take part in negotiations based only on the DDPD, considering, amongst other grievances, the mediation role played by Qatar to be illegitimate and politicised.⁴¹ In November 2018, an agreement between GoS, SLA/MM and JEM was reportedly reached concerning the mechanisms to be established for implementation of a future peace agreement. However, these negotiations – which did not include the SLA/AW, as they refuse to sign the DDPD – were suspended when protests broke out across the country in December 2018 and have not been resumed since the designation of the transitional government in August 2019.

“Last month [April 2018], the Janjaweed killed Mr. Abrifa Abed Alrasool Khamiss who was 30 years old, when he went back to our village. During the same period the Janjaweed attacked my nephew, A., aged 10 years, by hitting his body with a horse and robbed his cows. Now, he is in hospital in Al-Geinena [...].”

B.A., man interviewed in the Djabal refugee camp, April 2018

39. Dabanga Sudan, “Eight killed, dozens wounded by militiamen in Darfur banditry”, 11 June 2019, <https://www.dabangasudan.org/en/all-news/article/eight-killed-dozens-wounded-by-militiamen-in-darfur-banditry>; Dabanga Sudan, “Central Darfur militia raids: Death toll rises to 11”, 12 June 2019, <https://www.dabangasudan.org/en/all-news/article/central-darfur-militia-raids-death-toll-rises-to-11>; “UNAMID, which dispatched an assessment mission to Deleig, referred to 17 people dead, 15 injured and 100 houses burnt”, 13 June 2019, <https://unamid.unmissions.org/unamid-dispatches-assessment-mission-deleig-central-darfur-following-communal-clashes>.

40. The Panel of Experts Report notes in particular that Libya-based Darfurian elements “are building their military capabilities so as to return to Sudan when the environment becomes more conducive for such a move”. *Report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, op. cit.

41. Interviews conducted by FIDH with SLA/MM and JEM representatives in Paris, March 2018.

2. The disarmament campaign: a cosmetic measure?

A disarmament process was launched following the adoption of a presidential decree⁴² on 8 August 2017 (Decree of 11 July 2017). The process implied the collection of weapons throughout Darfur in two distinctive phases: a voluntary phase and a non-voluntary phase. During the second phase, the GoS deployed RSF troops and military equipment. Figures indicate that around 10,000 RSF were deployed⁴³ (from South and North Kordofan) after the voluntary deadline had expired. The decree granted RSF and NISS the power to implement its provisions by entering private and public facilities, carrying out arrests and seizing property. It also granted the forces immunity from prosecution, unless permission was given by the President of the Republic.

"The Sudanese Government takes the weapons during the day and redistributes them at night. The situation remains the same in Sudan. Difficulties and problems continue. It's impossible to go back. We are being told that we can go back, but the criminals are still there, and we cannot go back. A genuine refugee cannot decide to go back to Sudan. I know rapes and killings continue."

A.C., woman interviewed in the Djabal refugee camp, April 2018

Government statistics indicate that over 65,000 weapons⁴⁴ have been collected since the beginning of the voluntary campaign, whereas over 700,000 weapons are said to have been registered to civilians in Darfur.⁴⁵ A reliable source told ACJPS that arms collection operations focused on civilian-owned licensed weapons while regular armed groups, militia, and armed resistance movements kept their weapons.⁴⁶

Interviews conducted by FIDH and ACJPS with lawyers and civil society representatives based in Darfur suggest that *"the GoS focuses on confiscating weapons from African tribes only, not from the Arabs. This clearly shows the failure of this policy"*.⁴⁷ Some also raised fears that the disarmament process would create an imbalance between Sudanese forces, in particular the RSF, which would control all the weapons, and civilians, in particular from African tribes, *"who would have no weapons to protect themselves against the RSF"*.⁴⁸ Others declared that the disarmament process had *"no effects on the ground. Tribal conflicts are still going on and the weapons are still in the hands of RSF and non-regular militias"*.⁴⁹ Others explained that *"the GoS conducts searches in some villages without announcement. During the searches, the RSF come at night, collect the weapons and give them to Arab tribes. They collect the weapons for the Arab tribes. In this context, it is difficult to convince IDPs to go back to their places. The RSF are now under the umbrella of the army, but they are the ones committing the violations"*.⁵⁰

"Weapons are collected during the day and redistributed at night."

A.A., a woman interviewed in the Djabal refugee camp, April 2018

42. Decree No. 419 (2017).

43. ACJPS, *Militia Chaos in Darfur: What's Next?*, October 2018, <http://www.acjps.org/wp-content/uploads/2018/10/Militia-Chaos-in-Darfur-Whats-Next.pdf>.

44. *Report of the Panel of Experts on the Sudan established pursuant to Resolution 1591* (2005) addressed to the President of the Security Council, 10 January 2019, S/2019/34, <https://undocs.org/en/S/2019/34>, *op. cit.*

45. ACJPS, *Militia Chaos in Darfur: What's Next?*, *op. cit.*

46. *Ibid.*

47. Interview with lawyer from North Darfur, October 2018.

48. Interview with lawyer from North Darfur, October 2018.

49. Interview with lawyer from North Darfur, October 2018.

50. Interview with lawyer from North Darfur, October 2018.



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The Rapid Support Forces (RSF)

A force with extended powers

Janjaweed militias were integrated into the Sudanese security apparatus from mid-2013, mainly to respond to growing discontent towards the authorities and to help them to confront increasing rebel activity in Darfur, South Kordofan and Blue Nile.⁵¹ Mohamed Hamdan Dagalo, also known as “Hemeti”, today a military member of the SC, was amongst the few *Janjaweed* leaders to remain loyal to the authorities and was chosen to lead the force named the Rapid Support Forces (RSF). The RSF were initially placed under the command of the NISS,⁵² and then officially integrated into the SAF.⁵³ However, the RSF gradually started functioning as a distinctive branch of the security apparatus, placed under the direct command of Sudan’s former President, Omar Al-Bashir. A lawyer from West Darfur told FIDH and ACJPS: “RSF attacked one of the lawyers in my office. They were in a real position of power and told him ‘we belong to the President. Go talk to the President if you want to complain’”. Experts from Darfur confirmed to FIDH and ACJPS that prior to his overthrow, and given his growing mistrust of the army, Omar Al-Bashir was almost entirely relying on RSF for his protection against any form of protest.

At the time of their creation, members of the RSF mostly came from Hemeti’s tribe, the Rizeigat (originating from South Darfur State). Recruitment later extended to other tribes, including among Darfurian African tribes, and areas outside Darfur, such as South Kordofan.⁵⁴ The total number of RSF troops is unknown but is estimated at between 30,000 and 40,000.⁵⁵

It is alleged that these troops include child soldiers, aged between 14 and 17 years, some of whom have been deployed to Yemen to fight alongside the Saudi-led coalition.⁵⁶ Since

51. In 2013, the Government of Sudan was facing increasing rebel activity in Darfur, South Kordofan and Blue Nile and was seeking to regain control over Arab militias in Darfur. The RSF grew out of the paramilitary force of the *Janjaweed* militias. Aljazeera, “Who are Sudan’s RSF and their commander Hemeti?”, 6 June 2019, <https://www.aljazeera.com/news/2019/06/sudan-rsf-commander-hemeti-190605223433929.html>.

52. In July 2019, Sudan’s Transitional Military Council (TMC) issued a constitutional decree to restructure the NISS and changed its name to the General Intelligence Service (GIS). *Sudan Tribune*, “Sudan’s military reforms security services”, 30 July 2019, <http://www.sudantribune.com/spip.php?article67863>.

53. Through a parliamentary act adopted in 2017. See *Report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, addressed to the President of the Security Council, 10 January 2019, S/2019/34, <https://undocs.org/en/S/2019/34>, *op. cit.*

54. UNSC, *Letter dated 28 December 2017 from the Panel of Experts on the Sudan*, S/2017/1125, 27 December 2017, p. 10, https://www.un.org/ga/search/view_doc.asp?symbol=S/2017/1125.

55. *Ibid.*

56. *The New York Times*, “On the front line of the Saudi war in Yemen: Child soldiers from Darfur”, 28 December 2018, <https://www.nytimes.com/2018/12/28/world/africa/saudi-sudan-yemen-child-fighters.html?module=inline>. In March 2015, Sudan sent an initial force of 6,000 troops to Yemen and another 2,000 in June 2017. A third corps whose size was not disclosed by the Ministry of Defence was sent and followed by members of RSF. According to a reliable source there, enlistment in the Yemen effort was robust as salaries were as high as SD 60 million (approximately \$ 30,000 per soldier) for a tour of duty of six months; by contrast, a soldier in the Sudanese Army is paid SD 17,500 or approximately \$ 900 for an in-country assignment of the same duration. Soldiers fighting in Yemen are paid upon their return since service in Yemen is a “prepaid mission” that does not affect monthly salaries. ACJPS, *Militias Chaos in Darfur: What’s next?*, October 2018, <http://www.acjps.org/wp-content/uploads/2018/10/Milita-Chaos-in-Dafor-Whats-Next.pdf>, *op. cit.*

March 2015, Sudan has been playing a significant role in the conflict in Yemen, mainly by sending as many as 14,000 combatants to the battlefield.⁵⁷ Most of these combatants have the same profile: boys – aged between 14 and 17 – originating from poor Darfuri families, in search of economic opportunities. A significant number of them are thought to have grown up in Darfur IDPs camps and have been eager to integrate RSF troops to earn money and get their families out of the camps. West and Central Darfur are amongst Sudan's poorest states,⁵⁸ with high poverty rates in rural areas, high unemployment rates and low employment opportunities.⁵⁹ In a context where Sudanese authorities have taken no tangible measures to ensure economic development in Darfur, migration to foreign countries or engagement within the RSF have constituted real or perceived economic opportunities for the population. According to some sources, RSF combatants receive up to \$ 10,000 to join forces operating in Yemen, in addition to a monthly salary ranging from \$ 480 to \$ 530, depending on experience.⁶⁰ Families of deceased fighters are said to receive financial compensation of up to \$ 35,000.⁶¹ The actual number of Sudanese fighters who have died in Yemen is unknown, although some sources estimate that the figures are in the hundreds.⁶² According to other sources, fighters sent to the battlefield in Yemen are not among those close to Hemeti, who are instead kept in the capital, Khartoum.

The RSF have also been closely involved in the control of migration routes, while implementing the European Union-led "Khartoum process" launched in 2014 and aimed at combating "illegal migration" from the Horn of Africa.⁶³

A bloody human rights record throughout the country

Since their creation, the RSF have been responsible for serious human rights violations committed in various regions, including Darfur, South Kordofan and Blue Nile. In Darfur,⁶⁴ during Government counter-insurgency campaigns, the RSF have killed civilians, committed rapes and other forms of sexual violence, burned and looted villages, with the support of the SAF.⁶⁵

57. *The New York Times*, "On the front line of the Saudi war in Yemen: Child soldiers from Darfur", 28 December 2018, <https://www.nytimes.com/2018/12/28/world/africa/saudi-sudan-yemen-child-fighters.html?module=inline>, *op. cit.*

58. African Development Bank, *Sudan poverty profile*, June 2018, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Brief-Sudan_Poverty_Profile_2014-2015_-_Key_Findings.pdf.

59. According to the African Development Bank, 35.5% of the population in rural areas is below the global poverty line in Sudan, with unemployment a major cause of poverty. While individuals living in households with unemployed heads of household represent only 2.4 percent of the total population, they account for 50 percent of the population living below the poverty line. See: African Development Bank, *Sudan poverty profile*, June 2018, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Brief-Sudan_Poverty_Profile_2014-2015_-_Key_Findings.pdf, *ibid.*

60. *Ibid.*

61. *Ibid.*

62. See: <https://www.nytimes.com/2018/12/28/world/africa/saudi-sudan-yemen-child-fighters.html?module=inline>, *op. cit.*

63. CRU Report, *Multilateral Damage. The impact of EU migration routes on central Saharan routes. Effects of EU policies in Sudan*, by Jérôme Tubiana, September 2018, <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf>.

64. In her 20th report to the UNSC, the ICC Prosecutor raised concerns over the continuing ground attacks against civilians in Darfur and pointed to the responsibility of RSF elements, whom she considered to be commanded by Hemeti, 12 December 2014, <https://www.icc-cpi.int/iccdocs/otp/20th-UNSC-Darfur-report-ENG.PDF>, *op. cit.*

65. See CSOs' open letter to the United Nations Human Rights Council, *Gravely deteriorating human rights and humanitarian situation in Sudan*, 3 September 2015, <http://www.acjps.org/wp-content/uploads/2015/09/NGO-Letter-HRC-30-Situation-in-Sudan-02.09.2015.pdf>; see also ACJPS, FIDH and IRRI joint submission to the Universal Periodic Review of Sudan before the Human Rights Council (September 2015), https://www.fidh.org/IMG/pdf/20150922_pj_joint_submission_upr_sudan_2016.pdf.

According to a lawyer who provides assistance to victims of human rights violations in North Darfur: *"RSF continue raping IDPs and tell them 'it is a favour for you to be raped by us, the Arabs'"*.⁶⁶

The RSF are considered to bear primary responsibility for the massacre which took place in Khartoum on 3 June 2019, when, together with riot police and national security officials, they used live ammunition against protesters who had been participating in peaceful sit-ins, killing at least 128. During the massacre, they committed rapes and other forms of sexual violence,⁶⁷ threw bodies into the Nile and attacked at least three hospitals.⁶⁸ Such extreme violence is reminiscent of RSF's involvement in the September 2013 repression of peaceful protesters during which at least 185 protesters were killed and 800 were detained without charge, many of whom were allegedly subjected to acts of torture.⁶⁹

With regard to their control of migration routes under the "Khartoum process", the RSF have been accused of arbitrarily detaining migrants and committing acts of torture against them, being involved in the smuggling of migrants – sold to Libyan traffickers – or requesting migrants to pay illegal taxes.⁷⁰

In several regions, the RSF have granted themselves powers going beyond their prerogatives as security forces, including the power to confiscate goods and products from merchants or farmers and to sell them for themselves; or the power to interfere within family affairs. A lawyer from North Darfur described the following: *"Because of the rainy season, some IDPs decide to go out for plantation. But they usually find RSF on their lands who allow IDPs to do their plantation and farming under the condition that they pay some money. If they refuse, they won't be allowed to do their plantation. The sum of money can be up to one-third of the products a farmer will be able to sell"*.⁷¹

Crimes approved by the regime

The law (including the 2007 Armed Forces Act, the 1999 Police Act, the 2010 National Security Act) provides for immunity to Sudanese officials, including security forces. In practice, such guarantees of immunity have led to total impunity for Sudanese officials, including in respect of serious human rights violations, and legal remedies for victims have remained unavailable or ineffective. A 2015 constitutional amendment granted NISS, and thereby the RSF, the status of "regular forces", enabling them to benefit from

66. Interview with lawyer from North Darfur conducted by FIDH and ACJPS, October 2018.

67. *Sudan Tribune*, "Victims of sexual violence in Sudan deserve justice", by Tchérina Jerolon and Daisy Schmitt, 19 June 2019, <http://www.sudantribune.com/spip.php?article67657>. The opinion piece was also published in the *Daily Vox*, <https://www.thedailyvox.co.za/victims-of-sexual-violence-in-sudan-deserve-justice/>.

68. FIDH, ACJPS and SHRM, "Sudan: Violent crackdown on protesters requires urgent action by international community", 5 June 2019, <https://www.fidh.org/en/region/Africa/sudan/sudan-violent-crackdown-on-protesters-requires-urgent-action-by-op.cit>.

69. FIDH and ACJPS, "Bloody repression of protests in Sudan: FIDH and ACJPS call upon the African Union to send an Urgent Commission of Inquiry", 1 October 2013, <https://www.fidh.org/en/region/Africa/sudan/bloody-repression-of-protests-in-sudan-fidh-and-acjps-call-upon-the>; FIDH and ACJPS, "Sudan: One year after the September 2013 bloody repression victims still await truth and justice", 22 September 2014, <https://www.fidh.org/en/region/Africa/sudan/16070-sudan-one-year-after-the-september-2013-bloody-repression-victims-still>.

70. See CRU Report, *Effects of the EU Policies in Sudan*, *op. cit.*

71. Interview with lawyer from North Darfur, October 2018.

the immunity provisions.⁷² Hence, no RSF member has ever faced prosecution for alleged involvement in serious human rights violations. According to a lawyer from North Darfur interviewed by FIDH and ACJPS: *“There is no justice that can be provided to the victims. If we refer a matter to the prosecutor, he will not even take the names of those responsible within RSF as they enjoy immunity. The police, prosecutors, judges are afraid of them. They are now above the law, and nobody can prosecute them”*.⁷³

Other Sudanese military forces are responsible for perpetuating serious human rights violations against civilians in Darfur. These forces include the **SAF** which regularly used proxy militias (*Janjaweed*), paramilitary forces including the RSF, during fighting against rebel movements or attacks against civilians. The **NISS** are responsible for committing arbitrary arrests and detentions, acts of torture, threats and intimidation, and other acts of harassment mainly targeting human rights defenders, lawyers, political opponents and other dissenting voices. Both SAF and NISS members enjoy immunity, leading to a complete absence of accountability for their crimes.

72. International Crisis Group, *The Chaos in Darfur*, 22 April 2015, <https://d2071andvip0wj.cloudfront.net/b110-the-chaos-in-darfur.pdf>.

73. Interview with lawyer from North Darfur, October 2018.



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3. Politically instigated violence remains pervasive

When protests broke out across Sudan on 19 December 2018, Omar Al-Bashir was quick to accuse Darfurians of being the main instigators, in order to discredit the movement. Some students from Darfur were arrested, allegedly interrogated, tortured, and forced to confess on television that they had participated in the protests while carrying weapons.⁷⁴ These recent attempts once again illustrate the constant stigmatisation and marginalisation of populations from Darfur, which have been extensively employed under Al-Bashir's regime. This narrative, primarily aimed at dividing and weakening the recent protest movement, completely failed. Protests were organized throughout the country, including in Darfur, with similar demands for regime change and justice for past crimes.

Previously, in January 2018, Darfur had experienced similar protests, aimed at denouncing increases in the prices of basic commodities, including bread. NISS and police agents were responsible for beating peaceful protesters with sticks and batons and firing tear gas and live ammunition into crowds. On 7 January, in El Geneina (West Darfur) one student was killed and six other students were injured after

74. *The New York Times*, "With Sudan's Revolution in the Balance, Darfur Moves Center Stage", 11 May 2019, <https://www.nytimes.com/2019/05/11/world/africa/sudan-darfur-revolution-protest.html?module=inline>, accessed on 14 June 2019.

joint forces of NISS and Sudanese Police used live ammunition to disperse a peaceful student march. At least 5 people were killed and 26 others sustained gunshot wounds when joint forces of the SAF and RSF opened live ammunition on a crowd of protestors at Hasahisa IDP camp in Zalingei (Central Darfur), on 20 January.⁷⁵

In December 2018, protests also took place in Darfur, although, compared with other states, they were of lesser magnitude. This may be attributed to the fact that Darfur was the only region where emergency decrees had been in force since 1997, allowing authorities to carry out arbitrary preventive detention, including *incommunicado*, for up to a renewable 6-month period. Sudanese authorities, in particular the NISS have extensively relied on these decrees to arrest and detain several activists on allegations of affiliation with rebel movements. Many of those detained faced inhumane and degrading treatment, and acts of torture, that have in some cases resulted in death in custody.⁷⁶ Arbitrary prolonged or indefinite detentions, under the emergency decrees, have had the intended impact of intimidating and consequently preventing activists and peaceful protesters from participating in peaceful protests.

In the context of the protests which broke out in December 2018, NISS arrested and detained more than 120 Darfuri people in South, West or Eastern Darfur. The actual figure is likely to be higher as many people were detained for short periods and then released. In Khartoum and other towns in Central Sudan, Darfuri University students were amongst those primarily targeted by NISS when the first protests broke out. Several of them were arrested and detained, including *incommunicado* in unknown locations.⁷⁷ All of them were allegedly released following Al-Bashir's overthrow.

ACJPS documented several cases of arrest and detention in the aftermath of the protests, including the following:⁷⁸

El-Geneina (West Darfur) was the first town in Darfur to witness protests, when, in December 2018, students from the Mohamed Mohi Eldien private high school protested against the high prices of basic commodities. The protests led to the arrest of protesters, with some remaining in *incommunicado* detention for several days.

On 24 December 2018, residents in the towns of El-Fasher (North Darfur) and Eldian (East Darfur) jointly participated in peaceful protests organized by the Sudanese Professional Association (SPA). Authorities responded by arresting 73 peaceful protesters. 70 were released after a brief detention whilst 3 were subjected to three-months' detention in Shala prison, under the emergency decrees.

