

[Embargoed for: 18 January 2005]

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11/2-05

Im. Fln.sekr. 2002J.nr. 71511 - 73

31 JAN. 2005 NWI

## SUDAN

Antal bilag

akt nr. 36

# Who will answer for the crimes?

Summary

AI Index: AFR 54/006/2005

A peace agreement to end the 21 year-old civil war in Sudan between the central government and the main armed group in the South was signed on 9 January 2005. Amnesty International hopes it will usher in a new era for the protection of the rights of the Sudanese people as well as reforms to address injustice, discrimination and gross human rights violations in Sudan.

The civil war in Southern Sudan has provided the context for countless human rights violations, including systematic breaches of the laws regulating internal armed conflicts, by the Sudanese armed forces and its proxy militias, and southern armed opposition groups. Murders, rapes, abductions, indiscriminate aerial bombings, forced displacement and the destruction of villages and looting of property have been all too familiar events in the civil war. Yet the protocols and agreements which form the peace are silent on these abuses, many of which constitute crimes under international law. They do not provide for any mechanism to make those responsible for such crimes accountable and give justice to the millions of Sudanese victims. Demands for justice to be done have been conveniently ignored by international mediators of the North-South peace process, who have argued that it would be difficult to have a peace agreement signed if parties to the conflict were asked to account for the crimes committed by their armed forces.

In the current conflict in Darfur, abuses similar in scale and gravity to those in the South have been committed. Again, no serious step has been taken to bring anyone to justice. An international Commission of Inquiry has been mandated by the United Nations (UN) Security Council to investigate serious violations of international human rights and humanitarian law committed in Darfur, determine whether genocide has occurred, and identify the perpetrators. The Commission represents the first serious formal attempt to investigate grave crimes under international human rights and humanitarian law in this region. It is due to report back to the Security Council on 25 January 2005.

Establishing individual criminal responsibility, truth and full reparations for the victims is crucial to create lasting peace in Sudan. If those suspected of grave abuses in the context of the North-South civil war are not brought to justice, it will also signal to them, and others, that they can continue to violate human rights in Darfur or elsewhere, in total impunity. A comprehensive plan to end impunity in Sudan will strengthen the North-South peace agreement, and can also contribute to stop abuses against civilians currently under siege in Darfur.

Ending impunity is essential for the victims of serious crimes under international law and the relatives of those killed, "disappeared" or tortured to come to terms with their loss and to obtain redress; to ensure that the perpetrators of such crimes are put in a position where they can no longer commit such abuses; to signal that such crimes will no longer be tolerated;



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## Sudan

### Who will answer for the crimes?



January 2005  
AI Index: AFR 54/006/2005

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# Sudan: Who will answer for the crimes?

## Introduction

A Comprehensive Peace Agreement to end the 21 year-old civil war in Sudan between the central government and the main armed group in the South, the Sudan People's Liberation Movement/Army (SPLM/A), was signed on 9 January 2005. Amnesty International hopes that the peace agreement will usher in a new era for the protection of the rights of the Sudanese people as well as reforms to address injustice, discrimination and gross human rights violations in the country. However, in Darfur, the west of the country, the conflict is continuing today with civilians being targeted and displaced.

The civil war in Southern Sudan has provided the context for countless human rights violations, including crimes under international law by the Sudanese armed forces and its proxy militias and by southern armed opposition groups – the SPLM/A and other southern militias. The laws regulating internal armed conflicts have been massively and systematically breached. Yet the protocols and agreements which form the Comprehensive Peace Agreement are silent on the gross human rights abuses committed, many of which constitute crimes under international law. They do not provide for any mechanism to make accountable those responsible for such crimes and give justice to the millions of Sudanese victims. Demands for justice have been conveniently ignored by international mediators of the North-South peace process, who have argued that it would be difficult to have a peace agreement signed if parties to the conflict were asked to account for the crimes committed by their armed forces.

In the current conflict in Darfur, abuses have been committed similar in scale and gravity to those in the South. Again, no serious steps have been taken to bring anyone to justice. An international Commission of Inquiry has been mandated by the United Nations (UN) Security Council under resolution 1564 to investigate serious violations of international human rights and humanitarian law committed in Darfur, determine whether genocide has occurred, and identify the perpetrators. The Commission represents the first serious formal attempt to investigate grave crimes under international human rights and humanitarian law in this region. It is due to report back to the Security Council on 25 January 2005.

The Sudanese authorities have used the same tactics to crush opposition in Darfur and in the South: the arming of specific groups, often along ethnic lines, to act as counter-insurgency proxy forces, the targeting of civilians perceived as a potential support base for rebel groups or arbitrarily, and the destabilisation of the social structures of entire communities through gross human rights violations. War crimes and crimes against humanity, including murders, rapes, abductions, indiscriminate aerial bombings, the destruction of villages, forced displacement and the looting of property have been all too familiar events in the areas of Upper Nile, Bahr-el-Ghazal, the Nuba Mountains or Blue Nile. The Darfur conflict may differ in the intensity and speed with which the devastation took place; but the

crimes committed in Darfur, like in the South or the marginalised border areas between North and South Sudan have all remained so far unpunished.

Establishing individual criminal responsibility, truth and full reparations for the victims is crucial to create lasting peace in Sudan. Those responsible for war crimes and crimes against humanity must be brought to justice. If those suspected of grave abuses in the context of the North-South civil war are not brought to justice, it will also signal to them, and others, that they can continue to violate human rights in Darfur or elsewhere, in total impunity. A comprehensive, long-term plan to end impunity in Sudan is one of the measures which will strengthen the North-South peace agreement, and which can also contribute to stop abuses against civilians currently under siege in Darfur.

Ending impunity is essential for the victims of serious crimes under international law and the relatives of those killed, "disappeared" or tortured to come to terms with their loss and to obtain redress; to ensure that the perpetrators of such crimes are put in a position where they can no longer commit such abuses; to signal that such crimes will no longer be tolerated; to avoid the risk that people seek revenge and take justice in their own hands; and to remove the threat that such crimes are repeated in the future.

This document considers cases of serious crimes under international human rights and humanitarian law committed in Darfur and elsewhere in Sudan, for which there has so far been no accountability. Amnesty International hopes that by reminding the world about the massive crimes that have repeatedly taken place in Sudan for more than two decades, it will prompt action to challenge the climate of impunity and lay the foundations for full reparations to victims, justice and durable peace in the whole country.

The Sudanese government and the SPLM/A have not committed to account for the massive breaches of international humanitarian law for which they are responsible. It is alleged that the two parties have discussed an amnesty for the crimes committed in the South, but the discussions have not been made public.<sup>1</sup> The Sudanese government continues to deny its role and responsibility in the war crimes and crimes against humanity committed in Darfur, and the Sudanese justice system has proved unwilling and unable to address these crimes.