75. ACJPS, "Sudanese forces fire live ammunition at student protesters, killing one student and injuring six others in El Geneina, West Darfur", 8 January 2018, <https://www.acjps.org/sudanese-forces-fire-live-ammunition-at-student-protesters-killing-one-student-and-injuring-six-others-in-el-geneina-west-darfur/>; ACJPS, "Five IDPs killed as SAF and RSF use live ammunition to disperse a protest in Central Darfur", 24 January 2018, <https://www.acjps.org/five-idps-killed-as-saf-and-rsf-use-live-ammunition-to-disperse-a-protest-central-darfur/>; Joint NGO Open letter concerning the crackdown on peaceful protests and the wave of arbitrary arrests and continued *incommunicado* detentions by Sudanese government forces, 14 February 2018, https://www.fidh.org/IMG/pdf/final_urgent_appeal_to_un_special_mechanisms_14022018.pdf.

76. ACJPS, "Urgent call for investigation into the custodial death of a Pharmacist whilst in NISS detention in South Darfur", 16 January 2018, <http://www.acjps.org/urgent-call-for-investigation-into-the-custodial-death-of-a-pharmacist-whilst-niss-detention-in-south-darfur/>.

77. ACJPS, "Sudan Protests: Urgent call for investigations into the custodial death of three University students and alleged torture of detainees by NISS", 13 March 2019, <http://www.acjps.org/sudan-protests-urgent-call-for-investigations-into-the-custodial-death-of-three-university-students-and-alleged-torture-of-detainees-by-niss/>.

78. UNAMID's April 2019 report also refers to various cases of arrests and detention of protesters in East, South and West Darfur. The report refers to protests being dispersed by security forces using tear gas. African Union-United Nations Hybrid Operation in Darfur, *Report to the Secretary General*, 10 April 2019, S/2019/305, https://unamid.unmissions.org/sites/default/files/s_2019_305_e.pdf.

On 9 January 2019, the NISS arrested six human rights defenders in Nyala (South Darfur) whilst they were carrying out peaceful protests in front of the Central Court of Nyala, in solidarity with protesters detained in other Sudanese towns.⁷⁹

On 11 January, Ms. Amani Hasabo, a member of the Sudanese Congress Party, was arrested at her home in El-Fasher (North Darfur) and subjected to three months' detention under the emergency decree in El-Fasher (Khir Kanaga). She was released following Al-Bashir's pardon granted on 8 March 2019.

As of 18 January, NISS had arbitrarily arrested and detained more than 40 Darfuri students publicly accused of being part of a "sabotage cell".⁸⁰ It was reported that these students were subjected to torture and/or ill-treatment whilst in detention.

On 21 March, the RSF arrested Mr. Abu Bakar Adam Fadul in Jugo Jugo, near El-Fasher (North Darfur), on accusations of filming the RSF military base. Mr. Adam is the brother of Mr. Mohamed Adam Fadul, an activist who published information about security agencies involved in arresting and committing acts of torture against protesters in El-Fasher. Mr. Adam was detained *incommunicado* by the RSF in an unknown location. He has since been released.

On 29 March, NISS arrested at least two protesters in Zalingi (Central Darfur). On the same day, NISS arrested one activist at his home in El-Fasher (North Darfur).

On 2 April 2019, NISS arrested at least two protesters from the market in Zalingi (Central Darfur).

Several protesters from Al-Deain in East Darfur were detained for three months.

At least four peaceful protests were organized by lawyers and human rights defenders in Nyala town (South Darfur). Among them approximately 10 were briefly detained by NISS and then released. However, Mr. Salah Adam Alnoor, a lawyer and human rights defender, was transferred to Khartoum on 5 January 2019 where he remained in *incommunicado* detention. He has since been released.

Over the past few years, in particular since early 2018, FIDH⁸¹ and ACJPS have documented and denounced several cases of arbitrary arrest and detention, harassment, including judicial harassment of human rights defenders or lawyers in Sudan, including from Darfur.⁸²

79. ACJPS, "Sudan: Activists targeted with arbitrary arrest and *incommunicado* detention whilst the media remains restricted amidst crackdown on December 2018 peaceful protest", 17 January 2019, <http://www.acjps.org/sudan-activists-targeted-with-arbitrary-arrest-and-incommunicado-detention-whilst-the-media-remains-restricted-amidst-crackdown-on-december-2018-peaceful-protest/>.

80. ACJPS, HRW, IRRI and Al Khatim Adlan Centre for Enlightenment and Human Development, "Sudan: Hundreds of Protesters Arrested: Free or Charge Detainees; End Abuse of Critics", 18 January 2019, <http://www.acjps.org/wp-content/uploads/2019/01/Sudan-Hundreds-of-Protesters-Arrested.pdf>.

81. Within the framework of the Observatory for the protection of human rights defenders, a joint programme of FIDH and OMCT.

82. See some of the most recent examples: Observatory for the protection of human rights defenders, "Sudan: *Incommunicado* detention of 8 human rights defenders, lawyer and journalists, and arbitrary detention of a journalist and human rights defender for participating in peaceful protests", 8 February 2018, <https://www.fidh.org/en/issues/human-rights-defenders/sudan-incommunicado-detention-of-8-human-rights-defenders-lawyer-and>; Observatory for the protection of human rights defenders, "Sudan: Release of Ms. Rawa Jaafar Bakhit, Ms. Nahid Jabrallah, Ms. Amel Habani, Ms. Hanan Hassan Khalifa, and Mr. Mohamed Abdallah Aldouma", 22 February 2018, <https://www.fidh.org/en/issues/human-rights-defenders/sudan-release-of-ms-rawa-jaafar-bakhit-ms-nahid-jabrallah-ms-amel>; Observatory for the protection of human rights defenders, "Sudan: Release of Mr. Osman Salih, Mr. Salih Mahmoud Osman and Mr. Amjed Fareed", 17 April 2018, <https://www.fidh.org/en/issues/human-rights-defenders/sudan-release-of-mr-osman-salih-mr-salih-mahmoud-osman-and-mr-amjed>. See also the joint report by the Observatory for the protection of human rights defenders and ACJPS, *Target one to silence a hundred. The repression of human rights defenders in Sudan*, October 2018, https://www.fidh.org/IMG/pdf/sudan_joint_report_web_version.pdf, *op. cit.*



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4. Untimely downsizing of UNAMID while rape and other forms of sexual violence remain widespread

In June 2017, the UNSC adopted a resolution renewing the mandate of the United Nations – African Union hybrid mission in Darfur (UNAMID)⁸³ until 30 June 2018, while deciding to drastically reduce the mission's troop and police strength. The Council decided that at the end of phase one of the draw down, the authorized numbers of troops and police would be 11,395 (instead of 15,845) and 2,888 (instead of 3,403), respectively; and at the end of phase two, 8,735 troops and 2,500 police.⁸⁴

Prior to the adoption of the resolution, the Assistant Secretary-General for Peacekeeping Operations told the Council that gradual restructuring of UNAMID should take place given that the *"level of armed hostilities [was] significantly lower than in previous years"*.⁸⁵ In a resolution adopted on 13 July 2018, the UNSC renewed UNAMID's mandate, while confirming its further reduction and affirming that the exit of the mission would take place on 30 June 2020.⁸⁶

83. UNAMID was established in 2007, in the context of the conflict that erupted in Darfur in 2003 and was mandated to ensure the protection of civilians, the facilitation of full humanitarian access and the return of refugees and IDPs to their homes. The mission was also established to contribute to the restoration of security in Darfur. [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769\(2007\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769(2007)).

84. "Security Council Renews Mandate of African Union-United Nations Hybrid Operation in Darfur, Unanimously Adopting Resolution 2363 (2017)", 29 June 2017, <https://www.un.org/press/en/2017/sc12893.doc.htm>.

85. "Assistant Secretary-General Urges Readjustment of Mandate to Accompany Drawdown of African Union-United Nations Hybrid Operation in Darfur", 14 June 2017, <https://www.un.org/press/en/2017/sc12869.doc.htm>.

86. UNSC, S/RES/2429 (2018), 13 July 2018, [https://undocs.org/en/S/RES/2429\(2018\)](https://undocs.org/en/S/RES/2429(2018)).

These planned cuts and exit of the mission were however primarily based on the Government of Sudan's "stability discourse", rather than the material facts revealing the actual security and political context prevailing in Darfur: the continued armed clashes or acts of violence primarily affecting civilians; the precarious humanitarian situation; hundreds of thousands of IDPs and refugees; and the absence of a viable political agreement between authorities and rebel movements.

On 27 June 2019, the UNSC decided to extend "temporarily and exceptionally, the period of draw-down" for the mission's military personnel.⁸⁷ The decision was taken in the political and security context that prevailed following the ousting of Omar Al-Bashir. Despite the various criticisms against UNAMID,⁸⁸ it was clear that, in the current context, with no visibility over the transition process, security instability throughout the country, in particular in Darfur, the absence of any other international presence in charge of protecting civilians and documenting human rights violations, and Sudan suspended from the African Union, a decrease in UNAMID troops or a withdrawal of the mission would have been inappropriate.

Following the political transition in Sudan, on 31 October 2019, the UNSC decided to extend the UNAMID mandate by one year, until 31 October 2020. Resolution 2495 (2019) states that the mission will maintain its current troop and police level until 31 March 2020, keeping all team sites other than the sector headquarters in South Darfur, with drawdown plans following that date to be decided. To inform consideration of drawdown options by the 31 March deadline, the Council requested a report by 31 January 2020 assessing the situation on the ground, progress in the peace process, information on the status of team sites previously handed over to the Government, and recommendations for the drawdown itself.⁸⁹

87. UNSC, Resolution 2479, S/RS/2479, 27 June 2019, [https://undocs.org/S/RES/2479\(2019\)](https://undocs.org/S/RES/2479(2019)).

88. Since its establishment, UNAMID has been criticised, including by civil society organizations, for not adequately implementing its mandate on protection of civilians.

89. "UNSC 8654th meeting, Security Council extends mandate of African Union-United Nations Operation in Darfur for one year, unanimously adopting Resolution 2495 (2019)", SC/14007, 31 October 2019, <https://www.un.org/press/en/2019/sc14007.doc.htm>.

Rape and Other Forms of Sexual Crimes Remain Widespread and Unpunished

On 3 June 2019, when members of Sudanese security forces, mainly from the RSF, attacked civilians participating in the peaceful sit-in in front of the military headquarters, at least 128 people were killed and at least 500 others wounded.⁹⁰ The RSF reportedly used live ammunition against protesters, threw bodies into the Nile and attacked hospitals and medical personnel. Cases of rape and other forms of sexual violence were also reported, with some doctors estimating that at least 70 rapes were perpetrated against women and men on that day.

These reports of rapes committed by the RSF came as no surprise. This military body, mostly composed of former members of the Janjaweed militia, is notorious for having committed serious crimes, including sexual crimes, during the conflict in Darfur. Sexual crimes were indeed one of the most salient facets of the conflict. Dozens of investigations revealed the devastating violence inflicted upon women and girls – many of whom suffered public gang-rapes – during military operations against their villages. Some were kidnapped and held captive as sex slaves for days in military camps; others were raped in and around IDP camps that were supposed to serve as a refuge for them. Still, others had their unborn babies ripped from their bellies, endured genital mutilation and the humiliation of forced nudity. Men, too, fell victim to abuses – many have described suffering sexual mutilation. Most of these crimes were committed at the hands of Sudanese security forces and their allies within the Janjaweed militia, who have so far enjoyed complete impunity.⁹¹

“We were in a village not far from Beida. The war started there. Janjaweed came to take things from people. One day, a large group of Janjaweed came to take everything we had. The people started to flee. My brothers, my mother and I left separately. I left to hide. I came across a group of Arabs. Maybe they were over 20. Three of them raped me. As I refused, one had a small pistol [...]. They hit me. I could not defend myself. They raped me one after the other. I do not know how long it lasted. They raped me until I fell unconscious. They left me on the ground [...]. They left me like that. [...] My mother wanted to seek justice for me. But since it was Janjaweed who raped me, and since they had not disappeared, it was not worth it. [...] When we arrived here in Chad, my family got me married. When my husband found out that I had lost my virginity, he left. [...] Today I still feel pelvic pains. I often have a lot of thoughts about rape, which makes me feel dizzy. [...] I do not see a good future for me”.

A.N., woman interviewed in the Djabal refugee camp, April 2018

90. FIDH, ACJPS and SHRM, “Sudan, violent crackdown on protesters requires urgent action by international community”, 5 June 2019, <https://www.fidh.org/en/region/Africa/sudan/sudan-violent-crackdown-on-protesters-requires-urgent-action-by>.

91. Tchérina Jerolon and Daisy Schmitt, “Victims of sexual violence in Sudan deserve justice”, 19 June 2019, Op-ed published in the *Daily Vox*, the *Sudan Tribune* and the *Daily Nation*, <https://www.fidh.org/en/region/Africa/sudan/victims-of-sexual-violence-in-sudan-deserve-justice>, *op. cit.*

A woman who, at the beginning of the war, was held captive for several days by Janjaweed militias and gang-raped, told FIDH and ACJPS: *"Those who raped me are hiding behind the State of Sudan. I was there, in Sudan, I did not find any justice. Now I'm here in Chad. Do you think I can go back and complain against those who raped me? No, I can't. But I need those who raped me to face justice. It's my whole life that has been taken. How can people committing crimes against you remain free? They are living their lives and me I'm here in the refugee camp. I need all my pain to go away. This can only be achieved if those criminals face the court"*. She further indicated that other members of her family were raped by the Janjaweed. All of them, including her, continue suffering the physical and psychological consequences.

A.R., woman interviewed in the Goz Amir refugee camp, April 2018

Such crimes, perpetrated for strategic and opportunistic reasons, were widespread and systematic. They were an integral part of the *modus operandi* of the Sudanese security forces and the *Janjaweed* militia, during attacks mainly targeting civilian populations of Fur, Massalit and Zaghawa ethnicity, perceived as being close to the SLM/A, JEM and other armed groups opposing the Sudanese Government. It is estimated that dozens of villages were attacked in the north, south and west of Darfur and that thousands of women and girls were raped and victims of other forms of sexual violence during such attacks.⁹²

Today, sexual violence against civilians remains widespread throughout Darfur. The UN Panel of Experts on the Sudan recently indicated that *"Gang rape, primarily by armed men, is becoming an increasing phenomenon in Darfur [...] as are reports of abductions and kidnapping for the purpose of rape [...]. These human rights abuses and other criminal acts continue to be perpetrated with impunity and leave women and girls extremely vulnerable. The rape of children also remains a serious concern in Darfur [...]. Descriptions of perpetrators include civilian men and boys, armed men, members of militia groups in civilian clothing and members of State security forces, including SAF, RSF, the Border Guards and the police. Members of SLA/AW in the Jebel Marra have also been named as perpetrators"*.⁹³

In a previous report, the Panel indicated that *"while crimes of sexual violence occur both in urban and rural settings, women and girls in displaced persons camps and in rural communities are systematically preyed upon by armed men, especially when they are on the move and engaged in livelihood activities. As in previous years, there was a peak in sexual violence cases during the 2017 farming season, in particular in areas with a high presence of armed militia and other armed actors, such as North and Central Darfur. While in certain instances, these acts are opportunistic, in others they are aimed at instilling fear in the victims and their communities"*.⁹⁴

92. According to the ICC Office of the Prosecutor, *"Since March 2003, thousands of women and girls belonging to the target groups were raped in all three States of Darfur by members of the Armed Forces and Militia/Janjaweed. Girls as young as five and women as old as 70 have been raped. Gang rape – the rape of one or more victims by more than one perpetrator – has been a distinctive feature of sexual violence in Darfur [...] Rape has been used as a weapon during the attacks on villages and has been 'a critical element in the sweeping, scorched-earth campaign by the Janjaweed and the GoS against the non-Arab Darfurians'. Rape has also been a characteristic of the abuses in and around the camps for the internally displaced persons. Most of these rapes have been attributed by victims to members of the Armed Forces, Militia/Janjaweed and other GoS agents"*. ICC, Decision on the Prosecution's application for a warrant of arrest against Omar Hassan Ahmad Al Bashir, para.106, 4 March 2019, https://www.icc-cpi.int/CourtRecords/CR2009_01517.PDF.

93. *Final report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, paras.144-150, 10 January 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/Final%20report%20of%20the%20Panel%20of%20Experts%20on%20the%20Sudan%20established-10jan2019.pdf>, op. cit.

94. *Final report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, paras. 118-122, 28 December

The UN Secretary-General reported in March 2019 that in 2018 UNAMID “documented 122 incidents of sexual violence involving 199 victims: 85 women, 105 girls and 9 boys in Central, South, North and West Darfur States. Rape constituted 80 per cent of reported incidents; 80 per cent of the perpetrators of sexual violence were described as armed and 31 per cent of cases were attributed to members of the security forces. [...] One incident in Jebel Marra involved 37 internally displaced women, who were sexually assaulted while they were returning from livelihood activities in Thur, Central Darfur. The alleged perpetrators were members of the Rapid Support Forces and the Sudanese Armed Forces and other unidentified armed elements”.⁹⁵

Sexual violence in Darfur has had devastating effects on civilian populations. Families and entire communities have been destroyed or suffer long-term consequences, given the serious physical, psychological and social impacts.⁹⁶

Sixteen years after the outbreak of conflict, the scars are still very apparent. They are exacerbated by the fact that the situation of victims of sexual violence remains characterized by a total absence of justice and reparation from Sudanese authorities. Although they have been informed of the extent and seriousness of crimes of sexual violence committed against civilian populations, the authorities have not taken any significant steps to end such crimes, prosecute those responsible, provide reparation to victims or put in place guarantees of non-repetition.

While some cases of sexual violence have been handled by Sudanese justice authorities, they are not conflict related. Indeed, Sudanese authorities continue to deny the occurrence of conflict-related sexual violence. In March 2007, in an interview given to NBC, Omar Al-Bashir declared, “It is not in Sudanese culture, or people of Darfur to rape. It doesn’t exist. We don’t have it”.⁹⁷ In February 2018, following a mission to the country, the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict expressed concern that the Sudanese authorities continue to use this rhetoric of denial, stating, “It deeply saddened me to hear interlocutors in Sudan doubting and questioning victims [of sexual violence] as well as the appalling nature of these crimes”. She further expressed alarm that, “The pervasive culture of denial is the most serious obstacle to eradicating this heinous crime”.⁹⁸

“Since I arrived here [in 2010], I have never been back to Darfur. But according to the information we receive, they continue to rape, to kill people, all that continues. The Arabs are settled in our village. We cannot return. We don’t even think about it”.

A.O., a woman interviewed in the Djabal refugee camp, April 2018

2017, <https://www.undocs.org/S/2017/1125>.

95. *Conflict-related sexual violence*, Report of the United Nations Secretary-General, S/2019/280, 29 March 2019, pp. 30-31.

96. See below, Section II, for testimonies from refugees who have been victims of sexual violence during the conflict.

97. NBC News, “Sudan’s al-Bashir denies role in Darfur violence”, 20 March 2017, http://www.nbcnews.com/id/17691868/ns/nbc-nightly_news_with_brian_williams/t/sudans-al-bashir-denies-role-darfur-violence/#.W-wDRDjLCL.

98. “Special Representative of the Secretary-General on Sexual Violence in Conflict Ms. Pramila Patten Concludes Visit to Sudan and Calls for End to Culture of Denial for Conflict-Related Sexual Violence”, 27 February 2018, <https://www.un.org/sexualviolenceinconflict/press-release/special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten-concludes-visit-to-sudan-and-calls-for-end-to-culture-of-denial-for-conflict-related-sexual-violence/>.

According to the UN Panel of Experts on the Sudan: *"Underreporting owing, among other reasons, to fear of reprisals, harassment and social stigma remains a key concern. When incidents are reported, lack of follow-up and inadequate response by police and judicial authorities represent significant challenges, in particular when the perpetrators are alleged to be armed actors or of Arab ethnicity. Protection for victims and witnesses who come forward is also lacking; at times, victims face pressure not to file complaints or are intimidated to drop charges. Finally, the victims' limited access to essential medical and psychosocial services, the lack of trained personnel and weak referral pathways are additional impediments to curbing sexual violence. Aid and health workers can at times face restrictions imposed by the authorities on the provision of services to survivors and on prevention and monitoring activities, which in turn, limits the accurate collection of data on cases".*⁹⁹

These challenges were confirmed to FIDH and ACJPS by lawyers providing assistance to victims in West, South and North Darfur. One of them reported the case of a woman, a 22-year-old IDP, who was gang-raped in late 2017. She was on her way from the Otash to the Kalma IDP camp in Nyala when she was stopped by three men who were driving a Land Cruiser car. She was forced to enter the car, blindfolded and taken to a barrack. The three men raped her until she fell unconscious. When she woke up, she found her way to Kalma camp and reported the case to a local leader, who managed to take her for medical treatment. The victim did not feel confident enough to report the case to the police. She got pregnant as a result of being gang-raped.