Amnesty International is calling on the UN Security Council to pursue its commitment to ensure that suspected perpetrators of violations of international human rights and humanitarian law are brought to justice. It should refer the situation in Sudan, including Darfur, to the jurisdiction of the International Criminal Court (ICC), in the same way that it should refer to its jurisdiction situations anywhere in the world where crimes under international law, including war crimes, crimes against humanity and genocide, occur.

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<sup>1</sup> See article in Al-Sharq al-Awsat newspaper, 31 December 2004: "*Sources disclosed a difference continuing (until yesterday) about the question of a general amnesty after the signing of the peace agreement, where the government thought it should be an inclusive amnesty after the signing, while the SPLA saw it as including the areas which were in the south, i.e. in the framework of the north-south war*" (Amnesty International translation from Arabic).

The International Criminal Court would, however, only try a handful of those responsible for war crimes and crimes against humanity. The UN Security Council and others in the international community, particularly donor countries, must also take complementary measures to end impunity in Sudan. They must support a comprehensive reform of the Sudanese justice system with a view to enabling it to bring to justice perpetrators of serious crimes under international human rights and humanitarian law. A comprehensive plan to end impunity in Sudan should include a referral to the Prosecutor of the International Criminal Court, investigations and prosecutions by Sudan and the exercise of jurisdiction by other states.

The Sudanese government and the SPLM/A have declared their commitment to make peace a reality. They have the responsibility to ensure a lasting peace, based on truth and justice, for the Sudanese people. Amnesty International is appealing to the Sudanese government and the SPLM/A to adopt, with the support of the international community, mechanisms to account for the grave crimes committed in the past 21 years in Sudan. Such mechanisms could encompass the establishment of a Truth and Reconciliation Commission, as demanded by civil society in the South, which could help acknowledge past abuses and help victims come to terms with their trauma. This measure, however, must not be a substitute for legal accountability for the most serious crimes committed. A profound reform of the domestic justice system must also be undertaken.

## **1. Massive abuses of international humanitarian law in Darfur committed with impunity**

### ***1.1 War crimes and crimes against humanity in Darfur***

Since 2003, massive human rights abuses, including war crimes and crimes against humanity, have been committed in Darfur. All sides have committed abuses, although the majority have been perpetrated by the Janjawid, local militias armed and paid by the Sudanese government, and government armed forces. In the beginning, the grave abuses committed in Darfur took place amidst the silence of the international community. The mediators of the North-South peace process were not willing to criticize publicly the actions of the Sudanese authorities in Darfur, at a time when delicate negotiations were continuing to end the civil war in southern Sudan. This silence contributed to the conflict spreading rapidly.

War crimes committed in Darfur include: murder, torture, rape and intentional attacks against civilians and civilian objects. Crimes against humanity committed in Darfur include murders, forced displacement and rape committed as part of a widespread or systematic attack against the civilian population.

The scale of the human rights disaster and the destruction of people and major parts of Darfur are clear. It is now estimated that 1.6 million are displaced within Darfur and that 200,000 Sudanese refugees fled across the border into Chad. Amnesty International considers that there was indeed a purposeful policy designed by the Sudan government and

the Janjawid to forcibly displace, by violent and terror-inspiring means, the civilian population of particular ethnic groups from certain geographic areas. Fighting, killings of civilians, rapes, displacement and fear continue today.

The exact number of victims of war crimes and crimes against humanity may never be known. Amnesty International has collected the names of thousands of people murdered in Darfur since early 2003.<sup>2</sup> The fate of many people is unknown; some have disappeared or have been abducted by the Janjawid, others are hiding in the bush, or in areas controlled by the armed opposition, often inaccessible to international monitors and aid agencies. Amnesty International estimates that thousands of women have been raped. The cases below are only a tiny part of what is happening in Darfur.

### **Mass summary executions in Deleij**

Between 5 and 7 March 2004, Sudanese military intelligence and armed forces officers accompanied by members of the armed militia, the Janjawid, arrested at least 135 people in some 10 villages in Wadi Saleh province, in Western Darfur state: Zaray, Forgo, Tairgo, Kasikildo, Mukjar, Garsila, Kirting, Kuso, Gaba, Sogo, Masa and N'djamena. All those arrested belong to the Fur, the largest ethnic group in Darfur. The military intelligence officers detained those arrested in Deleij, 30 kilometres east of Garsila town in Wadi Saleh province. Military intelligence and army officials reportedly claimed that they had arrested the men because they were sympathizers of the armed opposition group the Sudan Liberation Movement/Army (SLM/A), at war with the government since February 2003 over issues relating to discrimination and marginalisation. At least 135 men were then blindfolded and taken in groups of about 40, on army trucks to an area behind a hill near Deleij village. They were then told to lie on the ground and shot by a force of about 45 members of the military intelligence and the Janjawid.

### **Systematic rapes in the school of Tawila**

Tawila, a town 60 km away from Al-Fasher, the capital of North Darfur, was attacked by the Janjawid on 27 February 2004. The attack lasted at least two days. Civilians were killed, property looted and dozens of women and girls were raped. In one case, at least 41 schoolgirls and female teachers were raped in the local school. Some of them were gang-raped by at least 14 Janjawid members, according to the testimonies of survivors to the UN.<sup>3</sup> Some were abducted. Amnesty International met one of the survivors of the Tawila attack, who now has a baby born of rape, who said:

*"I was living with my family in Tawila and going to school when one day the Janjawid entered the town and attacked the school. We tried to leave the school but we heard noises of bombing in the town and started running in all directions. All the girls were scared. The Janjawid entered the school and*

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<sup>2</sup> See: *The victims in Darfur are not nameless* (<http://www.amnesty.org/resources/flash/sudan/sdn-161104-animation-eng.html>).

<sup>3</sup> UN Darfur Task Force Situation report on Tawila, 11 March 2004.

*caught some girls and raped them in the class rooms. I was raped by four men inside the school. When they left they told us they would take care of all of us black people and clean Darfur for good."*

Despite Al-Fasher, the regional capital, being only 60 km from Tawila, the Governor of North Darfur state only sent a delegation two days after the attack. The advance signs of an attack were clear as villages around Tawila had been attacked days before and as Janjawid troops had been spotted not far from the town several days prior to the attack.

### **Increasing abuses by the armed opposition**

While the SLM/A and the Justice and Equality Movement (JEM) seemed at first to act within the framework of international humanitarian law and attacked military targets, they have in the past months increasingly violated applicable international humanitarian law, particularly common article 3 to the Geneva Conventions. On 27 October, 18 passengers from nomadic groups were taken off a bus between Niyertiti and Thur in South Darfur state by soldiers of the SLA. Some were reportedly later killed. Humanitarian workers and convoys have also been targeted by the armed opposition.<sup>4</sup> On 12 December 2004 two Sudanese workers for Save the Children in a clearly-marked humanitarian convoy were killed on the road between Duma and Mershing in South Darfur. It is likely that SLA soldiers acting independently were responsible for the attack.

### **1.2 Failure of the Sudanese authorities to address impunity**

Not one suspected perpetrator of war crimes and crimes against humanity has been brought to justice. The Sudanese government has either deceived itself or deliberately tried to deceive the international community in relation to steps taken against suspected perpetrators of violations in Darfur.

In July 2004, the Sudanese Minister of Foreign Affairs Mustafa Ismail declared in an interview with *Le Monde* newspaper that more than 200 Janjawid members had been convicted and sentenced to amputations in response to the UN Security Council debate over the government's responsibility in the disaster in Darfur. Later the Sudanese government lowered this number and said that 10 Janjawid had been tried and convicted in Nyala, the capital of South Darfur. None of those to whom the Sudanese government referred appeared to have been tried for human rights violations committed in the context of the Darfur conflict. The government announcement gave no details of the crimes of which the men had been found guilty. The so-called *Janjawid* members were shown on Sudanese television saying that they had not been armed by the government. Those shown on television were criminal suspects accused of *haraba* (armed robbery) who have been detained for more than a year in

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<sup>4</sup> See Amnesty International, *Sudan: Armed groups must stop targeting civilians and humanitarian convoys* (AFR 54/140/2004, 03/11/2004).



Nyala. Amnesty International was able to confirm that five persons were tried<sup>5</sup>, including a bank employee who had been found guilty of embezzlement and sentenced to a fine.

Such initiatives as have been taken by the government to investigate abuses in Darfur have not ended impunity. The national commission of inquiry on Darfur created by the Sudanese President on 8 May 2004 has still not reported publicly, nine months after its creation. It reportedly submitted its report to the Sudanese President on 13 January 2005.<sup>6</sup> Reports from civil society in Darfur indicate that it did not meet with victims of grave crimes in Darfur, apart from displaced persons from nomadic groups in Mosai camp who were reportedly attacked by the armed opposition. "Rape committees" established by the government on 17 July 2004 found only 50 cases of rapes in the whole of Darfur, according to the government. They were supposed to continue investigations, but nothing seems to have been done since their first report to the government, which was not made public. The committees took no measure to investigate the consistent reports of systematic rapes in Tawila in February 2004. Amnesty International was able to confirm that in one of the cases raised by the rape committees, two policemen were suspended from the police force and charged in relation to the rape of a displaced girl in Abu Shouk camp in Al-Fasher in September 2004. It is not known whether they have been brought to trial.

The Sudanese authorities have denied their role and responsibility in the war crimes and crimes against humanity against civilians in Darfur.<sup>7</sup> Instead of admitting what has happened and addressing the abuses committed in Darfur, they have intimidated those seeking to shed light on such abuses or trying to seek redress through the domestic legal system. Amnesty International asked traditional leaders in Darfur if traditional reconciliation mechanisms would be able to overcome the tragedy in the region. They answered that, in order for forgiveness and reconciliation to happen, there needed to be an acknowledgement of guilt for the crimes committed, reparations for the victims and the mediation of a neutral body. They added that as long as the Sudanese government remains in denial over its role in Darfur, there could be no hope of reconciliation.

Amnesty International has detailed in a report entitled *Sudan, Darfur: No one to complain to*<sup>8</sup> the lack of action on the part of the Sudanese authorities and the failure of national justice system to investigate reports or complaints of human rights violations, identify suspected perpetrators and bring members of the Janjawid or the government armed

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<sup>5</sup> The criminal suspects were tried by a Specialised Court. Specialised Courts in Darfur do not respect international standards of fairness and have sentenced people to cruel, inhuman and degrading punishments such as amputations. See *Sudan, Darfur: Incommunicado detentions, torture and special courts – Memorandum to the Sudanese government and the Sudanese Commission of Inquiry*, Amnesty International (AI index: AFR 54/058/2004, 8 June 2004).

<sup>6</sup> See *Darfur probe committee presents report to president*, text of report by Republic of Sudan Radio, Omdurman, BBC Monitoring, 13 January

<sup>7</sup> See *Sudan: Intimidation and denial – attacks on freedom of expression in Darfur*, Amnesty International (AI index: AFR 54/101/2004, 25 August 2004).

<sup>8</sup> *Sudan, Darfur: No one to complain to – no respite for the victims, impunity for the perpetrators*, Amnesty International (AI index AFR 54/138/2004, 2 December 2004).

forces to justice. Amnesty International concluded in this report that the national justice system was deeply flawed and not able in its present state to address the gross abuses committed in Darfur; and that international jurisdiction should be considered as an alternative to ensure against impunity in Sudan. Since the publication of this report on 2 December 2004, there has been no evidence of any concrete steps taken by the Sudanese government to initiate investigations and prosecutions for the war crimes and crimes against humanity committed in the region.

### **1.3 Security Council demands for justice in Darfur ignored by Sudan**

The UN Security Council has emphasized its grave concern at the lack of government measures to end impunity and has demanded action to be taken. In resolution 1556 of 30 July 2004 the Security Council Resolution:

*“Demands that the Government of Sudan apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and further requests the Secretary General to report in 30 days, and monthly thereafter, to the Council on the progress or lack thereof by the Government of Sudan on this matter and expresses its intention to consider further actions, including the imposition of sanctions on the Government of Sudan, in the event of non-compliance [...]”.*

Security Council Resolution 1564 of 18 September 2004 renews the same call. In the resolution, the Security Council expresses:

*“Grave concern at the lack of progress with regard to security and the protection of civilians, disarmament of the Janjaweed militias and identification and bringing to justice of the Janjaweed leaders responsible for human rights and international humanitarian law violations in Darfur”.* It reiterates demands:

*“for the Government of Sudan to end the climate of impunity in Darfur by identifying and bringing to justice all those responsible, including members of popular defense forces and Janjaweed militias, for the widespread human rights abuses and violations of international humanitarian law [...]”; and “demands that the Government of Sudan submit to the African Union Mission for verification documentation, particularly the names of Janjaweed militiamen disarmed and names of those arrested for human rights abuses and violations of international humanitarian law, with regard to its performance relative to resolution 1556 (2004) and the 8 April 2004 N’djamena ceasefire agreement”.*

Resolution 1564 also asks the UN Secretary General to create a Commission of Inquiry to investigate serious crimes under international human rights and humanitarian law in Darfur and identify the perpetrators. The UN Security Council took this step partly because the Sudanese authorities and the national legal system did not appear to act to bring to justice

the perpetrators of war crimes and crimes against humanity. By creating the Commission of Inquiry, the UN Security Council committed itself to uphold justice in Sudan. In order to stop the crimes of which civilians are victims and protect them effectively in Darfur, the Council recognised that a combination of concrete measures was needed. They include, but are not limited to, putting pressure on parties to the conflict, having independent monitors on the ground and disarming militias, but also making persons suspected of war crimes and crimes against humanity accountable.