While the Special Criminal Court on the Events in Darfur, created in 2007 by the Sudanese authorities, has prosecuted and convicted members of rebel groups – often after proceedings which failed to respect the right to a fair trial - to date it has mainly addressed common law offences (theft of livestock, matrimonial disputes, etc.). Since its creation, the Court has not dealt with a single case of conflict-related rape or other forms of sexual violence.¹⁰⁰

99. *Final report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, para. 122, 28 December 2017, <https://www.undocs.org/S/2017/1125>, *op. cit.*

100. The Special Representative of the Secretary-General on Sexual Violence in Conflict recently conducted a mission to Sudan and reported that *"In El Fasher, [she] met with the Prosecutor General of the Special Court for Darfur, which has jurisdiction over conflict-related crimes committed in Darfur since February 2003. [She] was dismayed to learn that, to date, the Special Prosecutor's Office has not investigated a single case of conflict-related sexual violence"*. She further denounced the absence of female judges in the five states of Darfur, and the lack of female police investigators and prosecutors. For more information on the Special Court, see below Section III.

II. RETURNING TO SUDAN: HARDLY AN OPTION FOR REFUGEES

The huge forced displacements of population in Sudan, which have occurred over the past 15 years are mainly caused by the GoS's violent counter-insurgency in conflict areas, including in Darfur, South Kordofan and Blue Nile, the lack of democratic rule, deeply rooted discrimination, marginalisation and economic hardship. The number of Sudanese, in particular Darfurians, leaving their country for Libya and Europe has continued to increase over recent years. In 2013, an estimated 30,000 to 60,000 Sudanese left their country for Libya or Egypt; between 2014 and 2016, Sudanese arriving in Italy multiplied threefold.¹⁰¹

Around 343,000 Sudanese refugees¹⁰² continue to live in 12 camps¹⁰³ established just outside the western border of the country, in eastern Chad. These camps are operated by the UNHCR and its partners. In addition to refugees, Sudan also has the second largest population of IDPs on the continent, with approximately 2.6 million persons still leaving in IDP camps, rural settlements, urban areas and host communities.¹⁰⁴

Most of the refugees interviewed by FIDH and ACJPS arrived in eastern Chad between 2003 and 2013 and had survived serious human rights violations including rapes and other forms of sexual violence, acts of torture, forced displacements, killings of their relatives, pillaging, destruction of properties. Most refugees had been forcibly separated from members of their families and some of them, including elderly women, remained on their own within the camps, with no close relative to assist them. Besides, many of those interviewed had fled the country while they were still children, and, in most cases, had strong memories of the events that forced them to leave Darfur. As adults interviewed by our organisations, most of these refugees seemed completely lost about their future prospects in Chad, Darfur, or even abroad. Despite some differences in the way they perceived their personal situations – especially between men and women – all refugees interviewed continued to suffer the consequences of the conflict, including physical, psychological, social or economic consequences.

In addition to narrating their personal stories and giving testimonies about the crimes they endured in Darfur, refugees interviewed insisted on giving details on their living conditions and challenges faced in the camps in eastern Chad. The situation they described remains ambivalent. On the one hand, the living conditions in the camps are very harsh, especially for women, many of whom are sole householders and

101. In France, in 2017, around 75% of Sudanese asylum seekers obtained refugee status or protection and Sudan was the first nationality to be granted refugee status ahead of Syria and Iraq. Clingendael, *Multilateral Damage, The impact of EU migration policies on central Saharan routes*, CRU Report, September 2018, pp. 37-38, <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf>.

102. As of 30 June 2019, UNHCR estimated the number of Sudanese refugees in Chad at 343,591. <https://data2.unhcr.org/en/country/tcd> (consulted on 25 July 2019).

103. Oure Cassoni, Iridimi, Touloum, Am Nabak, Mile, Kounoungou, Gaga, Farchana, Bredjing, Treguine, Djabal and Goz Amer. They each host between 20,000 and 50,000 refugees. UNHCR, *Sudan: Voluntary Repatriation Update 2018*, 31 December 2018, <http://reporting.unhcr.org/sites/default/files/UNHCR%20Sudan%202018%20VolRep%20Update%20%28March%202019%29.pdf>.

104. OCHA, Sudan humanitarian needs overview, 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_2017_Humanitarian_Needs_Overview.pdf. "In Darfur, some 1.6 million displaced people are registered as living in camps. For unregistered IDPs i.e. displaced people living in rural settlements and urban areas, estimates vary considerably, especially as there is no systematic registration of displacement outside camps. The official government estimate is that an additional 0.5 million internally displaced persons live outside camps in Darfur [...] The UN and partners estimate that a further half a million displaced people live in host communities and settlements in Darfur".



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have to raise their children with insufficient resources. However, the overwhelming majority of refugees expressed their satisfaction at receiving humanitarian assistance and their wish that it could continue for as long as necessary. Above all, the difficulties encountered in the camps are largely counterbalanced by the highly volatile security situation in Darfur and the outright refusal of interviewed refugees to return to their lands as long as they are occupied by the former Janjaweed and the government continues to host those responsible for the crimes perpetrated in Darfur (see above Section I). Despite government pressure, and according to information collected by FIDH and ACJPS from lawyers providing assistance to IDPs in Darfur, IDPs generally refuse to go back to their homelands or to integrate villages which have been newly created with the support of Gulf countries, as part of the GoS-led voluntary return process. Security and access to basic services are among their main demands.

This section focuses on the harsh living conditions described by refugees interviewed in the camps of Goz Beida and Goz Amer. While most refugees face similar challenges (in terms of access to health, education, food, water, employment, etc.), these challenges tend to be exacerbated for women and girls. Testimonies collected by FIDH and ACJPS demonstrate how discrimination and gender-based violence have been, in this particular precarious humanitarian and security context, exacerbated for women in the refugee camps.

This section also highlights testimonies from refugees and analysis from lawyers providing assistance to IDPs, illustrating unwillingness to participate in repatriation or relocation processes in the absence of any significant guarantee related to the stabilisation of the political and security situation in Darfur. While these testimonies were gathered prior to the protests that broke out throughout Sudan in December 2018, and a transitional government has been formed since then, it is likely that the current security situation in Darfur is insufficiently stable for IDPs to return to their villages and homes.

1. Harsh living conditions in camps, especially for women and girls

1.1 Decreasing budgets

A few years after the onset of a crisis, as it becomes less and less urgent in the eyes of the international community, humanitarian funding decreases and is allocated to other situations seen as more urgent. For several years, Chad has no longer been on the frontline of humanitarian funding. The situation of Sudanese refugees who settled in the eastern part of the country 16 years ago is no longer among UNHCR's emergency situations. As a result, for many years, UNHCR refugee program's budget for Chad has been falling steadily and drastically, from 227 million USD in 2014 to 124 million USD in 2019.¹⁰⁵ According to UNHCR's estimates, 208 million USD were needed to meet the needs of all refugees in the country in 2019, including 113 million USD for Sudanese refugees alone.¹⁰⁶

1.2 The dire situation of women and girls

In UNHCR camps, refugees mainly depend on humanitarian assistance to fulfil their basic needs. They continue to have access to food, water, healthcare, education and in some cases, land and income-generating activities. But these services are limited and largely insufficient for women who are often sole householders and have to look after several children. They live in informal settlements – separated compounds with houses made of natural materials – where they have no access to electricity and have to go outside the camps to collect firewood.

A/ Women as sole householders and poverty

In the eastern Chadian camps, most women interviewed by FIDH and ACJPS raise their children alone and live in poverty. Because of the war and the gender dimension of the violence perpetrated during the conflict, in which men were more often targeted by killings and women by rape and other forms of sexual violence, many men have died or disappeared. Furthermore, it is often the case that Darfuri women are considered as caregivers and are in charge of domestic work and raising the children, among other tasks.¹⁰⁷ In addition, in many cases, Darfuri men leave them in charge of the children without support after divorce or separation.

*"I came here with my husband and my children. Later, we divorced.
When we separated, I suffered, he left all the children with me.
Now I live alone with my children, six of them are alive.
It's difficult to raise them by myself. Three have blood problems (anaemia).
One has a mental problem. I take them to the hospital, sometimes it's free,
sometimes they give me a prescription to buy the medicines outside.
I don't work. I wish I could get a treatment for my children. There's no proper treatment here.
One of my children went to the hospital every day until he died."*

T.O.Y., aged 35 years, woman interviewed in the Djabal refugee camp, 19 April 2018

105. UNHCR, *Global Focus, Chad*, <http://reporting.unhcr.org/node/2533?y=2019#year>.

106. This estimate was made for 324,702 Sudanese refugees on 31 December 2019. 120 million USD will be needed to assist an estimated 298,700 Sudanese refugees for 2020. See HCR, *Tchad, Plan de réponse pays pour les réfugiés, 2019-2020*, p. 3.

107. Cultural Orientation Resource Center, *Refugee Backgrounder No. 6, Refugees from Darfur: Their Background and Resettlement Needs*, June 2011, p. 3.



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*"I got married in my homeland. I divorced 5 years ago.
[My ex-husband] remarried me again. He divorced me again and left me.
Now I'm alone with my five children. They all have the same father.
When he divorced me the last time, I was pregnant.
He went back to Goz Amer and remarried there."*

F.M.A., aged 38 years, woman interviewed in the Djabal refugee camp, 20 April 2018

*"My parents divorced 5 years ago and for 5 years my father has never brought anything home.
When they were together, he was helping [my mother]."*

H.A.I., aged 26 years, woman interviewed in the Djabal refugee camp, 21 April 2019

*"I got married before the attack. We were together in the village and got separated
when the attack started. I don't know where my husband is, if he's deceased or alive.
I never met anyone else because we are still together. I'm waiting for him. I raise my children.
Sometimes I go to Goz Beida for work to feed my children".*

F.Z.A., aged 45 years, woman interviewed in the Djabal refugee camp, 20 April 2018

Polygamy, which is prevalent in Darfuri culture, is perpetuated in the camps and exacerbates women's poverty. Polygamy is also legal in Chad¹⁰⁸ in violation of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW Convention).¹⁰⁹ Besides its profound discriminatory nature, polygamy is also contrary to the dignity of women and girls and negatively impacts women's physical and mental health, social well-being, economic and material situation, as it increases poverty in the family.¹¹⁰ In humanitarian settings, where employment and resources are particularly scarce, this practice has disastrous effects on the financial situation of households and can create conflicts. Men, who can barely contribute to the expenses of one household, in most cases don't have the capacity to provide for several families.

*"I have problems with my husband, he doesn't support me.
He takes my money and gives it to his other wives, and if I say anything, he beats me.
He gave me all the responsibilities for the children, he doesn't support them".*

H.M.I., aged 28 years, woman interviewed in the Djabal refugee camp, 20 April 2018

B/ Healthcare

According to ADES which provides medical and psycho-social assistance to refugees, before 2014, when the emergency system was still in place, refugees' medical costs were entirely covered. Since 2014, humanitarian assistance entered a development phase, and is moving towards sustainability with a smaller budget. The current system allows refugees to pay 150 FCFA per ordinance regardless the quantity of medication prescribed. Then they purchase the medicines at the pharmacy. They also have to pay 100 FCFA for a health booklet which has to be renewed when it is full. ADES acknowledges that some refugees don't have the resources to support such costs, *"Like in every community, there's always people who cannot pay"*. For some emergencies, health care remain free: pregnancy consultations, child birth, children below 5 years old, people aged over 60 and persons with special needs.

In terms of available health care facilities, refugees have access to health care centres run by humanitarian organisations within the camps. Centres within Djabal, Goz Amer, Kerfi camps are not public yet but are recognised by the health Ministry. If humanitarians would leave, they could be taken over by the government. For more serious cases, refugees can be referred to the district hospital in Goz Beida which covers the whole Sylla region. An ambulance is available in every camps to bring refugees to this hospital. According to the director, few cases of SGBV are referred. Proportion of refugees among patients varies depending on the season. Financial and human resources are extremely limited and the hospital only receives the support of ADES. They have two doctors and don't have any surgeon or gynaecologist. For more serious cases, patients can be taken to the regional hospital in Abéché, only by plane during the rain season, where a surgeon from ADES is

108. Déclaration de fin de mission au Tchad du Groupe de Travail du Conseil des droits de l'homme sur la question de la discrimination à l'égard des femmes dans la législation et dans la pratique, 14 décembre 2017, <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=22534&LangID=F>.

109. Polygamy breaches the provisions of articles 5 (a) and 16 of the CEDAW Convention.

110. Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 14 Novembre 2014, §25-28, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement>. See also CEDAW Committee, General recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution), 2013, CEDAW/C/GC/29, §27-28; CEDAW Committee, General recommendation No. 21: Equality in marriage and family relations, 1994, §14.



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present. But flight costs from Goz Beida to Abéché are disproportionate, around 100 000 FCFA, when a radiological exam (only available in Abéché) costs 5000 FCFA. Neurosurgery is only available in the national hospital in Ndjamena. National travels are covered and coordinated by ADES. UNHCR coordinates cases requiring international travel, including resettlement for medical purposes.

Several refugees confirmed that medicines used to be free, but since 2017, doctors started to write ordinances for patients to go outside the camps and buy medicines. Prices can vary from 300 to 1 000 FCFA, making access to health care less available to many households.

Many women and men who were interviewed have been subjected to sexual violence during the conflict and did not have access to adequate treatment or counselling. Some of the refugees interviewed, including victims of rape and other forms of sexual violence indicated for instance that they had never seen a psychologist since their arrival in the camp.

"I got a treatment from the doctor, injections. In my leg, it's injured. I still have pain sometimes. I go to the hospital, they give me medicines until the pain is reduced. Before, it was free. [...] For a year we have been required to pay."

F.M.A., 38, woman interviewed in the Djabal refugee camp, 20 April 2018

Fear of retaliation, shame and stigmatisation also prevent victims of sexual violence from accessing appropriate health-care.

"The day of the attack, we ran [...] they came and brought the women to the valley. They raped us. [...] I suffered for 3 years. I was feeling the pain, general pain, in my shoulder, my back, my waist. Now it's ok. I got traditional treatment with hot water. At the hospital, I was shameful to tell them I was raped so I didn't say it. [...] the Janjaweed told me that if I said anything, they would kill me."

F.Z.A, 45, woman interviewed in the Djabal refugee camp, 20 April 2018

C/ Food and water

In the camps, the World Food Program (WFP) distributes rations, representing approximately 6000 FCFA for a poor family. Now refugees need to work to complement the rations, and be able to buy meat or spices, for example. During the rainy season, camps become empty as refugees go outside to farm. According to several testimonies, before, rations were coming from Europe and were smaller and more expensive because of the cost of transport. Now they contain local products, which are more suitable, and the quantity has increased. But supplies are still limited, and shortages are frequent.

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"My situation is very bad, I'm taking care of my children, it's very bad for me. Distribution is not helping me. It's not enough. I don't have enough at my home. During the rainy season, I can cultivate some land in a village 2 hours walk from here, I go alone. The local people from Chad are the owner. I grow sorghum. I feed my children. I have to pay 15,000 FCFA each year for good land, 10,000 FCFA for bad land."

F.M.A., 38, woman interviewed in the Djabal refugee camp, 20 April 2018

In some of the camps such as Goz Amer, refugees can have access to pieces of land they can farm.

"In the wadi in the camps, during the rainy season, I grow vegetables and sorghum. I sell the crops. And I take distribution. What I do in the wadi doesn't bring money every month and the food I get from distribution ends before the end of the month. I go to the shop, to borrow sugar, then I give him the sorghum in exchange for sugar. I sell items from my house one by one. Distribution should be improved, food is lacking. There are also problems with water. Water supplies are insufficient, women fight, there are fights."

A.A.A, 25, a woman interviewed in the Goz Amer refugee camp, 23 April 2018

D/ Education

Refugees can have access to education, but schools are not free (except before 4 years old) and facilities are lacking. Some of the fees are covered by the Jesuit Refugee service (JRS), a UNHCR partner NGO. To attend primary, intermediate and secondary schools, pupils have to pay 500 FCFA a month (less than 1 USD). Only a few refugees get to study at the only university in Abéché.

"I have three children now and none of the fathers is helping me to support them. It hurts a lot. My children don't go to school, the bigger one takes care of the smaller one. They play together at home. None of them has ever been to school. Me neither."

A.A.A, 25, woman interviewed in the Goz Amer refugee camp, 23 April 2018

Adult classes are also available in the camps. These courses are particularly well-suited for women, most of whom were not educated in Darfur and want to attend these classes. But the time spent taking care of children and the need to earn an income in order to complement the ration and feed them, prevent most of those interviewed from attending classes.

"I went to the first class, but I never continued. I don't know how to read or write. I started adult school and then I dropped out. The circumstances didn't allow me [to carry on]. My husband was beaten in prison and he cannot walk. I go and search for work to help my four children. I make tea, I sell it in Kerfi (Arab camp) one day a week, I earn 5,000 FCFA (around 8.5 USD). When I come back I go to the forest, look for firewoods and sell some. I have no time."

A.A.A., 34, woman interviewed in the Djabal refugee camp, 21 April 2018



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E/ Employment

In and around camps, jobs are scarce. Few refugees have been able to buy cattle back after theirs were taken by the *Janjaweed*, or land for farming. Some refugees rent pieces of land to Chadians or do low-income activities such as brick-making and house building. Their main concern is to survive and feed their family, pending a more durable solution. According to HIAS, occupational activities are also available at community centres where starter kits are distributed for knitting, dyeing or bread making.

"I stopped school 4 years ago, it was my choice because no one is helping my mother so I wanted to earn some money. I build houses, I earn 1,000 CFA francs/day."

M.O.D., 20, woman interviewed in the Djabal refugee camp, 19 April 2018

"In Sudan I was a spokesperson for teachers. During the war, I was jailed and tortured because they said that they had information that rebels were from Fur tribes, and that I was a Fur leader. Here I'm not happy. It's like living in prison. We can't go outside to Sudan, we cannot farm, just sit here in the camp. I'm a teacher, the salary is not enough. There are 16 persons in my house"

and I earn 36,000 CFA francs a month (around 60 USD). CNARR doesn't like us to complain, it's forbidden to talk to journalists. But it's ok, I'm alive."

Y.E.F., 52, man interviewed in the Goz Amer camp, April 2018

F/ Sexual and domestic violence

Sexual violence in the vicinity of camps

During the mission, FIDH and ACJPS received information regarding cases of sexual violence against refugee girls. All of the cases that were reported to our organisations concerned sexual violence perpetrated outside the camps, by Chadian men against refugee girls while they were collecting water or firewood in isolated areas. In 2016, UNHCR registered 7 cases of rape, 7 cases of sexual assault and 2 cases of sexual exploitation against refugees in the area of Goz Beida. None of the rape victims received medical care within 72 hours.¹¹¹ The number of cases may be much higher than these figures suggest, as sexual violence is rarely reported, mainly due to fear of stigmatisation and family retribution.

"It happened 2 years after I came here. I was 12. We went to the mountain [with other girls]. Arab people found us, [...] they were holding guns. There were 3 of them. They were from this country, Chad, and spoke Arabic. They were wearing army uniforms. They wanted to talk to us so we ran. [...] When I fell down, they came and caught me and raped me. But I don't remember it. Afterwards, they left and people came to bring me back home. [...] They took me to the hospital. At the hospital, I was tested (I'm not sure if I was tested for HIV) and the doctors told me I was raped. [...] They gave me injections and medicine. And they didn't say anything to me after that. I stayed there for 2 days. Then they took me back to my home. [...] I don't feel pain, but sometimes, I feel sad. I still don't feel well. I feel better when I take medicine."

A.I.I., 23, woman interviewed in the Djabal refugee camp, 25 April 2018

A case which took place in 2018 was also reported to FIDH and ACJPS by APLFT, an NGO providing legal assistance to victims of human rights violations including survivors of sexual and gender-based violence. A group of girls who had gone to collect firewood a long distance from the camp were assaulted by several Chadian men. Three of the girls, aged between 11 to 13, were unable to escape. According to workers from the medical center, they were subjected to physical assault and attempted rape. The perpetrators escaped. DHPR (*Détachement pour la Protection des Humanitaires et Réfugiés*), a government body in charge of ensuring the security of refugees and humanitarian workers, was informed. However, the victims did not give their consent for APLFT to file a complaint before national courts, and the Public Prosecutor's Office failed to take any step to advance proceedings. The survivors are orphans and had travelled to Chad with their older sister.

According to APLFT, in December 2017, a 13 year-old Darfuri refugee girl who was living a few kilometers away from the camps was raped by men from the host community inside her home while her parents were working in the fields. She became pregnant as a result of the rape and did not have access to an abortion.

111. UNHCR, *The 2016 Annual Report on SGBV Incidents Among Refugees In Chad*, p. 23, <https://data2.unhcr.org/en/documents/download/56468>.