The African Union Mission in Sudan (AMIS) has stated that it has not received the names of Janjawid militiamen disarmed or arrested. Despite threats of action in case of non-compliance and Sudan's obvious attempts to escape its demands for justice, the Security Council took no further action.<sup>9</sup>

The UN Security Council well knows that its calls for suspected perpetrators to be brought to justice in Sudan have been ignored. The report of the UN Secretary-General to the Security Council on the situation in Darfur, on 7 January 2005, stated:

*"Impunity continues to prevail in Darfur. For two consecutive months, there has been no indication of government action to apprehend and bring to justice Janjaweed leaders in compliance with the repeated demands of the Security Council since the adoption of its resolution 1556 (2004)."*

*Not only has the Government failed to apprehend militia members for past crimes but it has not taken effective action to stop their retaliatory attacks. On the contrary, they have returned to the practice of including the militia in joint military operations."*

The report concluded:

*"Those who are perpetrating violations of human rights law and crimes under international humanitarian law must not go unpunished. Indications that the militias in this area are once again active in connection with Government offensives are worrying of the regard. The failure of the Government to act in compliance with the demands the Security Council contained in its resolution 1556 (2004) has consequences for the determination of responsibility for these crimes. All support must continue to go to the Commission of Inquiry set up to look into these matters."*

## 2. Gross abuses in the civil war with the South

In the context of the war in Southern Sudan, it is estimated that two million people have died, either killed, or victims of conflict-related disease or war-induced famines. As in Darfur, civilians in the South were massively displaced, then denied humanitarian assistance – it is

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<sup>9</sup> Amnesty International urged the UN Security Council to impose a mandatory arms embargo on the Sudanese government to halt exports of arms likely to be used to commit human rights violations. See *Sudan: Arming the perpetrators of grave abuses in Darfur* (AI index AFR 54/139/2004, 16 November 2004).

estimated that more than four million have been internally displaced as a result of the war in southern Sudan.

The following are some examples of gross human rights violations committed in the civil war between the central government of Khartoum and southern armed groups, the main one being the SPLM/A. They are not an exhaustive account of the human rights violations committed in the 21-year-old armed conflict; they can only give an idea of the scale of the crimes which stain Sudan's past.

According to the Power-sharing Protocol which forms part of the peace agreement, the Sudanese government and the SPLM/A have agreed "*to initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process. Its mechanisms and forms shall be worked out by the Government of National Unity.*" The Protocol does not provide further details on measures to address past abuses.

Some southern non-governmental organisations in Sudan are campaigning for a Truth and Reconciliation Commission to be established so that such crimes are acknowledged and the trauma they caused is addressed.

## **2.1 Forced displacement in the oil-rich areas of Upper Nile**

Upper Nile, rich in oil, has been one of the areas of the south most hit by the civil war between the central government and the SPLM/A. Oil was one of the factors behind the formation of armed opposition groups in southern Sudan such as the Anyanya II, and the SPLM/A in 1984 and uprisings against Khartoum governments. With the resumption of oil exploration and the building of an oil pipeline in 1999, assaults by government forces and allied southern militias against the Nuer and Dinka population intensified, with a clear aim to forcibly displace civilians from the areas where oil could be extracted. Forcible displacement, when committed as part of a widespread or systematic attack on civilians, is a crime against humanity.

Villages north of Bentiu,<sup>10</sup> such as Gumriak and Pariang, were cleared of civilians during the first half of 1999, by the pro-government militia South Sudan Unity Movement/Army (SSUM/A), led by Nuer commander Paulino Matip,<sup>11</sup> and then by Antonov planes and helicopter gunships of the Sudanese Air Force, and tanks and ground troops of the regular army. Among the places most affected by the attacks and subsequent forced displacement since mid-1999 were Mankien, Langkien, Neny, Duar, Koch, Toic and Leer. At least 20,000 of the people reported missing in the areas of the oilfields were subsequently reported to be living in neighbouring counties, including in Bahr al-Ghazal and the Lakes region around Yirol. Scores of civilians were murdered and dozens of women and girls were raped by the SSUM/A militia. The armed militias burned down villages, looted houses and homesteads, seized livestock and torched harvests and crops.

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<sup>10</sup> Bentiu is a town of Western Upper Nile state in the centre of oil concessions.

<sup>11</sup> The government denied it had a direct link with southern militias while at the same time giving military roles to some of their leaders; for instance Paulino Matip was appointed Major General of the regular government army around 1998.

The number of those forcibly displaced by government forces or by fighting between southern armed groups in Western Upper Nile amount to more than 170,000 people, according to conservative estimates.<sup>12</sup> Serious crimes under international law around the oil areas continued until at least 2004, when tens of thousands of civilians from the Shilluk area in central Upper Nile were forcibly displaced.

## **2.2 War crimes and other crimes under international law by southern armed groups**

The SPLM/A is the main southern armed opposition group, but there are many other southern armed groups led by faction leaders, in particular in the oil areas, which have allied to either the SPLM/A or the government and shifted alliances according to their perceived interests and opportunities for supply of arms. The SPLM/A, like the government, has armed and supported southern militias, playing on ethnic lines. Southern armed opposition groups have also been responsible for serious crimes against civilians, particularly since a faction led by Nuer leader Riek Machar defected from the SPLM/A in 1991. Some 2,000 Dinka civilians were killed in what is known as the "Bor massacre" by the armed forces of the SPLM-Nasir, led by Riek Machar in 1991, following his defection. The SPLM/A also murdered and displaced many Nuer civilians in response to internal splits. Between March and May 1993, it looted and burnt villages of Didinga people around Chukudum in Eastern Equatoria state, after the defection of SPLM/A leader John Garang's deputy from the movement.

Civilians in Upper Nile have particularly suffered from inter-factional fighting between southern forces for the control of oil areas. For example, fighting between the forces led by SPLM/A commander Peter Gadet<sup>13</sup> and the Sudan People's Defence Forces/Democratic Front led by Riek Machar,<sup>14</sup> in June and July 2000 in areas of civilian concentration around Nimne and Nhialdiu, uprooted tens of thousands of civilians. These forces and all parties to the conflict are known to have forcibly recruited civilians, including children - a war crime - into their ranks.

The southern militias have the choice of either joining the government army or the SPLM/A forces under the terms of the peace agreement. There is no provision to establish individual responsibility or to require reparations for war crimes and other serious crimes under international law of militia members or of the government or the SPLM/A armed forces, before or after militia leaders and members rally one of the parties to the peace agreement.<sup>15</sup> Amnesty International is concerned that if people reasonably suspected of being

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<sup>12</sup> For further details on oil and human rights violations in Sudan, see *Sudan: the human price of oil*, Amnesty International, 3 May 2000 (AI index AFR 54/001/2000); and the extensive study by Human Rights Watch: *Sudan, Oil and Human Rights*, 2003.

<sup>13</sup> Peter Gadet shifted alliance and was SPLM/A commander between 2000 and 2002.

<sup>14</sup> Riek Machar defected from the central government by 2000 and renamed its forces the Sudan People's Defence Forces/Democratic Front (SPDF).

<sup>15</sup> According to AFP, "The process got underway with the integration of 182 officers and soldiers from the pro-government South Sudan Defense Forces in a ceremony in Khartoum, which included the

responsible for serious crimes under international law are allowed to escape criminal responsibility and to hold positions of authority, such crimes and other human rights violations are likely to continue to be committed.

The peace agreement's wealth-sharing protocol signed in January 2004 mentions that:

*"persons whose rights have been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused".*

The protocol does not provide further explanation and it is not clear whether this provision relates to the possibility of reparations for survivors of the countless killings and the massive forced displacement in the region before the peace agreement. It does not make clear whether the people forcibly displaced from their land will have their right to return upheld.

### **2.3 Abductions and enslavement in Bahr-el-Ghazal**

Thousands, mainly women and children, of the civilian Dinka population have been abducted in the Northern Bahr-el-Ghazal region bordering Southern Kordofan and Southern Darfur since the mid-80s, as part of a widespread and often systematic attack on the civilian population. The continued deprivation of liberty, in violation of fundamental rules of international law, is a crime against humanity. The government of Sadiq al-Mahdi armed militia of the Rizeiqat and Miseriya groups to counter the armed rebellion in the South, identified with the Dinka ethnic groups - a practice kept by the current government. These militia, called  *Murahilin*, were given a free rein to raid villages, kill, loot, and capture children and women in villages along the railway line linking Babanusa to Wau. The abducted were then held in homes in western Sudan and elsewhere and used for no or minimal pay as domestic workers, field labourers or cattle herders, and often abused physically. This forced labour constitutes the crime against humanity of enslavement.

The Sudanese government was accused of not addressing the issue of slavery in Bahr-el-Ghazal. Under pressure, it created in 1999 the Committee for the Eradication of Abductions of Women and Children (CEAWC), to trace abductees and reunite them with their families. The work of CEAWC has been slow and hampered by allegations of mismanagement of the funds it has received from the international community.

An investigation into the issue of slavery was a condition of the US government for its involvement in a peace process for Sudan in 2001. An International Eminent Persons Group was set up by the US government and published its findings and recommendations in May

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taking of the oath of allegiance. Many of them got promotions, with a few becoming generals. [...] SSDF commander Paulino Matep also addressed the event, telling the officers to "defend the peace agreement and its provisions." See *Sudanese army begins to absorb southern militias*, AFP, 5 January 2005

2002.<sup>16</sup> The international commission found “*evidence of exploitative and abusive relationships that, in some cases, do meet the definition of slavery as contained in international conventions, which Sudan has signed*”. It made recommendations to end the practice, including a call for government “*statements calling for the immediate release of all such victims (persons holding slaves might be given a date after which prosecution will be certain), an announcement of the government’s intent to prosecute persons who commit these abuses, the enactment of new criminal legislation and military regulations*”.

It would appear that abductions in Northern Bahr-el-Ghazal have stopped with the extension of ceasefires between the government and the SPLM/A since the signature of the Machakos peace Protocol in July 2002. However abductions have re-emerged in the context of the war in Darfur. Many of those abducted in Darfur remain unaccounted for. Some women and girls who have escaped their abductors have reported being used as sex slaves and some boys and young men reported being used as cattle herders.

The recommendations of the International Eminent Persons Group have not been implemented. No one is known to have been prosecuted for abductions or enslavement in Sudan. Despite the issue being recognised as a major point of conflict at the start of the Machakos process in 2002, today not one of the Sudan peace Protocols mentions any mechanism to bring to justice those responsible or to require them to provide reparations. It is not even known whether all those abducted from Bahr-el-Ghazal have been freed or remain enslaved, if they are dead or alive.<sup>17</sup>

## **2.4 Killings and disappearances in the Nuba Mountains**

The wife of a Nuba man who “disappeared” during the conflict told Amnesty International in 2004:

*ask* “We are waiting for peace and we will welcome peace. At the moment, with the  
*We will* ceasefire in the Nuba Mountains, we are less afraid. But we are still afraid to  
*we do* about our husbands and brothers. Will we be able to ask when peace comes?  
*children”* never forget those who have not come back. We cannot have peace of mind if  
 not know what happened to them. We do not even know what to say to our  
 children”.

Since 1992, civilians in the Nuba Mountains, in Southern Kordofan which borders North and South Sudan, have been caught in a vicious war between the Sudanese government and the SPLM/A. The government used the  *Murahilin* and the Popular Defence Forces to launch attacks against Nuba civilians, seen as sympathetic to the SPLM. The regular army

<sup>16</sup> See *Slavery, Abduction and Forced Servitude in Sudan*, Report of the International Eminent Persons Group, 22 May 2002.

<sup>17</sup> The Kenya-based Rift Valley Institute started a project to create a record of persons missing, abducted, enslaved or killed since the start of the civil war, as a result of raids on Dinka, Luo and Fertit communities by the  *Murahilin*. It has so far established the identity of more than 12,000 persons abducted (see <http://www.riftvalley.net>).

was also involved in killing and arresting villagers and Nuba leaders. Thousands died and tens of thousands were forcibly transferred into "peace villages", virtual prisons under control of the armed forces, who reportedly took women from such places to rape them. An unknown number were targeted as suspected government opponents. Mainly drawn from the educated Nuba population, they were victims of killings or "disappearances".

A chief from Jebel Otoro, the sole survivor of a massacre of Nuba chiefs in late 1991 testified:

*"We were called for a chiefs' meeting by the government, but when we went there we found there was no meeting. We were all arrested, detained and had our hands tied behind our backs. We were 68 in the prison, all of us from the Nuba Mountains. One night, we were taken out [of] the prison. We were put on a truck. They shot us. I was shot in the back of the head. The bullet went through here and smashed my jaw. I fell unconscious...all the others died but I survived."*<sup>18</sup>

The fate of many of those "disappeared" is still unknown today.