According to ADES, abortions may be carried out in circumstances in which it is legally permitted, such as cases of sexual assault, rape or incest.¹¹² If necessary, women can be referred to district hospitals. However, only one abortion was registered, in the case of a woman who was paraplegic. Medical assistance is provided in cases of unsafe abortion in order “to preserve human life”.

Early and forced marriage/marital rape

In the course of the mission, FIDH and ACJPS interviewed several women who had been married before the age of 18 while living in the camps. While early marriage is widespread in Sudan,¹¹³ studies show that it tends to be more common in conflict situations and humanitarian settings.¹¹⁴ For poor families, who have lost all their property and rely on limited resources, marrying a daughter is a means of alleviating financial hardship.¹¹⁵ In eastern Chad, according to ADES, for Sudanese refugees who lost property as a result of the conflict, early marriages are aimed at reducing poverty.

Early marriage is also intended to reduce the risk that a daughter loses her virginity – on which “family honour” is seen to depend – before marriage. This trend is driven by a family’s will to control girls’ sexuality and can be exacerbated by the insecurity and the risk of sexual violence within and outside the camps (see above). Yet, early marriage is itself a form of gender-based violence.¹¹⁶ In addition, within marriage, girls face increased risks of marital rape and other forms of sexual violence, as well as other forms of physical and psychological violence. Early marriage also exposes girls to early pregnancies and childbirth, which can have severe consequences for their physical and psychological health and increase the risk of maternal and infant mortality. Girls in such marriages also have limited decision-making, education, freedom of movement and are particularly at risk of domestic violence.¹¹⁷ In some cases, girls refuse such marriages (which does not prevent them from being married), in others they may agree to get married, as this is common practice, they are often unaware of their rights and wish to avoid problems with their families. In Chad, the minimum legal age for marriage is 18 years for both girls and boys and marriage below this age constitutes a criminal offence.¹¹⁸ In 2016, UNHCR registered 21 cases of forced and child marriage of Sudanese refugees in the area of Goz Beida.¹¹⁹

112. In Chad, abortion is prohibited and constitutes a criminal offense (Articles 356 to 358 of the Penal Code [*Loi n°001/PR/2017 portant Code Pénal* of 8 May 2017]). However, medical abortion is permitted in cases of sexual assault, rape, incest, or when the pregnancy endangers the mental or physical health or the life of the woman or the fetus. It is necessary to obtain authorization from the public prosecutor, after a doctor has confirmed the facts.

113. Sudan has the 16th highest number of child brides in the world. In South and East Darfur, 56% of women aged 20 to 49 were married before the age of 18, and 55% in Central Darfur. There is no minimum legal age for marriage in Sudan, although Article 40 of the Muslim Personal Law of 1991 allows marriage of 10 year-olds with the permission of a judge and provided that the guardian can prove that the marriage will benefit the child, the husband is suitable and he pays the dowry. See UNICEF, *Child Notice Sudan*, 2016, “Girls not brides”, <https://www.girlsnotbrides.org/child-marriage/sudan/>. Chad also has a very high rate of child marriage, at around 70%.

114. Girls not Brides, *Child Marriage in Humanitarian Settings*, August 2018, <https://www.girlsnotbrides.org/wp-content/uploads/2016/05/Child-marriage-in-humanitarian-settings.pdf>.

115. Marrying a girl is perceived as meaning one child less to feed, school, etc. but also allows the family to receive a dowry (called *Mahr* in Sudan), the payment of money and gifts from the groom to the bride’s family.

116. CEDAW Committee, *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19*, 2017, CEDAW/C/GC/35, para. 29 (c) (i).

117. CEDAW/C/GC/31-CRC/C/GC/18, *op. cit.*, paras. 20-22.

118. See Ordinance No. 006/PR/2015, available (in French) at <https://www.girlsnotbrides.org/wp-content/uploads/2016/08/ORDONNANCE-N%C2%B0006-PR-2015-du-14-mars-2015-nterdisant-le-mariage-des-enfants.pdf>; and Law No. 029/PR/2015, available (in French) at <https://www.fillespasepouses.org/wp-content/uploads/2016/08/Loi-Num-029-PR-2015-interdisant-mariage-denfant.pdf>.

119. UNHCR, *The 2016 Annual Report on SGBV Incidents Among Refugees in Chad*, p. 23, <https://data2.unhcr.org/en/documents/download/56468>.



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"In Djabal, 3 years ago, my family wanted to marry me, but I refused. He was a distant relative, around 35 years old. My father's brother pushed for this marriage, but he saw that it was going to be difficult and dropped it. I said no because he was older than me. Two years ago, I did get married. I didn't choose him. My mother did. I didn't want any problems. He's 30. I know other girls who were forcibly married. It happens a lot."

M.O.D., aged 20 years, woman interviewed in the Djabal refugee camp, 19 April 2018

"What I live through here surpasses my experience in Darfur. When I arrived I was 14 and my mother forced me to marry an old man. He was about 50 and he already had two wives. I didn't want to marry him at all. When I was brought to his house, I hid all the time. He forced me to have sex with him. The marriage lasted for two months. He was my first husband. I have been married twice since then."

A.A.A., aged 25 years, woman interviewed in the Goz Amer refugee camp, 23 April 2018

"I'm married. It's my first marriage. I'm the second wife. We have 4 children, 3 of them are alive. The first one is 8 years old. I was 15 when I got married. No one asked me. My brother told me I was getting married. They married me and told me 'he will be your husband'. We are from the same family. My grand-mother and his grand-mother are sisters. He's about 39. At the time I didn't know if I was happy or sad. I'm not educated. If it was now, I wouldn't get married. Here I went to school until grade 5. When I got married, I dropped out of school. It was not my choice, but it would have been difficult for me to continue to go to school once I was married, once I'd taken my house. I go to fetch water, I cook food, and I take it to my husband's shop and give it to him. I bring him his lunch every day. I cook for five days, then the other wife cooks for five days."

M.D.A., aged 23 years, woman interviewed in the Djabal refugee camp, 22 April 2018

Domestic violence

Women also face domestic violence, which can be physical, sexual, psychological and economic. In humanitarian settings, following conflict domestic violence can be exacerbated. Unemployment and lack of access to health care after the trauma of the war can constitute aggravating factors. In Eastern Chad, ADES makes a connection between the rate of domestic violence and the trauma of the conflict, as well as the absence of counselling services within the camps.

"Some husbands when they don't have any work, they go and drink. When they come home, they ask 'where's the food?'. If there's nothing at home, they beat the women. The woman takes responsibility for food, clothes, shoes for children, soap to wash clothes, all the work at home for the children. Men don't help. That's the way it is in my home."

H.A.I., aged 26 years, woman interviewed in the Djabal refugee camp, 21 April 2019

"I have problems with my husband because of food. I complained because he didn't share his distribution ration with me, he didn't treat his two wives the same. One day, we fought. I fell down, he hit me on my shoulder, on my nose. I was in pain, I wasn't able to work or lift heavy things. After three days, the pain stopped. He beats me every time I talk to him about food, other household items. Then I ask for a divorce and he asks for the bride price. I don't have it. So he says 'Don't ask for a divorce if you don't have the money'."

M.D.A., aged 23 years, woman interviewed in the Djabal refugee camp, 22 April 2018

According to APLFT, in cases of human rights violations perpetrated in Chad, refugees should have access to the national justice system, since Chadian law makes no distinction between nationals and refugees. Cases are referred to the justice system through DPHR. ADES provides the medical certificates required by the justice system. APLFT covers the legal costs, providing lawyers where possible given its limited financial capacity. However, even in cases in which perpetrators are sentenced, they may not be imprisoned. There are no detention facilities in Goz Beida (only a custody cell, which does not meet international standards), and convicted persons are not always transferred to Abéché. Local NGOs advocate for the creation of a detention facility in Goz Beida which respects human dignity. Corruption also allows perpetrators to avoid prison.

ADES indicates that in most cases of sexual violence, families do not want perpetrators to be prosecuted and cases are settled out of court. Some cases are stopped after they reach the Prosecutor's Office. There are cases of marriage between perpetrators and victims although they are not documented.

According to APLFT's representative in Goz Beida, since Darfuri refugees arrived in Chad, harmful traditional practices (such as early marriage and female sexual mutilation) have decreased as a result of awareness raising by NGOs on child protection.

2. "We don't want to go back"

Life in the camps is particularly difficult, especially for women, and displacement is an aggravating factor with regards to a number of issues. Yet, for most people interviewed by FIDH and ACJPS, life there is still an improvement on their experience during the conflict. And according to the majority of testimonies, nothing has changed in Darfur since then.

2.1 UNHCR-led voluntary repatriation process

In May 2017, UNHCR and the Chadian and Sudanese Governments signed a tripartite agreement to launch a voluntary repatriation process for Sudanese refugees living in Chad (as well as Chadian refugees living in Sudan). The repatriation process of Sudanese refugees started on 14 April 2018 with a group of 53 refugees who left the Irdimi camp in north-eastern Chad and travelled to the Tina reception centre in North Darfur.¹²⁰ In October 2018, the number of returnees from Chad was 353.¹²¹ In December 2018, there were approximately 1,750.¹²² Since then, about 4,000 people have voluntarily returned to Sudan. The process is facilitated by UNHCR and the Chadian National Refugee Commission (CNARR), an inter-ministerial body in charge of implementing national policies on the protection of refugees, which claims that a total of 20,000 Sudanese refugees have agreed to return to their country of origin.¹²³

The voluntary repatriation process was based on the Sudanese authorities' intention to demonstrate that the security and political situation in Darfur had normalised. On several occasions, Omar Al-Bashir expressed his desire to promote the voluntary return of refugees to Darfur and to accelerate the process.¹²⁴ The Sudan Refugee Commission states that "50% of the 300,000 Sudanese refugees in Chad have expressed a desire to return to [Sudan]".¹²⁵ However, the testimonies collected from refugees by FIDH and ACJPS paint a completely different picture. According to a UNHCR survey in Goz Beida conducted before April 2018, only 4% of refugees in this area wanted to go back. Those who were willing to return to their country of origin were mostly from the north of the country, which was deemed safer by UNHCR.¹²⁶

120. UNHCR, News Briefing, "First Darfur refugee returns from Chad", 20 April 2018, <https://www.unhcr.org/news/briefing/2018/4/5ad9a4604/first-darfur-refugee-returns-from-chad.html>, (consulted on 7 February 2019).

121. UNHCR, *Sudan: voluntary repatriation dashboard*, "Sudanese refugee returnees from Chad", 31 October 2018, <https://data2.unhcr.org/en/documents/download/67677>.

122. UNHCR, *Sudan: Voluntary Repatriation Update 2018*, 31 December 2018, <http://reporting.unhcr.org/sites/default/files/UNHCR%20Sudan%202018%20VolRep%20Update%20%28March%202019%29.pdf>.

123. OCHA, *Situation report on Chad*, 4 June 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/Situation%20Report%20-%20Chad%20-%204%20Jun%202019.pdf>.

124. *Dabanga*, "Al Bashir: 'Repatriation of refugees in and from Chad must be accelerated'", 25 January 2018, <https://www.dabangasudan.org/en/all-news/article/al-bashir-repatriation-of-refugees-in-and-from-chad-must-be-accelerated>, "Al Bashir: 'Promote voluntary return in South Darfur'", 31 July 2018, <https://www.dabangasudan.org/en/all-news/article/al-bashir-promote-voluntary-return-in-south-darfur>.

125. *Sudan Tribune*, "Sudan to repatriate 150,000 refugees from Chad: official", 1 November 2018, <http://www.sudantribune.com/spip.php?article66529>.

126. Meeting with Edward O'Dwyer, UNHCR Deputy Representative for Protection in Chad, Ndjamena, April 2018.



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According to UNHCR, help desks are operating in the camps to advise refugees, but the information they have regarding the situation in Sudan is unsatisfactory. It is often the case that refugees receive information from other refugees who go back and forth for personal, medical or professional reasons, or from relatives living in Darfur. According to UNHCR staff in Chad, “They will not rely on our information. They will only return if people tell them it’s safe,” and “When we talked of repatriation in Oure Cassoni, women could not imagine going back”.

In addition to repatriation, UNHCR is also working on the integration of refugees in Chad, if a sustainable asylum system can be put in place. Resettlement in France, Sweden, Australia or the United States of America depends on various criteria including the presence of relatives in the country, whether they are in polygamous marriages, and the health situation of refugees.¹²⁷

2.2 Refugees’ views on repatriation

The security situation in the region remains precarious. While armed clashes have decreased in various parts of Darfur, they continue to be particularly acute in others, including in the Jebel Marra, causing casualties mainly among civilians (see above, Section I). Refugees are well aware of the situation in Darfur, as some of them have been back for personal, medical or professional reasons, or through the

127. According to UNHCR, France refuses polygamous families because it is contrary to its values. Refugees in polygamous marriages can be accepted by the USA. Australia refuses to take medical cases.

“go-and-see” visits organised by UNHCR.¹²⁸ They also obtain information from others who have been back, and through the media. They almost unanimously point to the following factors as major obstacles to any genuine repatriation process: the lack of stability in the security situation, including continuing attacks, killings and rapes against Darfuri people; the unwillingness of Sudanese authorities to admit the gravity of the crimes committed against civilians; the total impunity and absence of reparation for victims; as well as the continued presence of those responsible throughout the region, including on their lands and within the government itself. According to those interviewed, access to humanitarian assistance, security, justice and reparation continue to be the main demands. The vast majority of women interviewed had never heard of the ICC but strongly stressed the need for accountability.

“I went back to Darfur. On 10th March I was in El Geneina, on the 4th I was in Zalingei, on the 5th in Garsila. They say everything is good, but nothing has changed. There are still rapes, deaths, nothing has been solved. Darfur is empty. Go back to do what? Going back is impossible. I don't want to go. In March, in Kabar, there was a rape during the night, but nothing was done. In Bindis and the neighbouring villages, there were 3 cases of rape of 15-year-old girls. Nobody took them to the hospital. On the radio, on TV, we hear that criminals are catching girls.”

Group interview with women community leaders, 19 April 2018, Djabal camp, Goz Beida

“I will not go back to Sudan. There are no benefits for us there. Many people ran, they are in camps now. People are living on our land, we wouldn't have anywhere to stay if we went back there.”

K.A.Y., aged 68 years, woman interviewed in the Djabal refugee camp, 19 April 2018

“Before we go back, the criminals who attacked us have to leave. At the moment, they are still there. [...] The priority is to catch the criminals: the Al-Bashir government. Bashir is the cause of all our problems.”

Group interview with women community leaders, 19 April 2018, Djabal camp, Goz Beida

“Right now I don't want to go back. Sudan is discriminating against people. Arab people are still there, killing people, raping women, putting their cattle on peoples' farms. Several people, including the ones who did the “go-and-see” visits told us about it.”

A.I.I., aged 23 years, a woman interviewed in the Djabal refugee camp, 25 April 2018

“As long as peace has not been restored, I won't go back. I still suffer from the consequences of what happened. We hear about what is happening in Darfur. The Janjaweed are still attacking. If they want us to go back, these people should understand and put an end to the current conflict. They need to rebuild villages, to give young people access to an income.”

A.A.A., aged 25 years, woman interviewed in the Goz Amer refugee camp, 23 April 2018

128. UNHCR organises “go-and-see/come-and-tell” visits of refugees to Darfur. The visits give the refugees an opportunity to see with their own eyes the situation on the ground in order to make a voluntary decision on whether or not to return to areas in Darfur.

When asked about how they see the future, most say they will go back when Darfur is safe and when they can get their lands back. In the meantime, they want to stay with the group, or, in some cases, be resettled to Western countries, mainly because of better opportunities for education, including of women and girls. Several of the refugees interviewed by FIDH and ACJPS who were participating in the resettlement process were about to be sent to France or the USA. Integration within the Chadian population does not seem to be an option, mostly due to a lack of economic opportunities, as well as regular attacks by locals against the refugee population (see the section on sexual violence in the vicinity of camps). The delegation met several refugees who were married to Chadian men but were still living in the camps with their communities.

Chad has ratified the 1951 Refugee Convention, as well as the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. Chad also acceded to both the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In 2011, it became a party to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and that same year created the National Commission for the Reintegration of Refugees and Repatriates (CNARR) whose mission includes the implementation of international legal instruments and national laws relating to refugees and asylum seekers. Furthermore, Chad has undertaken to draft a law to address the following: recognition of documentation issued to refugees and freedom of movement; access to naturalization for refugees; access to land and land security; access to employment for refugees; and access to financial institutions.

However, despite these commitments, Chad has yet to adopt national legislation on asylum, and the lack of access to civil registration, including birth, marriage and death certificates represents a significant barrier to refugees' enjoyment of their rights in Chad.¹²⁹

"They shot me. I don't want to go back. If the situation in Darfur became very good and all the people were going back, I would go with them. I would follow my people and go with them."

D.M.A., aged 35 years, woman interviewed in the Djabal refugee camp, 20 April 2018

In its final report, the UN Panel of Experts on the Sudan stated that: *"Sexual violence also affects the possibility of return of civilians to their places of origin. For example, in For Baranga, West Darfur, a Darfurian family – which had formerly been living in Chad as refugees – returned to Chad after a family member was gang-raped, fearing further attacks by the perpetrators. These cases highlight the need for enhanced security and basic services in areas of origin to facilitate the return of those displaced by the conflict"*.¹³⁰

2.3 The fate of Internally Displaced Persons (IDPs)

There are still almost 2.6 million IDPs in Darfur,¹³¹ living in IDP camps, settlements and host communities. In January 2016, the Government of Sudan (GoS) claimed that it would ensure that there would be no IDPs remaining in camps by 2017¹³² and outlined three options:¹³³ 1. Integration into host communities; 2. Return to villages of origin; 3. Relocation to another place in the country.

129. UNHCR, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: Chad*, July 2018.

130. *Final report of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005)*, para. 120, 28 December 2017, <https://www.undocs.org/S/2017/1125>, *op. cit.*

131. *Ibid.*, p. 23

132. UNAMID and OHCHR report on IDPs in Darfur (2017).

133. *Ibid.* and Panel of Experts report (2019).



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A/ IDPs in three Darfur States

South Darfur

For the GoS, the IDP camps constitute evidence of the persistence of the crisis in Darfur. For this reason, the regime attempted to dismantle them. In April 2018, the Governor (*Wali*) of South Darfur, Adam El Faki, announced that Kalma camp, one of the largest camps for displaced people in Darfur, situated south-east of Nyala (the capital of South Darfur) and hosting nearly 100,000 persons, was to be dismantled within weeks, as part of Al-Bashir's plan for voluntary return. He stated that by the end of 2018 there would be "no camps, food aid, relief, or organisations" and ordered the arrest of IDP leaders standing against the President's voluntary return project. The Governor also dismissed returnees' complaints to UNAMID about lack of security, attacks, occupation of their lands and lack of compensation and said he would only receive complaints related to cases of killings of a minimum of 10 people.¹³⁴ A few days before he made this statement, 4 returnees had been killed and 6 injured in South Darfur.¹³⁵ Several days later, the South Darfur Governor informed a UNSC delegation that he intended to withdraw his order to dismantle the camp by force, instead pursuing voluntary return.¹³⁶

134. Radio Dabanga, "South Darfur Wali determined to dismantle Kalma camp", 26 April 2018, <https://www.dabangasudan.org/en/all-news/article/south-darfur-wali-determined-to-dismantle-kalma-camp>.

135. Dabanga, "Again voluntary returnees killed in South Darfur", 22 April 2018, <https://www.dabangasudan.org/en/all-news/article/again-voluntary-returnees-killed-in-south-darfur>.

136. Dabanga, "South Darfur declares to Security Council: No camp dismantling", 11 May 2018, <https://www.dabangasudan.org/en/all-news/article/south-darfur-declares-to-security-council-no-camp-dismantling>.

The Abu Shouk Camp of El-Fasher, established in 2004, is one of the biggest IDP camps in North Darfur. The number of IDPs registered there has gradually fallen from 54,000 in 2004 to approximately 41,000 in 2008 and 38,000 in 2013.¹³⁷ In October 2018, the Government of North Darfur State approved a plan to turn the IDP camps into permanent residential areas.¹³⁸ On 4 November 2019 the new Sudanese Prime Minister Abdalla Hamdok visited the IDP camps outside El-Fasher, including Zamzam, Alsalam and Abu Shouk, to inspect the conditions and listen to demands. Hamdok undertook to address the situation of displaced people and refugees in Darfur, however, no specific plans have been drawn up yet.¹³⁹

B/ "Voluntary return" under pressure from the GoS

In order to promote the voluntary return of displaced Darfuri people, the GoS, with the support of the State of Qatar, built several villages in South and North Darfur. They are composed of a few houses, police stations and schools. However, other services are lacking. Before they can return, IDPs are claiming compensation for missing livestock, medical care and access to other items necessary to their survival. These factors, combined with the lack of security in the area, prevent IDPs from settling there. Some people who agreed to settle there were attacked, and there were reports of rape of women. To date, these villages remain empty.