### 3. Political repression outside conflict areas

Serious crimes under international law have not only been committed in war zones. The current government has used a shadowy security force and emergency legislation to repress political opposition, limit activities of the civil society and preserve impunity,<sup>19</sup> Thousands have been arbitrarily arrested, detained incommunicado, mostly without charge and tortured since 1989. Some have been tortured to death. In the years immediately after 1989, systematic torture of political detainees was reported, then appeared to decrease from about 1997, although Amnesty International continued to document torture. Since 2003 reports indicate that torture has increased with conflict in Darfur. Torture is inflicted particularly in detention centres and camps under the control of national or military security where detainees remain cut off from the outside world.

The most extreme forms of torture appear to be committed on suspected Darfur opposition sympathisers, and by the military intelligence, including one of its branch called the "positive security"<sup>20</sup>. However, many political detainees who do not have a high public profile to protect them from acts of torture, are beaten by the security forces. These include numerous students arrested by the National Security Forces. The beatings are sometimes so severe that they can cause the death of those detained. Two students from the opposition Popular Congress party, Shamsaddin Idris and Abdelrahman Suleiman Adam, died in custody in September 2004 in Khartoum, hours after being arrested by the National Security.

<sup>18</sup> Quoted in *Sudan: the Tears of Orphans – no future without human rights*, Amnesty International (AI index AFR 54/, 1994).

<sup>19</sup> For more details, see Amnesty International, *Sudan, Darfur: No one to complain to*, December 2004, op.cit.

<sup>20</sup> "positive security" is a translation from the Arabic "al-amn al-ijabi".



Sudanese lawyers have documented hundreds of cases of torture, including through medical evidence and attempted to start legal proceedings against those said to be responsible. These legal proceedings are blocked because Article 33 of the National Security Forces Act grants immunity to the security forces. Only the Director of the National Security Forces is allowed to lift the immunity of its members; the judiciary is not allowed oversight of the security forces. Human rights activists have continued to file hundreds of complaints, hoping that after peace is signed, they will finally lead to prosecutions.

The Sudanese authorities have stated in discussions with Amnesty International that human rights abuses are an inevitable part of war and that human rights would come automatically when peace comes. Such statements do not stand, as wars are not justifications for breaching international humanitarian law or state obligations under international human rights law. Torture and other serious human rights violations have been used by the Sudanese government in areas outside war zones. It is no surprise that a government which commits human rights violations in zones of peace uses the same tactics in its conduct of wars.

## **4. Impunity for war crimes and crimes against humanity is contrary to international law**

### **4.1 International law**

There are clear conventional and customary rules of international law on the conduct of hostilities which outlaw certain means and methods of warfare. These rules are designed to protect civilian lives to the maximum extent possible. Since 23 September 1957, Sudan has been a High Contracting Party to the Geneva Conventions of 1949, and the minimum rules governing all conflict including "armed conflict not of an international character" are laid out in Article 3 common to all the four Geneva Conventions. It provides for the protection of persons taking no active part in the hostilities. It prohibits "*violence to life and person, in particular murder of all kinds*" and the carrying out of executions without certain judicial guarantees. The destruction and pillaging of civilian property and means of livelihoods are also forbidden under international humanitarian law.

Governments that ratify international human rights treaties have a particular obligation to ensure that the treaties they have ratified are upheld and that the human rights of the population living within the state are protected. Yet the Sudanese government has participated in massive breaches of international humanitarian and human rights law.

Armed opposition groups, such as the SPLM/A, militias in southern Sudan, and the SLM/A or the JEM in Darfur have also targeted civilians and civilian objects. They have endangered civilians by sheltering among them and by launching attacks from civilian areas. Armed groups have abducted and killed civilians and attacked humanitarian convoys. Although armed opposition groups are not themselves parties to international treaties on the protection of civilians in times of conflict, members of armed groups are nevertheless bound to observe the customary laws of war embodied in common Article 3 of the Geneva Conventions and clear conventional and customary rules on the conduct of hostilities.

Article 8 (2) (c) of the Rome Statute of the International Criminal Court includes a list of war crimes (when committed in internal armed conflict) in its jurisdiction. These war crimes include *inter alia*: murder of all kinds, mutilation, cruel treatment, torture and hostage taking, committed against those who take no active part in the conflict, intentionally directing attacks against the civilian population or against individual civilians, pillaging civilian property. Furthermore, rape and other forms of sexual violence by combatants in the conduct of armed conflict are now recognized as war crimes.

Knowingly and intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance mission are recognised as war crimes, according to the Rome Statute. UN Security Council Resolution 1502 (2003) confirms that in situations of armed conflicts such attacks constitute war crimes.

When murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment, torture or rape are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, they are, as recognised by Article 7 of the Rome Statute, a crime against humanity.

International law prohibits amnesty for crimes such as genocide, crimes against humanity, war crimes and other serious violations of international law. The international community, through the Rome Statute and other mechanisms, has affirmed that individuals must be held criminally responsible for war crimes and crimes against humanity. These crimes are subject to universal jurisdiction. This means that, under international law, the authorities in any country can investigate them, regardless of where the crimes were committed and seek the extradition of suspects. If the suspects are present, the authorities must investigate and if there is sufficient admissible evidence, that state should prosecute the suspects, extradite them to a state able and willing to do so in a fair trial, without recourse to the death penalty, or surrender the suspects to an international criminal court.

#### **4.2 The will to end impunity**

Many Sudanese people have expressed to Amnesty International their desire for truth and justice to be done for the numerous and continuing crimes committed in the country and for reparations to be awarded. The people in Darfur today run great risks in order to expose the killings of their relatives or seek redress. The people in the Nuba Mountains are hoping that in a time of peace they will be able to find the truth behind the disappearances of their relatives and friends. Communities affected by enslavement practices in Bahr-el-Ghazal have affirmed their will to see the perpetrators prosecuted and reparations to be awarded to the victims<sup>21</sup>. Lawyers in the North are waiting for the removal of emergency legislation which blocks hundreds of complaints for acts of torture, and help their clients get the justice they deserve.

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<sup>21</sup> See, for instance, the Oxford Declaration on Demands for Investigations, Prevention, Prosecution and Reparations for the Crimes of Slavery and Genocide and other Crimes committed Against the Humanity of the Peoples of Aweil and Twic of Northern Bahr El Ghazal, Sudan, signed on 29 July 2003 in Oxford, UK.

In southern Sudan, many civilians are fearful of future actions by militia, who have behaved as if they were unaccountable.

Representatives in the international community have also emphasized the need to end impunity.

In his report on women, peace and security in October 2002, the UN Secretary-General called on the Security Council to:

*"Ensure that amnesty provisions included in conflict settlement agreements reached under the auspices of the Security Council exclude impunity from all war crimes, crimes against humanity and genocide, including gender-based crimes".*

Similarly, in his report on transitional justice and rule of law in conflict and post-conflict situations in August 2004, the Secretary-General called for peace agreements and Security Council resolutions and mandates to:

*"Reject any endorsement of amnesty for genocide, war crimes, or crimes against humanity, including those relating to ethnic, gender and sexually based international crimes".*

During a debate on this report by the Security Council on 6 October 2004 Juan Méndez, Special Adviser of the UN Secretary-General on the Prevention of Genocide, representing the International Center for Transitional Justice (ICTJ) of which he is President, commended the report's rejection of amnesty for international crimes. He added:

*"A peace settlement that rejects impunity is a legal and moral imperative, but it must also address the grievances that gave rise to the conflict in the first place. That is why it is important to resist the blackmail of those who threaten to continue to fight and commit atrocities unless they are given immunity".*

This was reiterated by the UN High Commissioner for Human Rights, speaking at the Security Council debate on women, peace and security on 28 October 2004:

*"The pressure for political agreement to resolve a conflict too often led to reluctance to bring perpetrators to justice".*

However, the international community has remained silent regarding the question of impunity in the peace agreement for Sudan and has made no declaration rejecting an eventual amnesty for past serious crimes under international law.

Amnesty International has consistently opposed, without exception, amnesties and similar measures of impunity which prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparations to victims and their families.

## **5. Conclusion: the international community must not fail the Sudanese people**

Throughout the past 21 years, the Sudanese authorities have consistently failed to bring to justice those responsible for grave violations of international human rights and humanitarian law. War crimes and crimes against humanity have been committed against civilians in Darfur because those responsible for similar atrocities in other parts of Sudan believe that they can continue to do so in total impunity.

Those who have survived human rights abuses have their right to truth and reparations. Condoning impunity for serious crimes under international law committed in southern, western, northern or eastern Sudan brings the serious threat of condemning the country to a cycle of continuing human rights abuses. When a peace agreement has just been achieved, discussions about impunity may be sensitive. However, it would be unfair and unwise to hope that the Sudanese people, who have suffered so much, will have enough resilience to simply forget and forgive.

Not engaging in a process to end impunity would be a dangerous gamble on the lives of the Sudanese people. Injustice and discrimination have brewed wars in Sudan lasting for more than two decades and causing millions of deaths; acknowledging crimes, establishing responsibility for them, bringing to justice suspected perpetrators of all such crimes and ensuring reparations for the victims will help protect against future conflicts in Sudan.

Amnesty International has documented how the Sudanese justice system has been unable and unwilling to bring suspected perpetrators to account. Unless national legislation which contravenes Sudan's international human rights obligations is repealed, unless practical measures to respect basic human rights standards are implemented by the Sudanese government and unless a comprehensive reform of the national legal system is undertaken, there will be little chance for Sudanese victims of serious crimes under international law to obtain remedies in the country. War crimes and crimes against humanity are crimes against the entire international community, not just against Sudanese people. The international community has therefore a particular responsibility for ensuring accountability for past and present human rights abuses in Sudan.

Mediators of the North-South peace agreement failed to address seriously human rights violations committed in Northern Sudan and to make clear that breaches of the laws of war would not remain unpunished. These two factors may have contributed to the escalation of conflict in Darfur.

The UN Security Council also failed to take meaningful action on the continuing abuses in Darfur at its meeting on 18-19 November 2004 in Nairobi, which focused on the North-South peace process. Days later, fighting and abuses in Darfur intensified, with armed opposition groups justifying their attacks on account of the weakness of Security Council Resolution 1574 on Darfur, while the government appears to have taken the lack of action of the Security Council as a *carte blanche* to commit further crimes.

The UN Commission of Inquiry into the situation in Darfur represents the first serious attempt to establish responsibility for serious crimes under international rights and humanitarian law committed in Sudan. The UN Commission of Inquiry is now due to report back on its findings to the UN Security Council, including on whether genocide has occurred in Darfur.

Regardless of the exact nature of the crimes committed in Darfur, it is clear that serious crimes under international criminal law have been committed, in Darfur and in other parts of Sudan. Amnesty International has consistently called on the international community to act on the failure of the Sudanese authorities to bring those responsible to justice, to establish the truth and to provide reparations to victims.

The international community, and especially the UN Security Council which has created the Commission of Inquiry, must now show its determination to put an end to such crimes in the whole of Sudan.

## **6. Recommendations**

### **To the UN Security Council**

- Consider carefully the findings and recommendations of the UN Commission of Inquiry created by the Secretary-General at the request of the Security Council pursuant to resolution 1564 (2004) and mandated “to investigate reports of violations of international humanitarian law and human rights law by all parties, to determine 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”.
- Urge all relevant UN actors and donor governments to work with the Sudanese government and civil society to develop and implement a comprehensive plan to end impunity for suspected perpetrators of war crimes, crimes against humanity and other crimes under international law that have been committed in all parts of the Sudan, including Darfur.
- As part of a consistent policy to refer any situation in the world where crimes within the jurisdiction of the International Criminal Court are occurring or have occurred on a large-scale to its Prosecutor, refer the situation in Sudan, including Darfur, since 1 July 2002 to the Prosecutor of the International Criminal Court pursuant to Chapter VII of the UN Charter and to Article 13 (b) of the Rome Statute. The Security Council should require all UN member states to cooperate fully with requests by the International Criminal Court made pursuant to the Rome Statute.
- Request all states to assist Sudan in implementing all human rights standards it has committed to respect under the Power-Sharing Protocol of the peace agreement, according to a timetable of concrete measures.
- Call upon all states to investigate and, where there is sufficient admissible evidence, to prosecute, in fair trials without the possibility of the death penalty, persons found

in their territories suspected of crimes under international law, and conduct proceedings for reparations; to extradite such persons to states able and willing to do so; or to surrender such persons to international criminal courts. Call upon all states to cooperate with states conducting such investigations and prosecutions.

- Ensure, when considering setting up a new UN peacekeeping mission, as envisaged in the peace agreement, that it would provide for a strong, independent and well-resourced human rights monitoring and advisory presence that draws upon existing UN expertise in this area. A UN peacekeeping mission should assist in the reconstruction and strengthening of Sudanese judicial and law enforcement institutions, in particular the judiciary and the police.
- Call upon all states to develop judicial action teams composed of experienced and trained criminal justice experts (investigators, experts on issues related to crimes against children and crimes of sexual violence, prosecutors, judges, defence lawyers and prison officials) able and willing to assist in ending impunity in Sudan and elsewhere.