In West Darfur, the Qatar State supported the GoS to build houses in El Geneina, but to date, accommodation is occupied by Arab tribes, rather than by IDPs. When Al-Bashir visited El Geneina in 2017, he went to the village of Al Shukri which was established with Qatar's support and where around 2,000 people were residing. However, according to H., a lawyer in West Darfur, ***"it's occupied only by Arabs."*** IDPs tend to go back to their villages of origin and build their own huts. Yet, their security is not guaranteed. In the words of H., ***"The money paid by Qatar never reached Darfur. The situation for IDPs is bad. There's no humanitarian assistance for them. When IDPs return, they can't build strong houses, they build their homes with grass and dirt, and the Arabs destroy it easily. There is no safe haven for them. When houses are built with the help of Qatar, they are occupied by Arabs. This money should be used to build good houses for IDPs with good materials"***.

During the summer of 2018, some IDPs started building houses in Hartz-Timan, north-east of El Geneina. During the night, armed men, to whom victims referred as "Arab tribes", attacked the village with heavy weapons (machine guns) and burnt down the houses. The GoS had installed a police station in the village but it failed to protect civilians. According to H., ***"The best place for IDPs is in the camps, because there is security"***.

"The voluntary return process started in May 2018 in Nyala (South Darfur).

The local government encourages IDPs to return to their homelands. They provide them with money (around 5,000 SDG – 5 US dollars – per family) and seeds for agriculture. But IDPs complain

137. Chr. Michelsen Institute (CMI), "From a Temporary Emergency Shelter to an Urbanized Neighborhood: The Abu Shoak IDP Camp in North Dārūr", *Sudan Working Paper 2016*, <https://www.cmi.no/publications/5928-the-abu-shoak-idp-camp-in-north-darfur>.

138. *Sudan Tribune*, "North Darfur endorses residential plan to resettle IDPs", 15 October 2018, <http://www.sudantribune.com/spip.php?article66434>.

139. *Sudan Tribune*, "Sudan's PM pledges to address Darfur IDPs plight", 4 November 2019, <http://sudantribune.com/spip.php?article68442>.

about the lack of security. They tell me that their lands are being occupied by other people. They complain that there is no water. Some go back to the camps claiming that there is no security".

A., lawyer from South Darfur (Nairobi, October 2018)

In Sudan, under the *Hawakeer* (customary land management) system, land belongs to the Sultan and is attributed to citizens for farming. Yet, under the Civil Transactions Act of 1984, land may be attributed to a person who has occupied it for ten years.

These competing legal systems leave IDPs who return to their lands with no legal argument for their land claims. However, according to the 1984 Act, the change of ownership should take place in good faith,¹⁴⁰ and not by force, as in the case of land taken by the *Janjaweed*.

Arguments relating to the absence of good faith have been raised before the Civil Court in El Geneina, which ruled that since the war had ended, citizens could claim their lands. There are still ongoing cases before the Civil Court, which may be appealed to the High Court. However, if a civilian seeks to summon the person occupying her/his land, and that person is a member of the RSF, a summons cannot be issued since RSF personnel enjoy immunity.

Chapter IV of the Doha Document for Peace in Darfur (DDPD) sets out principles and processes for restitution of property and assistance for the full integration of returnees into their communities, including restoring their rights to land property and compensating them for the damages and losses caused by the conflict.¹⁴¹ While Sudan's Draft Constitutional Charter for the 2019 Transitional Period lists issues of land and tribal lands (*Hawakir*) as an essential aspect of peace negotiations,¹⁴² Sudanese laws must be amended to allow for the restitution of property to returnees, in line with the DDPD.

140. Article 637(1) of the Civil Transactions Act of 1984 states: "A person in possession shall be deemed to be in good faith, where he is ignorant that he trespasses on the right of others, unless such ignorance arises out of a grave mistake". See <https://brill.com/view/book/edcoll/9789004362185/back-2.xml?language=en>.

141. See Chapter IV of the Doha Document for Peace in Darfur (DDPD), https://unamid.unmissions.org/sites/default/files/ddpd_english.pdf.

142. Draft Constitutional Charter for the 2019 Transitional Period, 68(g), <http://constitutionnet.org/sites/default/files/2019-08/Sudan%20Constitutional%20Declaration%20%28English%29.pdf>.

III. WHAT CHANCE OF JUSTICE FOR VICTIMS?

"I wish all the criminals in our country would be caught, especially the Government of Sudan and our president. I wish there was real security. If the situation becomes calm again, I will return, with security, not because of the will of another person but of my own will."

A.O., woman interviewed in the Djabal refugee camp, April 2018

Omar Al-Bashir was removed from power on 11 April 2019, arrested and later placed in detention in the Kober prison (located in the capital Khartoum). Ahmad Harun and Abdel Raheem Muhammad Hussein were also reportedly arrested on the same day. Following Al-Bashir's arrest, there were renewed demands for his transfer to the Hague, in order to stand trial before the ICC. However, the leaders of the Transitional Military Council (TMC) have repeatedly indicated that he will not be extradited to the Netherlands and that he would face justice before Sudanese national courts. On 16 June 2019, Omar Al-Bashir appeared in court to face corruption-related charges. Not a single charge was brought against him for the serious crimes committed against the people of Darfur, and Sudan as a whole, illustrating, once again, the unwillingness of the Sudanese authorities to take measures to ensure accountability for victims of such crimes. No information has been made available about whether Ahmad Harun and Muhammad Hussein have been indicted. The verdict in Al-Bashir's corruption trial is expected to be delivered in December 2019.¹⁴³

Crimes of incommensurate scale and gravity have been committed in Darfur and continue to have **long-lasting effects on victims (see Sections I and II above)**. Yet, sixteen years after the start of the conflict, not a single meaningful measure for accountability and reparation has been provided to the victims. The **Special Criminal Court** on the Events in Darfur (SCCED) has proven to be inefficient and the **ICC cases** have not progressed, mainly as a result of the lack of cooperation from the Sudanese government and other states. As outlined above, such rampant impunity has formed a fertile ground for the continuation of crimes in Darfur and elsewhere in Sudan. According to refugees in eastern Chad interviewed by the mission, demands for **justice and reparation** were **pre-conditions for any repatriation to Sudan**.

Despite continuing political instability, the current context in Sudan provides an opportunity for the country's new authorities and the international community to take concrete action to combat impunity. They must demonstrate that, finally, the people of Sudan have been heard and that concrete measures will be put in place to implement demands for long-lasting peace and justice.

143. Asharq Al-Awsat, "Sudan verdict in Bashir graft trial set for Dec. 14", 16 November 2019, <https://aawsat.com/english/home/article/1994566/sudan-verdict-bashir-graft-trial-set-dec-14>.

1. Crimes of incommensurate scale and gravity and their long-lasting effects on civilians

In its final report in 2005, the International Commission of Inquiry on Darfur (Col)¹⁴⁴ stressed the “magnitude, intensity and consistency” of attacks perpetrated against civilians, mostly by Government forces (militias and regular forces). The Col highlighted the **nature of these attacks, as well as their *modus operandi***, stating that:

*“In many cases a ground attack began with soldiers appearing in Land Cruisers and other vehicles, followed by a large group of Janjaweed on horses and camels, all with weapons such as AK47s, G3s and rocket-propelled grenades. Many of the attacks involved the **killing of civilians**, including women and children, the **burning** of houses, schools and other **civilian structures**, as well as the destruction of wells, hospitals and shops. Looting and theft of civilian property, in particular livestock, invariably followed the attacks and in many instances every single item of moveable property was either stolen or destroyed by the attackers. Often the civilians were **forcibly displaced** as a result of the attack. Several of the attacks on villages were carried out with the support of Government of the Sudan including the air force, involving **air bombardments** and regular aerial surveillance. The Commission received credible evidence of the use of Mi-8 helicopters, Mi-24 helicopters and Antonov aircraft during air attacks on villages. **Ground attacks** frequently were preceded by the presence of aircraft near or directly above the villages, which would either bomb the village or surrounding areas, or circle over the village and retreat”.¹⁴⁵*

The Col further emphasised the **forced displacement of civilians**, as a result of the attacks perpetrated against them:

*“At the time of the establishment of the Commission and, subsequently, upon its arrival in the Sudan in November 2004, two irrefutable facts about the situation in Darfur were immediately apparent. Firstly, there were more than **one million internally displaced persons (IDPs)** inside Darfur (1.65 million according to the United Nations) and more than **200,000 refugees from Darfur in neighboring Chad** to the East of the Sudan. Secondly, there were several hundred **destroyed and burned villages and hamlets** throughout the three states of Darfur. While the exact number of displaced persons and the number of villages destroyed remain to be determined, the **massive displacement** and the **destruction of villages** are facts beyond dispute”.¹⁴⁶*

In relation to cases of **rape and other forms of sexual violence**, the Col highlighted the following:

*“Various sources reported widespread rape and other serious forms of violence committed against women and girls in all three states of Darfur. According to these sources, the **rape of individual victims was often multiple**, carried out by more than one man, and accompanied by other severe forms of violence, including **beating and whipping**. In some cases, women were reportedly **raped in public**, and in some incidents, the women were further beaten and **called ‘slaves’** or ‘Tora Bora.’ The following patterns have been reported: First, deliberate aggressions against women and girls, including **gang rapes**, occurred during the attacks on the villages. Second, women and girls were **abducted**, held in **confinement** for several days and repeatedly raped during that time. Third, rape and other forms of sexual violence continued **during flight and further displacement**, including when*

144. The Col was established pursuant to Resolution 1564 of the UN Security Council. It was mandated to “investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable”.

145. Col report, paras. 242 and 243.

146. Col report, para. 226.

women left towns and IDP sites to collect wood or water. In certain areas, rapes also occurred inside towns. Some women and girls **became pregnant** as a result of rape. In most cases, the involvement of **Janjaweed** was reported¹⁴⁷ [...] It is apparent from the information collected and verified by the Commission that rape or other forms of sexual violence committed by the Janjaweed and Government soldiers in Darfur was **widespread and systematic** and may thus well amount to a **crime against humanity**. The awareness of the perpetrators that their violent acts were part of a systematic attack on civilians may well be inferred from, among other things, the fact that they were cognizant that they would in fact **enjoy impunity**".¹⁴⁸

In its concluding observations, the Col stressed that:

*"It is apparent from the Commission's factual findings that in many instances Government forces and militias under their control attacked civilians and destroyed and burned down villages in Darfur contrary to the relevant principles and rules of international humanitarian law. Even assuming that in all the villages they attacked there were rebels present or at least some rebels were hiding there, or that there were persons supporting rebels – an assertion that finds little support from the material and information collected by the Commission – the attackers did not take the necessary precautions to enable civilians to leave the villages or to otherwise be shielded from attack. The impact of the attacks shows that the **military force used** was manifestly **disproportionate** to any threat posed by the rebels. In fact, attacks were most often **intentionally directed against civilians** and civilian objects. Moreover, the manner in which many attacks were conducted (at dawn, preceded by the sudden hovering of helicopter gunships and often bombing) demonstrates that such attacks were also **intended to spread terror among civilians** so as to compel them to flee the villages. In a majority of cases, victims of the attacks belonged to African tribes, in particular the **Fur, Masalit and Zaghawa tribes**. From the viewpoint of international criminal law these violations of international humanitarian law no doubt constitute **large-scale war crimes**".¹⁴⁹*

The Col documented¹⁵⁰ international crimes perpetrated between February 2003 and January 2005 in Darfur. Years after the Commission's publication of its findings, these crimes continued unabated, and some continue today, 16 years after the conflict erupted. While the magnitude has reduced, the nature of the crimes remains similar, in particular in the Jebel Marra, where civilians continue to be regularly under attack (see above, Section I).

Civilians continue to face attacks by security forces, which include **killings, burning of villages and looting**. The perpetrators remain the same, with Government forces (now including former *Janjaweed* under the banner of the Rapid Support Forces) continuing to use militias to carry out such attacks jointly.

In 2005, the Col estimated that there were 1.65 million IDPs in Darfur, as a result of the conflict, and 200,000 refugees in eastern Chad. 16 years later, these figures have either remained stable or have continued to increase, indicating that little progress has been made in terms of security or relocation measures for civilians. There are currently approximately **2.6 million IDPs** in Darfur and **343,000 refugees** still living in eastern Chad. New cases of forced displacement – as a result of clashes – continue to be reported.¹⁵¹

147. Col report, paras. 333-335.

148. Col report, para. 360.

149. Col report, para. 267.

150. These crimes were also extensively documented by international organisations, human rights NGOs and other relevant stakeholders. See, for example, Amnesty International, *Sudan, Darfur, rape as a weapon of war*, 2004, <https://www.amnesty.org/download/Documents/92000/afr540762004en.pdf>; Human Rights Watch, *Darfur in Flames, atrocities in Western Sudan*, 2004, <https://www.hrw.org/sites/default/files/reports/sudan0404.pdf>.

151. See above, Section I, *Civilians continue to bear the brunt of insecurity*.

In addition, as detailed above, **rape and other forms of sexual violence** continue to be perpetrated against civilians, including widespread **gang rape**. Cases of women being abducted and raped for several hours or days continue to be reported. Women in IDP camps remain the targets of sexual violence, while they collect wood and water. Cases of women becoming pregnant after having been raped remain common¹⁵².

While the nature, the scale and the manner of commission of international crimes in Darfur demonstrate the gravity of these crimes, their ongoing impact on victims and affected communities further reinforce their seriousness and underline the urgent need for accountability.¹⁵³

International crimes committed in Darfur, including those perpetrated in the early years of the conflict, continue to have serious impacts on civilians. These include increased vulnerability of victims, terror instilled among civilians and physical, psychological, social and economic effects on victims and affected communities.¹⁵⁴

"I stayed for 5 years in Kalma IDP camp. There were difficulties. In 2008, Government soldiers attacked the camp and killed more than 40 people. I talked to my husband. It was difficult to stay there, every day we heard that people were dying in Nyala and in the camp. Two girls, my neighbours, went outside the camp to collect water and Government soldiers captured them, raped them and buried them in the sand."

"We arrived in Chad in 2009, thank God, it was a safe place. Right now it is better for us than in Sudan, where there is rape by Janjaweed."

A.A.A., aged 34 years, woman interviewed in the Djabal refugee camp, 21 April 2018

"The war started in 2003 in our village, not far from Bindisi. One day, my husband and I went to the market in Bindisi. We met with Janjaweed. They wanted to rape me and take our belongings. They started hitting my husband and me. They took our money and animals. They started beating villagers, raping women and girls. After the attack, we decided to move to Sara Bourgou. But one day, I went to the market with my sister. We met with Janjaweed. My sister had her child on her back. The Janjaweed killed the child, raped my sister, raped me. There were about 20 of them. My sister and I were gang raped by a group of three men. [...] Today I still take injections for lower back pains and some pain killers. [...] I keep thinking about the rape. I think about it all the time. [...] I do not expect anything in the future. I only want to see my children live. I never went back to my village and I don't want to go back. The criminals are still there. We will go back when our country is free [...] My sister lives in the Kalma IDP camp. We have never seen each other since then [...]."

A.J., woman interviewed in the Djabal refugee camp, April 2018

152. See above, Section I, *Civilians continue to bear the brunt of insecurity*.

153. In the ICC Office of the Prosecutor (OTP) policy paper on case selection and prioritisation, issued on 15 September 2016, (https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf), the assessment of "gravity" includes both quantitative and qualitative considerations, such as scale, nature, manner of commission, and the impact of the crimes. According to the OTP Policy Paper, paragraph 40, the "impact of the crimes" may be assessed in light of, *inter alia*, the increased vulnerability of victims, the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities.

154. See above, Section II, *Returning to Sudan: hardly an option for refugees*.



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"In Mukjar, the attack happened at 3pm. We were fetching water. They came with airplanes. They had cars and horses. We entered the mountains and the night came. The next day they surrounded us. They took the ladies and raped them. All men were captured, and all women were raped. Every woman that was with us was raped by Janjaweed. There were more than 50 women. During the attack, I was one-month pregnant, and I had my 2-year-old child with me. She saw. When we entered the mountains the child was sick and there was no treatment, she died there".

A.A.A., aged 34 years, woman interviewed in the Djabal refugee camp, 21 April 2018

2. The failure of accountability mechanisms to provide justice and reparation to victims

2.1. The Special Criminal Court on the Events in Darfur

Sudan's Chief Justice established the Special Criminal Court on the Events in Darfur (SCCED) by decree on 7 June 2005, less than a week after the announcement by the ICC Prosecutor of his intention to open an investigation into the crimes committed in Darfur. Since its creation, the SCCED has proven to be ineffective and unable to investigate serious crimes committed in Darfur and prosecute those responsible. Numerous factors – legal, structural and political – have constituted major obstacles to the Court's capacity to handle cases of such magnitude and gravity.

A/ Shortcomings of the national legal framework

Upon its creation, the SCCED's jurisdiction was described in broad terms, incorporating provisions under the Sudanese Criminal Code and any other relevant law determined by the Chief Justice. In 2008, the Court's jurisdiction was extended to include crimes under "**international humanitarian law**", yet with **no explicit definition** of such crimes. Despite this extension to IHL, provisions under the Draft Constitutional Charter for the 2019 Transitional Period include restrictions on **retrospective application of criminal law**.¹⁵⁵ Although it is possible to circumvent such restrictions— notably by means of provisions within the same Constitution which expressly guarantee that international treaties ratified by Sudan shall form an integral part of the Bill of Rights – they came into force in July 2005, thereby leaving open the possibility that they will be interpreted to prevent prosecution of crimes committed before that date.¹⁵⁶

"All the cases brought to the Special Criminal Court have nothing to do with international crimes. In 2008, the authorities amended the law establishing the Court to include jurisdiction over war crimes and crimes against humanity. However, most of these crimes were committed before the Court was established, and before the law was amended. Sudanese law does not provide for retroactivity; hence, the Court is not competent to deal with international crimes.[...] The Prosecutor mainly plays a public relations role. He makes statements; pretends he has cases. But there is nothing. There is only one judge sitting in the court. Besides, he is based in Khartoum. He comes for trials and then he goes. He only looks at "normal cases" such as civil cases, matrimonial cases".

Interview with lawyer from Darfur, October 2018

Furthermore, there is no explicit provision within Sudanese law providing for **superior or command responsibility** as a mode of liability, limiting the possibility to hold commanders and superiors accountable for crimes committed by subordinates under their effective control. In addition, the legal framework on security forces guarantees them **immunity from prosecution**, including for international crimes. The Armed Forces Act (2007, Section 34), the National Security Act (2010, Section 33) and the Police Act (1999, Section 46) all provide immunity for acts committed "in good faith" and "in the course of duty". Immunity can only be waived by the relevant individual governing these forces (including the Ministry of Interior or the Minister of Defence). Such flagrant inadequacy of Sudanese law with regards to international standards has been denounced by various regional and international mechanisms.¹⁵⁷ In its final report, the Col called on the Sudanese authorities to repeal provisions providing immunity for defence and security forces. At the time, although Sudanese authorities had assured the Commission that immunity would be automatically lifted where serious violations of international human rights or humanitarian law had been committed, the Commission had not been able to verify that assertion.¹⁵⁸

155. Article 51.4 of Sudan's Constitutional Charter for the 2019 Transitional Period states: "*Charges may not be brought against any person because of an act or failure to act if such act or failure to act did not constitute a crime at the time of its occurrence.*" It is worth noting that the 2005 Constitution had an almost identical provision: according to Article 34.4, "*No person shall be charged of any act or omission which did not constitute an offence at the time of its commission*".

156. The 2019 Constitution provides that laws issued under the 2005 Constitution remain in force, unless they are repealed or amended.

157. For example, the UNHCHR recommended that the Sudanese authorities undertake legislative reforms at both the federal and state levels, especially in relation to the National Security Act and the Armed Forces Act which are deemed to perpetuate impunity. See *Report of the United Nations High Commissioner for Human Rights on Impunity and Accountability in Darfur for 2014*, August 2015, <https://www.ohchr.org/Documents/Countries/SD/ImpunityAccountabilityInDarfur2014.pdf>.

158. Col report, para. 625.

In relation to the investigation and prosecution of **rape and other forms of sexual violence**, Sudanese law contained extensive restrictions including risks for complainants of being charged with adultery; the evidentiary weight attached to corroboration of their testimonies; the restrictive definition of rape; and the absence of an explicit definition of other forms of sexual violence.¹⁵⁹

B/ Shortcomings in the structure and organisation of the SCCED

It was not until August 2008 that a **Special Prosecutor** attached to the SCCED was appointed. He was assisted by only three senior legal advisers in carrying out investigations in Darfur. There have therefore been extremely **limited efforts** to ensure the existence of an **adequately staffed and funded** branch or unit within the Court to conduct investigations into international crimes and ensure that evidence is collected and preserved in appropriate manner to lay the groundwork for effective criminal prosecutions.