### **To states, including donors to Sudan**

- Call on the Security Council to refer the situation in Sudan since 1 July 2002, including Darfur, to the Prosecutor of the International Criminal Court, in the same way that it should refer to the Prosecutor situations anywhere in the world where crimes under international law, including war crimes, crimes against humanity and genocide, are occurring.
- Assist in the development, in a transparent manner in full consultation with civil society, Sudan and interested states, and the UN, and implementation of a comprehensive, long-term plan to end impunity for suspected perpetrators of war crimes, crimes against humanity and other crimes under international law that have been committed in all parts of the Sudan. Provide sufficient financial, material and personnel resources to permit effective implementation of such plan.
- Assist Sudan in implementing all human rights standards it has committed to respect under the Power-Sharing Protocol of the peace agreement, according to a timetable of concrete measures, and in drafting necessary legislative reforms, in a transparent process in consultation with civil society.
- Ensure that reform of the Sudanese legal system and respect for basic human rights standards are central to the discussions of the international donors' conference in Norway, which is to follow the signature of the North-South peace agreement.
- Investigate and, where there is sufficient admissible evidence, prosecute, in fair trials without the possibility of the death penalty, persons found in their territories suspected of crimes under international law, and conduct proceedings for reparations; to extradite such persons to states able and willing to do so; or surrender such persons

to international criminal courts. Cooperate with other states conducting such investigations and prosecutions.

- Develop judicial action teams composed of experienced and trained criminal justice experts (investigators, experts on issues related to crimes against children and crimes of sexual violence, prosecutors, judges, defence lawyers and prison officials) able and willing to assist in ending impunity in Sudan and elsewhere.

### **To the African Union (AU)**

- The African Union Assembly, at its forthcoming Fourth Ordinary Session in Abuja, Nigeria in January 2005, should strongly and publicly condemn the continuing human rights violations in Sudan, and ask all parties involved in the conflict in Darfur to comply with international human rights and humanitarian law, and for all reports of crimes under international law to be investigated and those responsible to be brought to justice.
- The African Union Peace and Security Council should follow up on the recommendations made by the African Mission in Sudan (AMIS) to all parties responsible for violations of international human rights and humanitarian law in Darfur. Concerted action by the international community must be taken against parties responsible of such violations, in case of non-compliance with AMIS recommendations.
- Following the adoption of its fact-finding mission to Sudan in September 2004, the African Commission on Human and Peoples' Rights (African Commission) should keep the situation in Darfur under review and investigate and make public recommendations to end impunity for all abuses of the African Charter on Human and Peoples' Rights (African Charter) in Sudan that come to its attention.
- The African Commission should submit its report on its fact-finding mission to Sudan to the AU Peace and Security Council, without delay; and urge the government of Sudan to fully cooperate in this matter with the Commission, in accordance with state parties' obligations under the African Charter. The AU Peace and Security Council should make the African Commission's findings and recommendations public upon consideration of the report at its next meeting.

### **To the Sudanese government and the SPLM/A, due to form a Government of National Unity under the Sudan Comprehensive Peace Agreement**

The Sudanese government and the SPLM/A have declared their commitment to make peace a reality. They have the responsibility to ensure a lasting peace, based on truth and justice, to the Sudanese people. Amnesty International is therefore calling on the Sudanese government and the SPLM/A to:

- Fully acknowledge the massive human rights abuses, including war crimes and crimes against humanity, committed on civilians in Sudan in the past 21 years; start a transparent process to establish responsibility for past crimes; ensure reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to victims and their families; and bring to justice those responsible of crimes under international law, including crimes against humanity, war crimes, extrajudicial executions, enforced disappearances, torture and rape.
- Develop, in a transparent manner in full consultation with civil society, the UN and interested states, and implement a comprehensive, long-term action plan at both the national and international levels to end impunity for suspected perpetrators of war crimes, crimes against humanity and other crimes under international law that have been committed in all parts of the Sudan, regardless when they were committed or by whom they were committed.
- As part of this process, draft in a transparent manner in full consultation with civil society<sup>22</sup>:
  - reforms of national criminal law to include crimes under international law, including crimes against humanity, war crimes, genocide, torture, extrajudicial executions and enforced disappearances, as crimes under Sudanese law in a manner consistent with the Rome Statute and international human rights and humanitarian law;
  - reforms of the criminal procedure codes in a manner that is consistent with human rights and international humanitarian law;
  - enactment of legislation permitting effective cooperation with international criminal courts and national courts of other states in connection with criminal and civil proceedings related to these crimes;
  - repeal of Articles 31 and 33 of the National Security Forces Act, as well as other legislation under the state of emergency which does not conform to international standards.
- Consider demands by the Sudanese civil society for the establishment of a Truth and Reconciliation Commission – which should exclude amnesty for crimes under international law.
- Respect all fundamental human rights, to which they committed by signing the Power-Sharing Protocol. In order to ensure that future legislation encompass human rights, proposed commissions such as the National Constitutional Review Commission and the Human Rights Commission must be composed of members of

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<sup>22</sup> Amnesty International has made detailed recommendations to reform Sudanese legislation, including in *Sudan, Darfur: No one to complain to – no respite for the victims, impunity for the perpetrators* (AI index AFR 54/138/2004, 2 December 2004).



the highest integrity, independence and impartiality and include civil society and representatives of all regions in Sudan.

- Condemn all crimes under international law which continue to be committed in Sudan, in particular in Darfur.
- Request the Security Council to refer the situation in Sudan since 1 July 2002 to the Prosecutor of the International Criminal Court, or ratify the Rome Statute and refer the situation to the Prosecutor or, pending ratification, recognise the jurisdiction of the International Criminal Court through a declaration by Sudan under Article 12(3) of the Rome Statute and then refer the situation to the Prosecutor of the International Criminal Court.
- Demonstrate their commitment to human rights by ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations; the Rome Statute of the International Criminal Court and Agreement on Privileges and Immunities of the International Criminal Court; the Convention on the Elimination of all Discrimination against Women; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts; the African Charter on Human and People's Rights on the Rights of Women in Africa; the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights; and the African Charter on the Rights and Welfare of the Child.

### **To all armed groups in Sudan, including in Darfur, Southern Sudan, Kordofan and Eastern Sudan**

- Make a public commitment to respect international human rights and humanitarian law in Sudan, in particular by refraining from any direct or indiscriminate attacks on civilians and civilian objects. Issue clear instructions to all combatants under their control not to kill civilians or use rape or other forms of sexual violence against women.
- Anyone suspected of war crimes or other serious crimes under international law should be removed from positions where they can continue to commit such crimes.
- Cooperate with measures seeking to bring to justice all persons responsible for crimes under international law, in fair trials without the application of the death penalty.