The **nominated judges** – which have not included a single woman – were for the most part **unqualified** to prosecute international crimes, and the majority were members of the State political party, the National Congress Party (NCP). In addition, they did not remain permanently in Darfur and only travelled occasionally to the region.

Since its creation, the Court's headquarters have been located in El-Fasher (North Darfur) with **no permanent branches** in the other states of Darfur. There has been no dedicated branch or unit within the Court to provide assistance, including **protection measures** or **physical and psychological support** to victims and witnesses.

There have been no efforts at all to allow for meaningful victim's participation in proceedings, to guarantee their right to be duly represented by the counsel of their choice, or to provide any form of **reparation measures to victims**.

In areas in which the Court is not present, some victims have tried to refer cases to the local police. A lawyer who tried to support such victims described the following to FIDH and ACJPS: *"Since the conflict erupted in Darfur in 2003, it has been impossible to open any case in relation to the crimes committed. Whenever I tried, the police told me they had instructions not to open such cases. They usually respond that it is too late and that the crimes have prescribed. [In 2017] I intended to file a case on behalf of the family of a person who was killed by a Janjaweed in 2003. The Janjaweed was clearly identified but the Prosecutor refused to look at the case, pretending that the crime had prescribed"*. This case is not isolated.

Since its creation, the SCCED has mostly dealt with **ordinary crimes** and international observers have generally been prevented from attending trials. In a decision rendered on 30 March 2015, the Special Court sentenced one individual from the JEM to death for a number of crimes, including under Article 50 (undermining the constitution) and Article 51 (waging war against the state) of the

159. Until 2015, provisions of the Sudanese Penal Code on rape contributed to exposing victims more, rather than providing justice. Article 149 of the Penal Code of 1991 defined rape as the crime of *zina* (adultery or unauthorised sexual intercourse between a man and a woman who are not married). Women convicted of *zina* were sentenced to death by stoning (married women) or 100 lashes (unmarried women). These provisions have had serious impacts on victims of rape. To prove they had been raped, they had to demonstrate that they were subjected to extramarital sex and that they did not consent. In February 2015, Sudanese authorities reformed the Penal Code, including amendments to Article 149. The definition of rape was expanded to include, for example, acts of penetration with objects. It also specifies contexts in which the issue of consent is not relevant. With regard to the evidence required, in practice the new article could help to make proving the crime less burdensome, with recourse to, for example, the testimony of the victim, the use of DNA tests, the testimony of men or women and expert testimony. However, although less restrictive than the previous definition, the new definition of rape remains limited and does not comply with regional and international standards. The new article contains elements that could continue to limit the possibility for victims to file complaints (references to adultery, as well as the notion of temptation), and a clarification on penalties is needed. Moreover, it is not clear that this reform has been widely disseminated throughout the country, particularly in Darfur, where the lawyers interviewed by the mission were unaware of it.

Sudanese Penal Code of 1991. Another case involved 19 rebels from the Sudan Liberation Army – *Minni Minnawi* faction – facing the same charges.

Sudanese authorities have been **unable** and **unwilling** to adequately investigate and prosecute the serious crimes committed in Darfur, since the conflict erupted in 2003 and the SCCED has so far proven unable to contribute to deterring violence in the region. Clarification of the legal framework on the basis of which investigations and prosecutions can be carried through is lacking, as well as on modalities to effectively lodge complaints before the Court. Immunity provisions make it impossible in practice to prosecute those in the defence and security forces who are responsible for serious crimes. Over the past 14 years, there have been limited efforts to promote knowledge of the Court's existence and mandate among Darfur populations.

"Accessing justice under this regime is almost impossible. We need a democratic regime which respects human rights. That's the best environment for people to get justice and reparation. Justice should not be compromised and discussed as a political interest for superpower states. Victims suffer when their rights are violated".

Interview with lawyer from South Darfur, October 2018

2.2. The International Criminal Court¹⁶⁰

In view of the Sudanese justice system's inability and unwillingness to investigate and prosecute the perpetrators of the serious crimes committed in Darfur, the Col "strongly [recommended] that the Security Council [...] refer the situation in Darfur to the International Criminal Court".¹⁶¹

A/ Investigation and prosecution by the ICC Office of the Prosecutor

The findings and recommendation of the Commission prompted the UNSC, on 31 March 2005, to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC.¹⁶² In a statement following the UNSC's decision, Kofi Annan, then UN Secretary-General, commended UNSC members for using "[t]heir authority under the Rome Statute to provide an appropriate mechanism to lift the veil of impunity that has allowed human rights crimes in Darfur to continue unchecked". Similar declarations from State representatives were made.¹⁶³ Since then, however, the UNSC's support to the ICC in ensuring State cooperation, particularly in the execution of pending arrest warrants, has been minimal.

160. See some of FIDH's past publications on the ICC and Sudan, including: The ICC and Darfur: Questions and Answers, 4 March 2009, https://www.fidh.org/IMG/pdf/Q_ADarfurENG_cleanFINAL.pdf; the International Criminal Court issues an arrest warrant for President Omar Al-Bashir, 4 March 2009, <https://www.fidh.org/en/region/Africa/sudan/The-International-Criminal-Court.6387>; "President Omar Al-Bashir must be arrested", 17 July 2010, <https://www.fidh.org/en/region/Africa/sudan/President-Omar-Al-Bashir-must-be>; "The same crimes by the same, wanted regime", 31 March 2015, <https://www.fidh.org/en/region/Africa/sudan/sudan-the-same-crimes-by-the-same-wanted-regime>; "After announcing the arrest warrant against al-Bashir, big trucks and men with guns appeared at our headquarters", 31 March 2015, <https://www.fidh.org/en/region/Africa/sudan/after-announcing-the-arrest-warrant-against-al-bashir-big-trucks-and>.

161. Col report, para. 647, p. 162.

162. UNSC Resolution 1593, 2005.

163. Speaking in explanation of position after the vote were the representatives of Japan, United Kingdom, France, Greece, United Republic of Tanzania and Romania, among others. The representatives from these States reaffirmed their support for the adoption of Resolution 1593 and their stand against impunity. UNSC Press release, "Security Council Refers Situation in Darfur, Sudan, to Prosecutor of International Criminal Court", 31 March 2005, <https://www.un.org/press/en/2005/sc8351.doc.htm>.

On 1 June 2005, two months after the UNSC's referral, the ICC Prosecutor proceeded with an investigation into the situation in Darfur¹⁶⁴. While the Prosecutor benefited from cooperation by the Government of Sudan between 2005 and 2007, undertaking several missions to the country, *"since that time, there has been no cooperation from Sudan whatsoever"*.¹⁶⁵

However, after two years of investigation, on 27 April 2007, the ICC issued its first arrest warrants in the Darfur situation, against **Ahmad Muhammad Harun** (Ahmad Harun), former Minister of the State for the Interior, in charge of the "Darfur Security Desk", and **Ali Kushayb**, senior tribal leader in the Wadi Salih locality and member of the Popular Defence Forces (PDF).¹⁶⁶ The arrest warrants were issued in relation to the alleged responsibility of both men for war crimes and crimes against humanity – including rape – committed in Darfur against civilians, primarily from the Fur, Zaghawa and Masalit populations.

Since then, the ICC has issued four further arrest warrants in the Darfur situation: two against **Omar Al-Bashir** (March 2009 and July 2010), one against then Minister of National Defence, **Abdel Raheem Muhammad Hussein** (March 2012) and one against Commander in Chief of the rebel group Justice and Equality Movement (JEM), **Abdallah Banda** (September 2014), who had earlier appeared voluntarily at the Court in June 2010 pursuant to a summons to appear, with the charges of war crimes against him confirmed by Pre-Trial Chamber I in December 2010. The ICC had also issued summons to appear against Chairman and General Coordinator of Military Operations of the United Resistance Front, **Bahar Idriss Abu Garda** (May 2009), who appeared voluntarily at the Court the same month. The charges of war crimes against him were not confirmed by the Pre-Trial Chamber.

Omar Al-Bashir and Abdel Raheem Muhammad Hussein are allegedly responsible for war crimes and crimes against humanity committed against civilians, including acts of rape. Al-Bashir is also allegedly responsible for three counts of genocide against the same groups. Banda is allegedly responsible for three counts of war crimes committed against the African Union mission in Sudan which was directed against personnel, installations, material, units and vehicles involved in a peacekeeping mission in accordance with the UN Charter.

12 years after issuance of the first arrest warrants, all but one case (the Banda case) remain at the pre-trial stage with the suspects at large and, until recently, most of them continued to hold senior positions in the GoS. Omar Al-Bashir has constantly defied the warrants against him and travelled across the world, including to States Parties to the ICC's Statute who have failed in their obligations to arrest and surrender him to the seat of the Court. All other indictees have also been travelling freely.

"I'm not aware of any accountability mechanism. I would like to make a complaint, but I don't have enough strength. Who am I going to complain to? They are the same people as in the Government [of Sudan]. I don't have the strength."

A.G., woman interviewed in the Djabal refugee camp, April 2018

164. See *First report of the ICC prosecutor to the UNSC, pursuant to resolution 1593*, 29 June 2005, https://www.icc-cpi.int/NR/rdonlyres/CC6D24F9-473F-4A4F-896B-01A2B5A8A59A/0/ICC_Darfur_UNSC_Report_290605_EN.pdf.

165. Statement of the ICC Prosecutor to the UN Security Council on the situation in Darfur, pursuant to UNSCR 1593 (2005), 19 June 2019, para. 12, <https://www.icc-cpi.int/Pages/item.aspx?name=190619-stat-otp-UNSC-Darfur-Sudan>.

166. ICC, *Alleged crimes (non-exhaustive list)*, <https://www.icc-cpi.int/darfur/harunkushayb/pages/alleged-crimes.aspx>.

International Crimes Committed in Darfur Remain Unpunished

Key figures: Not a single individual has been convicted for his/her criminal responsibility in international crimes committed in Darfur following a fair trial.

Before national courts

- **Special Criminal Court for the Events in Darfur:** **0** convictions of government forces for crimes committed during the conflict
- **National justice system:** **0** convictions of government forces for crimes committed during the conflict
- **Foreign national courts:** The French bank BNP Paribas was fined 8.9 billion USD in 2014 by US courts for violating the US embargo targeting several countries, including Sudan. Such practices resulted in significant support to the Sudanese economy during the conflict. The US Department of Justice said it planned to use the money paid by the bank to compensate victims of abuses by the Sudanese regime during the period. No compensation has so far been paid to the victims.

Before regional mechanisms

- **ACHPR:** lack of accountability of the Sudanese State for human rights violations committed during the conflict in Darfur
- **African Court:** Has no jurisdiction for cases brought against Sudan. Sudan has not ratified the Protocol establishing the Court or made the declaration under its Article 34.6 allowing individuals and NGOs to access the Court directly.

Before international courts

- **ICC:** **6** arrest warrants issued, **5** still pending, of which **4** for war crimes and crimes against humanity and **1** for genocide. **5** suspects, all of whom remain at large.

The ICC's Suspects

27 April 2007: ICC arrest warrant against Ahmed Mohammed Harun



On 27 April 2007, the ICC issued an arrest warrant against Ahmed Mohammed Harun, for crimes against humanity and war crimes committed in Darfur from August 2003 until March 2004.

From April 2003 to September 2005, Harun served as the Sudan Minister of State for the Interior, specifically responsible for the “Darfur Security Desk”. In this position, he was co-ordinating the various bodies of the Government involved in the counterinsurgency in Darfur, including the Police, the Armed Forces, the NISS and the Janjaweed militia. According to the ICC, Harun specifically coordinated the recruiting, arming and funding of the Janjaweed militia and publicly incited them to conduct attacks targeting civilians. The Court alleges that Harun is responsible for murders, rapes, destruction of properties, pillaging, persecution, forcible transfers, severe deprivation of liberty, acts of torture committed, between August 2003 and March 2004, against civilians from the Fur, Zaghawa and Masalit populations, in the towns of Kodoom, Bindisi, Mukjar and Arawala. He is charged with 20 counts of crimes against humanity and 22 counts of war crimes.

The execution of the ICC arrest warrant against Harun has remained pending since it was issued.

In 2006, Harun was appointed as Minister of State for Humanitarian Affairs (a position he occupied until 2009).

In September 2007, he was appointed to lead an investigation into human rights violations committed in Darfur.

In May 2009, he was appointed as Governor of South Kordofan. In July 2013, he resigned as Governor of South Kordofan, and was reappointed by the President Omar Al-Bashir as Governor of North Kordofan, a position he occupied until 23 February 2019.

In March 2019, President Omar Al-Bashir delegated his powers and jurisdiction as Chairman of the country’s ruling political party, the NCP, to Harun. Harun was appointed as acting chairman of the party until convocation of the general conference of the party.

Harun was reportedly arrested on 11 April 2019, the same day as Omar Al-Bashir, and placed in detention. At the time of his reported arrest, Harun held the position of head of the NCP. The ICC warrant for his arrest remains in force.

27 April 2007: ICC arrest warrant against Ali Kushayb



On 27 April 2007, the ICC issued an arrest warrant against Ali Kushayb, for crimes against humanity and war crimes committed in Darfur from August 2003 until March 2004.

According to the ICC, one of the most senior leaders in the tribal hierarchy in the Wadi Salih locality and member of the Popular Defence Forces (PDF), Ali Kushayb allegedly commanded thousands of Janjaweed militias from August 2003 until March 2004. Ali Kushayb is alleged to have implemented the counterinsurgency strategy of the Government of Sudan that also resulted in the commission of war crimes and crimes against humanity in Darfur. Ali Kushayb is perceived to have acted as the mediator between the leaders of the Janjaweed militia in Wadi Salih and the GoS. He is also alleged to have enlisted fighters, armed, funded and provided food and other supplies to the *Janjaweed* militia under his command. Ali Kushayb is alleged to have personally participated in some of the attacks against civilians namely in the towns of Kodoom, Bindisi, Mukjar and Arawala between August 2003 and March 2004, where the killing of civilians, rape, torture and other cruel treatments occurred. He is therefore accused, jointly with others, of these crimes. He is charged with 22 counts of crimes against humanity and 28 counts of war crimes.

The execution of the ICC arrest warrant against Harun has remained pending since it was issued.

In February 2009, Nimr Ibrahim Mohamed, Special Prosecutor of the SCCED, announced that Ali Kushayb had been charged by the Court with criminal offenses. It is also reported that Ali Kushayb may have been arrested by the Sudanese authorities on various occasions. There is a lack of transparency about criminal proceedings initiated against Kushayb, but it is unlikely that he has remained in custody. According to a 2016 report of the ICC Prosecutor, Kushayb remained active in militias aligned with the GoS operating in Darfur.

March 2009 and July 2010: Two ICC arrest warrants against Omar Al-Bashir



On 4 March 2009, the ICC issued an arrest warrant against Omar Al-Bashir, for crimes against humanity and war crimes committed in Darfur from April 2003 until July 2008. On 12 July 2010, the ICC issued a second arrest warrant against Al-Bashir for genocide committed in Darfur.

According to the ICC, as the President of Sudan and Commander in Chief of the Sudanese armed forces, Omar Al-Bashir played an essential role in coordinating, with other high-ranking Sudanese political and military leaders, the design and implementation of the GoS counter-insurgency campaign in Darfur. It is also alleged that his role went beyond coordinating the campaign as he was in full control of all branches of the “apparatus” of the State of Sudan, including the Sudanese Armed Forces and their allied Janjaweed militia, the Sudanese Police Force, the NISS and the HAC; and that he used such control to secure the implementation of the campaign. In this capacity, he is allegedly responsible for attacks, murders, rape, pillaging, extermination, forcible transfers, torture, genocide, against civilians from the Fur, Zaghawa and Masalit populations. Omar Al-Bashir is charged with 5 counts of crimes against humanity, 2 counts of war crimes and 3 counts of genocide.

Execution of the ICC arrest warrants against Al-Bashir has remained pending since they were issued. Indeed, over the past 10 years, Al-Bashir has travelled across the globe, including to State Parties to the ICC Statute, without being arrested and transferred to the Court (see Box 3 above).

Under the 2005 Sudanese Interim Constitution, the President and Vice Presidents of the Republic were protected from prosecution, except that under Article 122 the Constitutional Court had criminal jurisdiction over the President of the Republic, in the event that the incumbent commits high treason, gross violation of the Constitution, or gross misconduct in relation to State affairs. Article 60 provided for the immunity of the President to be lifted, upon a resolution passed by three quarters of the national assembly. A Sudanese president could then be tried while still in office.¹⁶⁷

On 11 April 2019, Al-Bashir, was arrested, placed in detention in the Kober prison and later charged by Sudan’s public prosecutor with corruption and illegal acquisition and use of foreign funds. So far, the SC has yet to indicate whether it would extradite Al-Bashir to the Netherlands, showing, once again, unwillingness to consider accountability for crimes committed in Darfur as a priority. According to media sources, Al-Bashir’s verdict in his corruption trial is to be delivered in December 2019.¹⁶⁸

167. The Draft Constitutional Charter for the 2019 Transitional Period provides similar protections. Article 21 on Procedural Immunity states, “(1) Criminal procedures may not be taken against any members of the Sovereignty Council, Cabinet, Transitional Legislative Council or governors of provinces/heads of regions without receiving permission to lift immunity from the Legislative Council. (2) The decision to lift this procedural immunity is issued by a simple majority of members of the Legislative Council. (3) Until the Transitional Legislative Council is formed, lifting immunity falls within the competencies of the Constitutional Court. If the Legislative Council is not in session, an emergency session is held”.

168. *Alsharq Al-awsat*, “Sudan verdict in Bashir graft trial set for Dec. 14”, 16 November 2019, <https://aawsat.com/english/home/article/1994566/sudan-verdict-bashir-graft-trial-set-dec-14>, *op. cit.*; *Al Arabiya*, “Sudanese court sets verdict in al-Bashir trial for December”, 16 November 2019, <https://english.alarabiya.net/en/News/middle-east/2019/11/16/Sudanese-court-sets-verdict-in-al-Bashir-trial-for-December.html>.

1 March 2012: ICC arrest warrant against Abdel Rahim Mohammed Hussein



On 1 March 2012, the ICC issued an arrest warrant against Abdel Rahim Mohammed Hussein, for crimes against humanity and war crimes committed in Darfur from August 2003 until March 2004.

According to the ICC, in his position as Minister of the Interior and Special Representative of the President in Darfur, and as an influential member of the Government of Sudan, Hussein made essential contributions to the formulation and implementation of the counterinsurgency campaign in Darfur, through his overall coordination of national, state and local security entities, and through the recruitment, arming and funding of the police forces and Janjaweed militia.

Hussein is alleged to be criminally responsible for the commission of persecution, murders, rapes, attacks, destruction of property, forcible transfers, torture, inhumane acts, pillaging, imprisonment and outrage upon personal dignity, committed against civilians in the towns of Kodoom, Bindisi, Mukjar and Arawala between August 2003 and March 2004. He is charged with 7 counts of crimes against humanity and 6 counts of war crimes.

The execution of the ICC arrest warrant against Hussein has remained pending since it was issued.

From 30 June 1989 until October 1993, Hussein acted as the Secretary General of the Revolutionary Command Council for National Salvation.

From 22 September 2005 until 6 June 2015, he acted as the Minister of National Defence. He was then appointed Governor of the capital Khartoum, until his reported arrest on 11 April 2019. His fate is unknown. The ICC warrant for his arrest remains in force.

*B/ Non-cooperation of States Parties to the ICC Statute and the UN Security Council*¹⁶⁹

The non-cooperation of States with the Court and the failure of the UNSC, which referred the situation to the ICC, to be proactive, led the ICC Prosecutor, Fatou Bensouda, to announce in December 2014 during her bi-annual report to the UNSC on the Darfur situation, that she would “hibernate” her investigation. She stated, *“Faced with an environment where my Office’s limited resources for investigations are already overstretched, and given this Council’s lack of foresight on what should happen in Darfur, I am left with no choice but to hibernate investigative activities in Darfur as I shift resources to other urgent cases, especially those in which trial is approaching”*.¹⁷⁰ Although this “hibernation” does not mean that the Prosecutor has closed the investigation or the cases against the suspects who remain at large, it points to the lack of effective implementation of States’ commitments to accountability and their obligations towards the ICC.

Twelve years after the issuance of the first arrest warrants, all but one case (the *Banda* case) remain at the pre-trial stage with the suspects at large and, until recently, most continued to hold senior positions in the GoS. Omar Al-Bashir has constantly defied the warrants against him and travelled across the world, including to States Parties to the ICC Statute, which are required, under the ICC Statute, to fully cooperate with the Court, including by executing pending arrest warrants if suspects are on their territory, and which failed to comply with their obligations to arrest and surrender him to the seat of the Court. All other indictees have also travelled freely.

The States Parties to which Al Bashir has travelled include Chad, Central African Republic, Democratic Republic of Congo, Djibouti, Jordan, Kenya, South Africa and Uganda.¹⁷¹

Faced with States Parties’ failure to effectively cooperate in the execution of the ICC arrest warrants against Al-Bashir, civil society groups called upon States to respect their obligations¹⁷² and, with

169. See some of FIDH’s publications on non-cooperation, including: FIDH, LTDH, ATPDH, “Chad must arrest Omar Al-Bashir”, 22 July 2010, <https://www.fidh.org/en/region/Africa/sudan/Chad-must-arrest-Omar-Al-Bashir>; FIDH and ACJPS, “President Bashir must imperatively be arrested in Kenya today”, 27 August 2010, <https://www.fidh.org/en/region/Africa/kenya/President-Bashir-must-imperatively8419>; FIDH, ACJPS, ASADHO, Groupe Lotus, Ligue des électeurs, “DRC must arrest Omar Al-Bashir”, 26 February 2014, <https://www.fidh.org/en/region/Africa/sudan/14786-drc-must-arrest-omar-al-bashir>; FIDH, “Sudan Continues to Disrespectfully Disregard Victims of International Crimes in Darfur: The Security Council must face up to its responsibility and ensure that its resolutions are implemented”, 5 June 2009, <https://www.fidh.org/en/region/Africa/sudan/Sudan-Continues-to-Disrespectfully>; LHR, FIDH and ACJPS, “South Africa must enforce the ICC arrest warrants against Omar Al Bashir”, 15 June 2015, <https://www.fidh.org/en/region/Africa/sudan/south-africa-must-enforce-the-icc-arrest-warrants-against-omar-al>; FIDH and ACJPS, “UN Security Council and States Must Cooperate with ICC on Darfur Investigation and Arrest Warrants”, 30 June 2015, <https://www.fidh.org/en/region/Africa/sudan/un-security-council-and-states-must-cooperate-with-icc-on-darfur>; FIDH and ACJPS, “World leaders attend China ceremony with war criminal, disregarding victims and international justice”, 3 September 2015, <https://www.fidh.org/en/region/Africa/sudan/world-leaders-attend-china-ceremony-with-war-criminal-disregarding>; FIDH, ACJPS and FHRI, “Uganda must respect legal obligation to arrest Omar Al Bashir”, 12 May 2016, <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/uganda-must-respect-legal-obligation-to-arrest-omar-al-bashir>; FIDH and ACJPS, “The EU must not let Sudanese victims down: Do not ignore the pending ICC arrest warrants against Al-Bashir”, 13 February 2019, <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/the-eu-must-not-let-sudanese-victims-down-do-not-ignore-the-pending>.

170. ICC Prosecutor’s Statement to the UN Security Council on the Situation in Darfur, pursuant to UNSCR 1593 (2005), 12 December 2014, <https://www.icc-cpi.int/iccdocs/otp/stmt-20threport-darfur.pdf>.

171. For a more detailed overview of Al-Bashir’s travels, see the *Bashir Travel Map* created by Bashir Watch, available on <http://bashirwatch.org/>.

172. See for example, FIDH and members’ press release, “Sudan crisis: accountability is a key ingredient for moving forward”, 20 June 2019, <https://www.fidh.org/en/region/Africa/sudan/sudan-crisis-accountability-is-a-key-ingredient-for-moving-forward>; FIDH and members’ press release, “Uganda must respect legal obligation to arrest Omar Al-Bashir”, 12 May 2016, <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/uganda-must-respect-legal-obligation-to-arrest-omar-al-bashir>; FIDH and members’ press release, “DRC must arrest Omar Al-Bashir”, 26 February 2014, <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/uganda-must-respect-legal-obligation-to-arrest-omar-al-bashir>; FIDH and members’ press release, “President Bashir must imperatively be arrested in Kenya today”, 27 August 2010, <https://www.fidh.org/en/region/Africa/kenya/President-Bashir-must-imperatively8419>; FIDH and members’ press release, “Chad must arrest Omar Al-Bashir”, 22 July 2010, <https://www.fidh.org/en/region/Africa/sudan/Chad-must-arrest-Omar-Al-Bashir>.

lawyers, attempted legal actions in certain countries to which Al-Bashir travelled. In South Africa, after Al-Bashir arrived on South African territory to attend the African Union (AU) summit that took place in Johannesburg from 7 to 15 June 2015, the Southern Africa Litigation Center (SALC) approached the relevant High Court to seek the implementation of the ICC arrest warrant based on South Africa's obligations as an ICC State Party. The Court issued an interim order on 14 June 2015 preventing President Al-Bashir from leaving the country pending the finalisation of the matter, which was widely welcomed by human rights NGOs.¹⁷³ When the Court reconvened on 15 June, it ordered that Al-Bashir be arrested and detained for subsequent transfer to the Hague. However, State respondents informed the Court that Al-Bashir had already left, despite the interim court order of 14 June. This was denounced by civil society groups working on international justice and human rights.¹⁷⁴ After several appeals, the matter was heard by the Supreme Court of Appeal, which ruled on 15 March 2016 that the government's failure to arrest Al-Bashir was unlawful, and then by the Constitutional Court. However, the government withdrew its appeal before the matter was effectively heard.¹⁷⁵

After Al-Bashir's various visits to States Parties, ICC Pre-Trial judges issued decisions finding that these States had failed to comply with the request to arrest and surrender Omar Al-Bashir to the Court. On 11 July 2016, ICC Pre-Trial Chamber II issued non-compliance decisions against Uganda and Djibouti, to which Al-Bashir had travelled in May 2016, and referred the matter to the Assembly of States Parties (ASP) and the UNSC.¹⁷⁶ However, neither the UNSC nor the ASP carried out concrete follow-up of these decisions or took measures to ensure States' full and effective cooperation with the Court.

In December 2017, Pre-Trial Chamber judges issued a decision finding that Jordan had failed to comply with its obligations to arrest and surrender Al-Bashir when he was on Jordanian territory to attend the Arab League Summit on 29 March 2017, and again referred the matter to the ASP and the UNSC. This time, Jordan appealed the decision, which led to appeals proceedings and the Appeals Chamber's judgment of 6 May 2019.¹⁷⁷ In this decision, the Appeals judges confirmed Jordan's failure to comply with its obligations to arrest and surrender Al-Bashir to the ICC, and clarified that, in any event, Al-Bashir did not enjoy immunity as a Head of State in relation to the ICC under customary law. However, the Appeals Chamber decided that the Pre-Trial Chamber did not have the discretion to refer the matter to the ASP and the UNSC.¹⁷⁸

Despite these various attempts to make States and in particular ICC States Parties and the UNSC face up to their responsibilities to cooperate with the ICC and effectively engage in accountability efforts, international crimes committed in Darfur have remained unpunished.

173. See FIDH and members' press release, "South Africa must enforce the ICC arrest warrants against Omar Al Bashir", 15 June 2015, <https://www.fidh.org/en/region/Africa/sudan/south-africa-must-enforce-the-icc-arrest-warrants-against-omar-al-bashir>.

174. See *Civil Society Declaration on Omar al-Bashir's visit to South Africa without Arrest*, 1 July 2015, <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/civil-society-declaration-on-omar-al-bashir-s-visit-to-south-africa>.

175. For more details on the case of South Africa's failure to implement the ICC arrest warrant against Al-Bashir, see the dedicated page on the SALC website: <https://www.southernafricalitigationcentre.org/2016/11/18/south-africasudan-case-challenging-the-states-failure-to-implement-the-icc-arrest-warrant-for-sudanese-president-al-bashir/>.

176. For more information on the non-compliance of Uganda and Djibouti, see ICC website: <https://www.icc-cpi.int/Pages/item.aspx?name=PR1231>.

177. ICC Appeals Chamber's Judgment in the Jordan Referral re Al-Bashir Appeal, ICC-02/05-01/09-397-Corr, 6 May 2019, <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/05-01/09-397>.

178. For further details on the 6 May 2019 decision of the Appeals Chamber, see ICC Questions and Answers, May 2019, <https://www.icc-cpi.int/itemsDocuments/190515-al-bashir-qa-eng.pdf>.

3. Ways forward to ensure accountability for serious crimes committed in Darfur

"The criminal Al-Bashir is still there. He is the source of all the problems. I want him to leave so that I can go back. I have six sons and I don't want them to experience the same violence we experienced. The situation in Darfur must be fixed before we can go back."

A.B, woman interviewed in the Djabal refugee camp, April 2018

"The main obstacles for victims to get justice are immunity, stigma for rape, delays in procedures before the authorities. Witnesses are also afraid of coming to testify. They fear for their lives. Al-Bashir is a criminal. 15 days ago he promoted judges in the judiciary. So I don't think justice will be available for citizens in Sudan, because the judges can't try Al-Bashir."

Lawyer from West Darfur, October 2018

Omar Al-Bashir's 30-year regime was marred with international crimes committed throughout the country. Despite the complexity and sensitivity of assessing individual criminal responsibility within the ongoing transitional political phase, the people of Sudan deserve truth, justice and reparation. Accountability must be central to any efforts aimed at building long-lasting peace and securing democratic transformation in the country.

Over the past years – and in particular since the ICC issued its first arrest warrants in the Darfur situation – debates around accountability measures in Sudan have included arguments calling for a sequencing between peace and justice. Such reasoning is likely to resurface considering that peace has not been fully restored and given the current political landscape, marked by the presence, within transitional authorities, of some of Al-Bashir's former lieutenants. Yet, in light of the impunity that has fuelled decades of violence in Sudan, effective accountability efforts are crucial and should not be side-lined or postponed.

Relevant stakeholders in Sudan, including citizens and civil society representatives, must be fully consulted and involved in decisions aimed at determining the relevant mechanisms that should be in charge of investigating and prosecuting international crimes committed over the past years.

Based on the findings highlighted in this report, including testimonies from civilians who have suffered the most serious crimes committed during the conflict in Darfur, FIDH and ACJPS make a series of recommendations intended to contribute to considerations of the accountability measures that could be taken to ensure that those responsible are held accountable before effective judicial mechanisms which allow victims to have their voices heard.

3.1. Investigating and prosecuting international crimes in Sudan?

Since Omar Al-Bashir's arrest, TMC leaders have indicated that he will not be transferred to the ICC and will instead face justice before Sudanese national courts.¹⁷⁹ On 25 June, they reportedly declared that

179. Reuters, "Toppled Bashir moved from residence to Khartoum's Kobar prison: relatives", 17 April 2019, <https://www.reuters.com/article/us-sudan-politics/toppled-bashir-moved-from-residence-to-khartoums-kobar-prison-relatives-idUSKCN1RT0SM>.

Al-Bashir would be prosecuted for crimes falling under the jurisdiction of the ICC.¹⁸⁰ So far, no concrete steps have been taken in this regard and no mention has been made of the initiation of proceedings against Abdel Raheem Hussein or Ahmad Harun. More generally, there has been no mention of measures to be taken to ensure a comprehensive way of combating impunity of all those allegedly responsible for international crimes committed in Darfur and elsewhere in Sudan.

Deficiencies currently existing within the Sudanese justice system render impossible any effective investigation and prosecution of those suspected of being responsible for international crimes. A number of pre-conditions would have to be met, in the event that national authorities decide to investigate and prosecute such crimes at the national level.

A/ Reforming the legal framework

It is essential that the Sudanese legal framework is brought into conformity with international human rights and criminal law. This requires numerous reforms including:

- Taking steps to **amend criminal laws** to reflect international crimes. At present, Sudanese criminal law does not entirely incriminate crimes against humanity, war crimes and genocide. Only some elements of the constitutive acts of such crimes are prohibited. Sudanese authorities should enact in national legislation crimes against humanity, war crimes and genocide, as defined in the Rome Statute. Provisions under Sudan's Constitutional Charter for the 2019 Transitional Period, such as Article 51(4), which provide for restrictions on the retrospective application of criminal law, must be repealed and it must be clearly stated in national legislation that **international crimes cannot be subject to prescription**. As mentioned above (see *Shortcomings in the legal framework*), in Darfur, prosecutors have regularly referred to prescription provisions to avoid investigating and prosecuting international crimes reported to their offices.
- Repealing **immunity provisions** – in particular for violations of international human rights or humanitarian law – that remain enshrined in various legislation, including within the Armed Forces Act (2007, Section 34), the National Security Act (2010, Section 33) and the Police Act (1999, Section 46), should also constitute a priority. The granting of immunity to officials suspected of being responsible for serious crimes committed in Sudan has so far contributed to shielding them from accountability. In Darfur, while there has been extensive evidence of the involvement of the SAF, the RSF – mostly composed of former Janjaweed and the GIS, in the perpetration of serious crimes against civilians, there has been not a single court case leading to adequate sentences, mostly due to immunity enjoyed by members of these forces. If a competent court – or any other relevant mechanism – is set up to try serious crimes committed in Darfur and elsewhere, it must ensure that no one shall be exempted from criminal responsibility on account of their official capacity as a government official, as a member of security forces, or by claiming the defence of superior orders. Sudanese authorities must ensure that no one suspected of being responsible for international crimes can benefit from clemency, amnesty or pardon.
- Ensuring that there is an explicit provision within Sudanese law providing for **command/superior responsibility** as a mode of liability to ensure the possibility of holding commanders and superiors accountable for crimes committed by subordinates under their effective control. More generally, Sudanese laws should provide for all modes of liability for crimes under international law.

180. RFI, "Soudan : la junte veut juger Omar el-Bechir sans le remettre à la CPI", 26 June 2019, <http://www.rfi.fr/afrique/20190626-soudan-bechir-omar-conseil-militaire-transitoire-cmt-president-juge-crime-cpi>.

- Ensuring that Sudanese laws **criminalise all forms of sexual violence**¹⁸¹ in accordance with provisions under international law. A definition of sexual violence which strictly complies with provisions under the Rome Statute, and the ACHPR *Guidelines on combating sexual violence and its consequences*, should be enacted in national legislation, in order to ensure that all forms of sexual violence are criminalised; to remove all legal barriers that continue to prevent victims of sexual violence, from having effective access to justice and reparation; and to allow such victims to make complaints to competent courts without fear of judicial reprisals.
- Excluding the **death penalty** as a potential sentence. Sudan retains the death penalty in its domestic laws and in 2014, the country was reported to be the highest-ranking state in terms of executions carried out in Africa, with the execution of at least 23 people.¹⁸² At the end of 2018, at least 109 people were known to be subject to death sentences.¹⁸³ Article 186 of the 2009 amendment to the 1991 Sudanese Criminal Act, provides for the death penalty as a sentence for crimes against humanity, genocide and war crimes. None of the international tribunals mandated to investigate and prosecute international crimes have included the death penalty as a potential sentence. Most of them have instead provided for a maximum sentence of life imprisonment (such as the International Criminal Tribunal for Rwanda – ICTR, and the Special Court for the Central African Republic).

B/ Carrying out structural reforms to the judiciary

- Taking steps to **eliminate political interference** in the judiciary. The judiciary in Sudan remains largely vulnerable to political oversight and any attempt to investigate and prosecute international crimes domestically should be preceded by reforms aimed at establishing an effective, independent and impartial judicial system.
- Taking steps to allocate adequate **human and financial resources** to the judiciary, in particular in the event that international crimes are to be investigated and prosecuted domestically. The judiciary in Sudan remains largely under-funded and under-staffed. Investigating and prosecuting international crimes require that investigators, judges and prosecutors are adequately trained in international criminal law, which might require external support from regional/international experts with extensive expertise in the field.
- Taking steps to guarantee the employment of sufficient numbers of **women police officers, investigators, prosecutors and judges**. In February 2018, the UN Special Representative on sexual violence in conflict expressed serious concerns about the complete absence of women judges in all five states of Darfur.¹⁸⁴ The investigation and prosecution of international crimes, in particular crimes of sexual violence, should be based on existing standards and best practices such as those outlined in the *International Protocol on the documentation and investigation of sexual violence in conflict*, or in the ACHPR *Guidelines on combating sexual violence and its consequences*. This would contribute to ensuring that the investigation and prosecution of sexual crimes respect the “do no harm” principle.

181. According to the UN Special Representative on sexual violence in conflict, “*The Armed Forces Act of 2007 criminalizes sexual violence that may occur during military operations; the implementation thereof is critical for the deterrence and prevention of such crimes. The Government has also established some specialized police structures and deployed judges, including to Darfur States, in order to enhance the investigation and prosecution of crimes of sexual violence. Unfortunately, there have been few prosecutions of such crimes*”, March 2019, <https://www.un.org/sexualviolenceinconflict/countries/sudan-darfur/>.

182. ACJPS, *The wide application of the death penalty in Sudan*, August 2016, <http://www.acjps.org/wp-content/uploads/2016/08/The-Wide-Application-of-the-Death-Penalty.pdf>.

183. Amnesty International, Global report, *Death sentences and executions*, 2018, <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

184. “Special Representative of the Secretary-General on Sexual Violence in Conflict Ms. Pramila Patten concludes visit to Sudan and calls for end to culture of denial for conflict-related sexual violence”, 27 February 2018, <https://www.un.org/sexualviolenceinconflict/press-release/special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten-concludes-visit-to-sudan-and-calls-for-end-to-culture-of-denial-for-conflict-related-sexual-violence/>.

- Taking steps to ensure **victims' participation** in criminal proceedings, in particular in the event that international crimes are to be investigated and prosecuted domestically. Such participation should include opportunities for victims to enjoy the right to be heard and considered, at stages of the proceedings determined to be appropriate, while respecting the rights of the accused. Victims should also enjoy the right to be represented by the legal counsel of their choice. Effective measures should be put in place to guarantee the rights of victims and witnesses to protection, through all stages of the court process, taking into account that issuing indictments or commencing trials could potentially increase security risks for those involved.

3.2. Supporting the ICC's investigations?

In her statement to the UNSC on 19 June 2019, the ICC Prosecutor, Fatou Bensouda, declared that *"Now is the time for the people of Sudan to choose law over impunity and ensure that the ICC suspects in the Darfur situation finally face justice in a court of law [...] All five ICC arrest warrants in the Darfur situation remain in force; however, the circumstances have changed dramatically [...] Sudan remains under a legal obligation to transfer these suspects to the ICC to stand trial, unless it can demonstrate to the Judges of the International Criminal Court that it is willing and able to genuinely prosecute them for the same cases"*.

As long as Sudanese authorities fail to take appropriate measures to ensure that investigations and prosecutions into international crimes committed in Sudan, in particular in Darfur, can be conducted – including through implementation of the above mentioned recommendations –, the ICC remains the only international judicial mechanism competent to investigate these crimes and prosecute the alleged perpetrators.

In her June 2019 UNSC statement, the ICC Prosecutor underlined that there has been no cooperation between her office and Sudanese authorities since 2007. This lack of cooperation has had implications on the Office of the Prosecutor's ability to conduct investigations inside the country. A resumption of such **cooperation is necessary**, in order to allow for the Court to pursue its investigations, provided that the protection of victims and witnesses can be guaranteed. So far, the arrest warrants issued by the ICC focus on crimes committed in Darfur prior to 2010, in very specific locations (mainly in the towns of Bindisi, Arawala, Mukjar and Kodoom). Yet, as illustrated in the Prosecutor's various reports, as well as in this report, serious crimes have continued to be perpetrated in various places in Darfur, until recently.

In addition to the need for cooperation by Sudanese authorities, there is a real need for States Parties to the ICC Statute, as well as the UNSC, which referred the situation to the ICC, and its members, to fully and effectively cooperate with the Court and support its necessary investigative and prosecutorial actions, as required. Political commitment to accountability for international crimes committed in Darfur should be translated into concrete action.

Testimonies gathered from refugees in eastern Chad revealed that many of them – in particular among the women interviewed – were not aware of the existence of the ICC, nor of the issuance of arrest warrants against Sudanese officials for crimes committed in Darfur. Refugees thus felt that their fate had been completely forgotten by the international community. It is important that the ICC dedicate the necessary resources to **outreach strategies** to better explain its role, mandate and actions to communities affected by the conflict in Darfur, including refugees. A targeted outreach strategy, which considers the specific situation of refugees, should be put in place.

It is also to be noted that the ICC Trust Fund for Victims, in addition to its mandate to facilitate the implementation of reparation orders issued after the conviction of a perpetrator, has an assistance

mandate, supporting the implementation of **assistance** projects towards victims of a situation under investigation before the ICC. Victims of the international crimes committed in Darfur, including refugees interviewed by the mission in eastern Chad, continue to live in very vulnerable and harsh conditions, and seriously require assistance, whether medical, psychological, social or economic (see above, Section on *Harsh living conditions in the camps*). The ICC Trust Fund for Victims should therefore engage in a process aimed at identifying, designing and supporting assistance projects for victims, including IDPs and refugees in neighbouring countries.

3.3. Exploring other possibilities for litigation?

Since the conflict erupted in Darfur, in view of the unwillingness and inability of Sudanese national courts to investigate and prosecute the international crimes committed in Darfur, victims have mobilised and multiplied efforts to seek redress before other jurisdictions. These actions have been aimed at either asserting the **responsibility of the State of Sudan** in the perpetration of these crimes, or the responsibility of **non-State actors**, including direct perpetrators of crimes as well as actors who contribute to or facilitate their commission.

Over the past years, victims and civil society organisations have also been active in using quasi-judicial mechanisms, such as the African Commission on Human and Peoples' Rights (ACHPR), to challenge the responsibility of the State of Sudan in the crimes committed in Darfur. In some of the cases, Sudan's responsibility has been recognised and the ACHPR has called upon the Sudanese authorities to take appropriate measures to provide justice and reparation to the complainants. Ensuring compliance with the ACHPR's recommendations should also be regarded by the authorities in Sudan as part of the accountability process.

In June 2014, following a criminal lawsuit launched by the US Department of Justice (DOJ) against **BNP Paribas**, the French bank admitted having acted, from at least 2002 to 2008, as Sudan's principal foreign bank by processing thousands of illegal financial transactions, in violation of US sanctions and in full knowledge of the regime's human rights abuses. BNP Paribas was fined a record 8.9 billion USD for "illegally processing financial transactions for countries subject to U.S. economic sanctions".¹⁸⁵ The plea agreement was approved in court in May 2015. In parallel, the DOJ invited submissions from individuals harmed by the actions of the Sudanese Government. Thousands of statements were collected and submitted from victims in the hope of accessing some form of reparation. However, before the DOJ could take any action, the US Congress diverted the entirety of BNP's fine to victims of domestic terrorism attacks. Sudanese victims were thus denied any access to reparation through these proceedings.

One year later, in May 2016, a further lawsuit was filed against BNP Paribas in the USA. A group of Sudanese plaintiffs claimed that the bank helped the Sudanese regime commit widespread atrocities, including murder, mass rape, torture, and deliberate infection with HIV.¹⁸⁶ Although initially dismissed, this case has recently been revived following a successful appeal.¹⁸⁷

185. BNP Paribas also processed illegal transactions on behalf of the States of Iran and Cuba. See The United States Department of Justice, "BNP Paribas agrees to plead guilty and to pay \$8.9 Billion for illegally processing financial transactions for countries subject to U.S. economic sanctions", 30 June 2014, <https://www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial>.

186. Business and Human Rights Resource Centre, "Sudanese refugees file lawsuit in US court against BNP Paribas over alleged complicity in Darfur genocide", <https://www.business-humanrights.org/en/sudanese-refugees-file-lawsuit-in-us-court-against-bnp-paribas-over-alleged-complicity-in-darfur-genocide>.

187. Beth Van Schaack, "Understanding the decision to revive the Sudanese genocide lawsuit against BNP Paribas", 30 May 2019, <https://www.justsecurity.org/64335/understanding-the-decision-to-revive-the-sudanese-genocide-lawsuit-against-bnp-paribas/>; Reuters, "BNP Paribas to face revived lawsuit over Sudanese genocide: U.S. appeals court", 22 May 2019, <https://www.reuters.com/article/us-bnp-paribas-sudan-lawsuit-idUSKCN1SS20D>.

Ensuring that financial institutions and economic actors who finance, facilitate or profit from human rights violations amounting to international crimes are held accountable is essential. Further proceedings against individuals and businesses who have been involved in or facilitated the perpetration of mass atrocities in Darfur and more widely in Sudan should be explored.

CONCLUSION

"I would like to go back but I can't. First the country needs to be free. For it to be free, I would like to see the government's weapons taken away. Our President would need to be caught and replaced. The President is the one responsible for the deaths of our family members. I don't know how this could be done but it would be good."

A.F., woman interviewed in the Djabal refugee camp, April 2018

The recent uprisings in Sudan and the subsequent removal of Omar Al-Bashir, ending a 30-year dictatorial regime, provide a unique opportunity for the country's new authorities and the international community to take decisive and concrete action to combat impunity for past and present crimes in Sudan, and in particular, Darfur.

However, as our report demonstrates, despite major political developments at the national level, which have led to the establishment of a Transitional Government, the security situation in the Darfur region remains unstable, and serious concerns persist in relation to accountability for crimes committed under the previous regime as well as during the recent peaceful uprisings, in particular the 3 June massacre.

In addition, the report addresses issues related to the overall dire human rights and humanitarian situation of IDPs and refugees from Darfur, and in particular of women and girls, with rape and other forms of sexual violence continuing to be perpetrated both in IDP camps in Darfur and in refugee camps in Chad. In some cases, these women have suffered from sexual violence during the Darfur conflict prior to being displaced, creating a continuum of violence. The testimonies of these women highlight the urgent need to combat impunity for past and present sexual and gender-based violence in order to prevent repetition of serious human rights violations.

The various testimonies included in this report show that for many Darfurian refugees one of the main concerns about returning to Darfur is that justice will not be served. Their testimonies convey a clear message: in order to achieve justice for victims, substantial legal and political changes are required and accountability for serious crimes, in particular sexual and gender-based crimes, must urgently be addressed.

At this critical time, action needs to be taken to protect human rights and achieve a peaceful and just transition in Sudan. Sudan is currently at a crossroads, faced with the possibility of departing from the policies of the previous regime and embarking on a new chapter by committing to accountability and justice. The Transitional Government of Sudan must therefore demonstrate that the people of Sudan have finally been heard and put in place concrete measures to meet demands for long-lasting peace and justice.

RECOMMENDATIONS

1.To the Sudanese Transitional Government:

1.1 In the context of the peace talks between the Transitional Government and the various rebel groups, the Transitional Government should:

- End serious human rights violations perpetrated against civilians in Darfur by government and government-sponsored militias, in particular in the Jebel Marra area, and strengthen protection of civilians in accordance with international humanitarian law (IHL) and international human rights law (IHRL);
- Build capacity for long-term peace, security and development by initiating a genuine process of Disarmament, Demobilization and Reintegration (DDR) of rebel forces and militias;
- Develop plans for Security Sector Reform (SSR) with the full participation of political actors and civil society, with monitoring by the relevant regional and international bodies, and in accordance with international human rights law and best practices;
- Clarify the official status given to the Rapid Support Forces (RSF), and their relationship to the Sudanese Armed Forces (SAF); and complete the full transformation of RSF into a professional, inclusive and accountable force;
- Provide training to the Sudanese Army, the RSF and rebel groups on humanitarian and international human rights law and standards, including a specific training on sexual and gender-based violence;
- Ensure meaningful participation and equal representation of women in peace and political transition processes.

1.2 On ensuring the protection of human rights, fundamental freedoms and a democratic transition, the Transitional Government should:

- End the repression against human rights defenders, journalists and political opponents and create and maintain a safe and enabling environment in which civil society, human rights defenders, the media and other independent actors can operate free from hindrance, insecurity, and reprisals;
- Shift public spending, in a transparent manner, away from a security and military focus to a social and cultural focus, including by funding policies on health, education and housing, while ensuring the protection of the environment and of future generations.

1.3 On accountability mechanisms for international crimes, the Transitional Government should:

- Prioritize strengthening the judiciary and its independence, step up the fight against impunity, and ensure accountability for past crimes of sexual violence as well as crimes committed since December 2018 in the context of the nationwide protests;
- Ensure that the National Human Rights Commission is provided with the means and structure to be fully independent and has sustained strengthened capacity, including that of the Complaints Committee to carry out investigations in all states of Darfur;
- Ensure that the investigation committee established on 21 September is independent and empowered to investigate abuses against protesters committed since December 2018, including sexual violence;
- Implement the provisions relating to sexual violence under the Armed Forces Act of 2007, establish specialised police units and deploy trained judges, including in Darfur States, to enhance investigations and prosecutions of crimes of sexual violence;
- Work to rehabilitate victims of sexual violence and provide compensation to affected families and communities as part of the transitional justice process in the country;
- Issue a public apology for the crimes committed in Darfur, including crimes of sexual violence, and work to raise public awareness on past and present crimes;
- **Reform the legal framework (see Section 3.1 for specific recommendations);**
- **Carry out structural reforms to the judiciary (see Section 3.1 for specific recommendations);**
- Ratify the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court (ICC);
- Cooperate with the ICC in line with the Court's existing jurisdiction in the Darfur situation as referred to it by United Nations Security Council Resolution 1593(2005) and extradite all individuals against whom the Court has issued arrest warrants.

1.4 On cooperation with the UN, humanitarian relief and the situation of IDPs, the Transitional Government should:

- Remove current barriers and enable the conditions for a safe, sustainable, voluntary, and dignified return of IDPs, including by providing access to education, medical referrals and livelihood opportunities to returnees;
- Improve the situation of IDPs, including by providing access to education, healthcare, land, and where applicable, facilitate voluntary relocation or return to place of origin;
- Ensure free and unfettered access for the UN and independent actors to all places and persons of interest in conflict areas and throughout the country, and respect the independence of these actors;
- Allow immediate and unconditional access for relief and humanitarian aid to all IDPs in all parts of the country.

2. To the Chadian Authorities:

- Enhance cooperation with the UNHCR and its partner organisations on best practices to prevent sexual and gender-based violence;
- Enhance security at water points and throughout the camps to mitigate the risk of gender-based violence;
- Conduct awareness-raising for camp residents regarding sexual and gender-based violence and establish a mechanism for emergency support;
- Enhance government accountability through increased monitoring and evaluation by the UNHCR and its partner organisations;
- Ensure that the Chadian legal framework, including traditional justice mechanisms in proximity to the camps, recognises the equal rights of women and punishes perpetrators of sexual and gender-based violence;
- Adopt a national law governing the status of refugees and asylum seekers, in compliance with international and regional instruments for refugee protection.

3. To the African Union (AU)/ Member States:

Following the recently adopted African Union Transitional Justice Policy we recommend that the African Union and its Member States:

- Support the institution and furtherance of accountability processes which undertake to investigate, prosecute and punish all crimes associated with violence and in particular, sexual and gender-based violence, including by providing the national independent investigation committee with the necessary support to conduct a transparent, meticulous investigation of the violations committed on 3 June 2019, and events and incidents in which violations of the rights and dignity of civilian and military citizens were committed, as outlined in the Constitutional Charter for the Transitional Period;
- As a key pillar of accountability at the highest levels of criminal responsibility, prioritise cooperation with the International Criminal Court in line with the Court's existing jurisdiction in the Darfur situation as referred to it by the United Nations Security Council Resolution 1593(2005);
- Support the active participation of victims of sexual and gender-based violence in accountability and other transitional processes, emphasising consultative safeguards for their personal safety and security as well as physical, psychological and social rehabilitation measures;
- Support the adoption of a comprehensive reparation programme that is responsive to and acknowledges the inter-sectional realities of harm suffered by victims of sexual and gender-based violence;
- Promote and support legal and institutional reforms that aim to enhance access to justice in Sudan through the establishment of independent, transparent and accountable institutions within the justice and security sectors.

4.To the European Union (EU) and its Member States:

- In contact with Sudanese authorities, underline the importance of accountability, justice and reparations for international crimes committed in Darfur as essential elements of the political transition, as well as the importance of respecting the principle of non-refoulement for Sudanese refugees currently residing in Chad, taking into account the fact that violations of human rights committed in Darfur are ongoing to this day;
- Step up their commitment to international justice in international fora, including by encouraging Sudanese authorities to cooperate with the International Criminal Court; calling for Omar Al-Bashir's transfer to The Hague, as well as all other individuals against whom the Court has issued arrest warrants; supporting efforts to involve all relevant stakeholders in Sudan, including citizens, civil society representatives and human rights defenders, in consultations aiming at determining relevant mechanisms in charge of investigating and prosecuting international crimes; and appointing a European Union Special Representative on International Humanitarian Law and International Justice;
- Fully implement the EU Guidelines on Human Rights Defenders, in particular provisions related to maintaining suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work; as well as using all diplomatic channels to call the Sudanese government to end all forms of harassment against human rights defenders, journalists and political opponents, including arbitrary arrests and detention, acts of torture, threats and intimidation perpetrated by the General Intelligence Service (GIS);
- Maintain essential humanitarian support to refugees in Chad, making sure the particular needs of women and children are taken into account, including through the development of specific mechanisms to combat gender-based violence in the camps; and use appropriate monitoring mechanisms to assess the respect of human rights in the refugee camps;
- Conduct a review of the first phase of the Khartoum Process (KP) focusing on the risks for refugees and migrants in Sudan, in particular of deportations, ill-treatment in Sudan and instances of collusion between the security forces and human traffickers in eastern Sudan;
- Ensure that any future collaboration on migration between the EU and countries in the Horn of Africa is evidence-based and thoroughly considered and includes requirements for accountability and human rights;
- Establish accountability measures and conduct an investigation into whether EU funding and training provided as part of the KP have contributed to human rights violations, specifically in the context of the recent uprising; and respond to the serious concerns expressed over the impact of ongoing actions of the EU and its Member States in funding and cooperating with external actors accused of systematic and severe human rights violations such as the Border Guards or the General Intelligence Service (GIS); stop all cooperation with such actors; and demand investigations into allegations of sexual violence perpetrated by Border Guards.

5. To the United Nations High Commissioner for Refugees (UNHCR):

- Ensure that security and transparency is at the centre of the UNHCR-led voluntary repatriation programme;
- Increase UNHCR accountability by establishing focal points on Protection against Sexual Exploitation and Abuse (PSEA);
- Enhance the number of women in security roles;
- Reinforce the capacity of community-based and implementing partner organisations on SGBV and security in the camps;
- Design and implement programmes with the full participation of refugee communities, especially those most vulnerable;
- Work closely with local authorities to ensure protection and provide a safe space against assaults in the camps.

6. To the United Nations Human Rights Council (UNHRC):

- Urge the new authorities to prioritise accountability measures as a central part of the transitional phase, and to strengthen the means and independence of the judiciary in order to prosecute perpetrators of human rights violations;
- Call on the transitional authorities to investigate promptly, in an independent and transparent manner, the full chain of command into the 3 June 2019 massacre and to hold accountable those responsible;
- Renew and strengthen the mandate of the Independent Expert until a fully mandated OHCHR country office is declared operational by the OHCHR and the government of the Sudan, and ensure continuity through robust and regular reporting by the OHCHR to the HRC, until credible elections take place and a fully civilian government takes office;
- Ensure robust UN monitoring and public reporting on the human rights situation in conflict areas and throughout the country until credible elections take place and the division of power and resources between the capital and the provinces is clarified;
- Provide technical support to the Sudan National Human Rights Commission to conduct investigations on past crimes and prioritise recommendations made to the Government.

7. To the United Nations Security Council (UNSC) and Member States:

- Ensure that the UNAMID drawdown plans articulated in Resolution 2495 (2019) take into consideration the situation on the ground, progress in the peace process, information on the status of team sites previously handed over to the Government and the overall security situation in Darfur;
- Support the peace negotiations between the transitional government and the different armed movements, and prioritise accountability measures as a central part of transitional phase;
- Support the Sudanese authorities by providing relief and humanitarian aid to IDPs in different parts of the country, especially in the Nuba Mountains and Blue Nile;
- Establish an independent investigation, in support of national initiatives, into the human rights violations and abuses, including sexual and gender-based violence, committed in the context of peaceful protests since December 2018, including the 3 June 2019 massacre;
- Support the ICC in its investigations and prosecutions, including in the execution of outstanding arrest warrants, by providing political and financial support to the Court in carrying out its mandate in the situation in Darfur/Sudan, referred by the Council pursuant to UNSC Resolution 1593 (2005).

8. To the International Criminal Court (ICC):

- The Office of the Prosecutor should remain seized of local proceedings against suspects sought by the ICC, and engage with local authorities on the impact of such proceedings, or lack thereof, on the execution of ICC arrest warrants against all suspects in the Darfur situation;
- The Registry should re-engage with public information and outreach activities for the benefit of affected communities in the situation in Darfur/Sudan, aimed at ensuring accurate understanding of the Court's mandate, ongoing investigation and outstanding cases before the ICC;
- The ICC Trust Fund for Victims should engage in a process to identify, design and launch assistance programmes for victims of international crimes committed in Darfur, including for IDPs and refugees in neighbouring countries, adopting a harm-based and victim-centred approach.



ACJPS is a non-profit, non-governmental organisation (NGO) working to monitor and promote respect for human rights and legal reform in Sudan. It was established in 2009 to address a gap in, and rejuvenate, the human rights movement in Sudan in the wake of forced closures and expulsions of NGOs.

ACJPS is dedicated to creating a Sudan committed to all human rights, the rule of law and peace, in which the rights and freedoms of the individual are honored and where all persons and groups are granted their rights to non-discrimination, equality, and justice.

The organisation runs three mutually reinforcing programmes of work to achieve an improvement in the human rights situation in Sudan:

- i) Human rights monitoring programme to document human rights violations and identify individuals at risk or situations of concern, operating as an early warning mechanism;
- ii) Legal programme to conduct legal research, protect individuals at risk and conduct strategic litigation in pursuit of effective remedies for victims of human rights violations and legal reform;
- iii) Advocacy programme to publish and disseminate evidence-based advocacy materials and influence domestic, regional and international policy-makers to improve the human rights situation in Sudan.



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The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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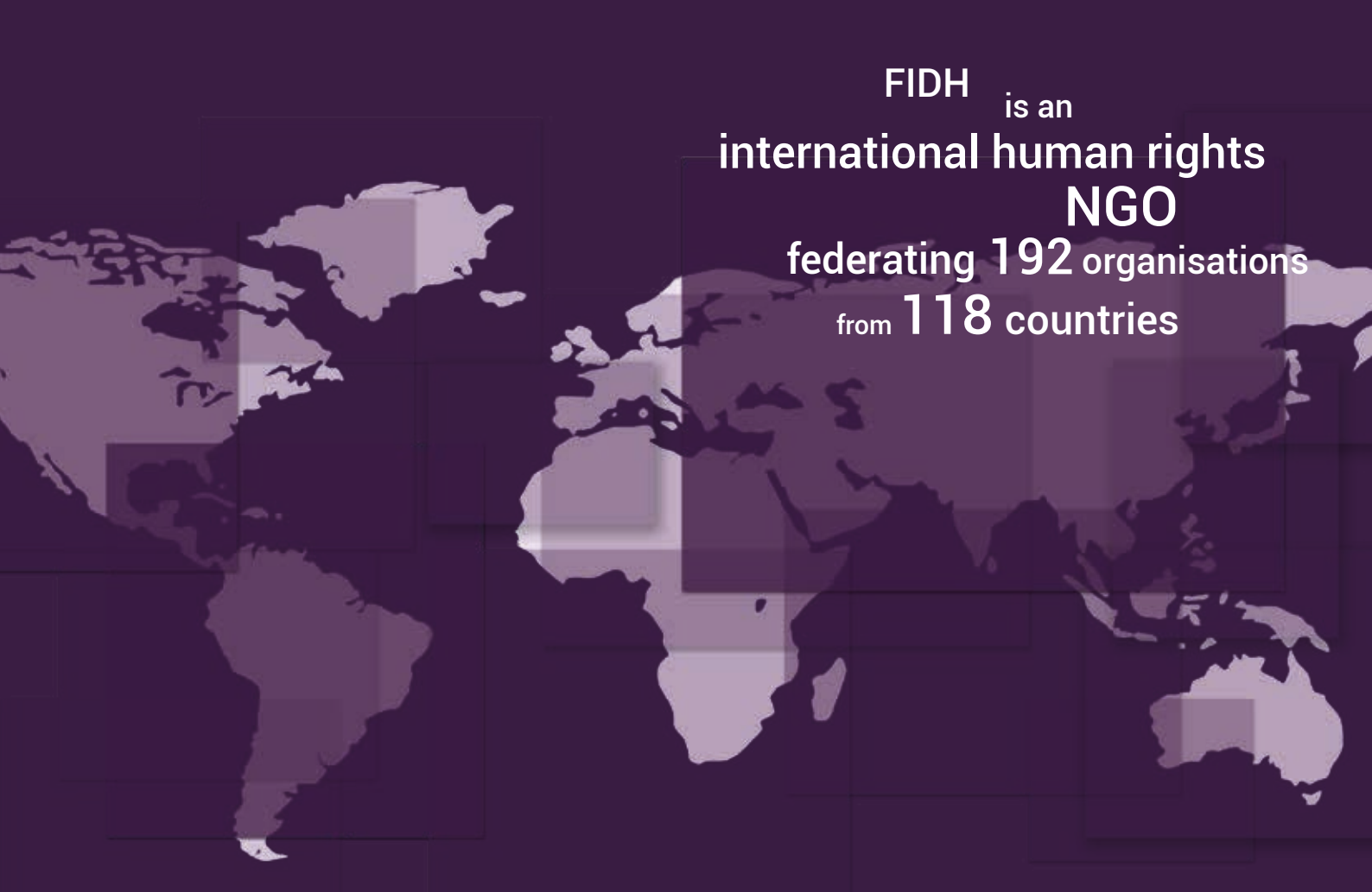
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ABOUT FIDH

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