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GE.08-11497 (E) 120308

UNITED NATIONS

A General Assembly

Distr.

GENERAL

A/HRC/7/22

3 March 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL

Seventh session

Agenda item 4

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar*

* The present report was submitted late in order to include the most recent information.

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Summary

The report of the **Special Rapporteur** on the **situation of human rights** in the **Sudan**, Sima Samar, is submitted in accordance with **Human Rights** Council resolution 6/34, in which the Council decided to extend for one year the mandate of the **Special Rapporteur**, in accordance with Commission on **Human Rights** resolution 2005/82. The present report updates the previous one (A/62/354) submitted to the General Assembly and covers the period from September to December 2007.

Protection of **human rights** in the **Sudan** continues to be an enormous challenge. Some slow progress has been made, in particular with regard to drafting of new bills, issuance of orders and new policies; however, they have not yet had an effect on the **situation**. Many of the concerns highlighted in the previous report remain the same, one year on. Despite the potential for democratic transition and optimism created by the Interim National Constitution and the Bill of **Rights**, violations of civil and political **rights** remain widespread. Delays in the implementation of the Comprehensive Peace Agreement continue to hamper the protection and promotion of **human rights**, particularly economic, social and cultural **rights**.

The **Special Rapporteur** is particularly concerned by the **situation** of women's **rights**. In spite of constitutional provisions guaranteeing equal protection by the law and equality before the law, women continue to be considered second-class citizens. Early and forced marriages, violence against women and female genital mutilation are still widely practised. Furthermore, women are frequently placed in detention facilities for lack of payment of dowry, family debts, acts committed by family members or on adultery charges. Women are underrepresented in

Government institutions, and in positions of leadership in general. In all parts of the country, common patterns of injustice, marginalization and exploitation are emerging. Impunity also remains a serious concern in all areas. The **Special Rapporteur** calls on the Government of National Unity and the Government of Southern **Sudan** to investigate all reports of **human rights** violations with transparency, make the reports of the investigative committees public, bring the perpetrators to justice, provide reparations to victims and promote the rule of law. She urges the authorities to cooperate fully with the International Criminal Court. The **Special Rapporteur** expresses her concern at the repression of fundamental **rights** and freedoms, the excessive use of force, arbitrary arrest and detention, torture and ill-treatment of **human rights** defenders and political opponents. She urges the Government to fulfil its obligations in accordance with international **human rights** law and international humanitarian law and to ensure that all people of the **Sudan** are able to enjoy their fundamental **rights** and freedoms, including political **rights** in view of the elections scheduled for 2009. Lastly, the **Special Rapporteur** notes that measures taken by the Government of Southern **Sudan** to strengthen the administration of justice remain inadequate in the light of the thousands of cases of people in pretrial detention. A considerable number of detainees is held in detention and prison facilities for extensive periods without their cases being reviewed and without receiving any kind of legal assistance.

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I. INTRODUCTION

1.

The Commission on **Human Rights** established the mandate of the **Special Rapporteur** on the **situation of human rights** in the **Sudan** in its resolution 2005/82. Sima Samar was appointed **Special Rapporteur** and was requested to monitor the **human rights situation** in the **Sudan** and to report to the Commission (now the **Human Rights Council**) and the General Assembly. The Council, in its resolution 6/34, decided to extend for one year the mandate of the **Special Rapporteur**, in accordance with Commission on **Human Rights** resolution 2005/82.

2.

From December 2006 to December 2007, the **Human Rights Council** maintained its concern with regard to the **human rights situation** in Darfur. On 13 December 2006, a **special session** of the Council was held on Darfur and a resolution adopted, in which the Council called for a high-level mission to travel to Darfur to assess the **human rights situation** and the needs of the **Sudan** in that regard. The **Special Rapporteur**, who was a member of the mission, submitted her report (A/HRC/4/80) to the Council in March 2007.

3.

The Council, taking note of the report and its findings, appointed a group of experts on the **situation of human rights** in Darfur to work with the Government of the **Sudan** to foster the effective implementation of previous **human rights** recommendations. Recommendations concerning protection of civilians, humanitarian access, accountability, justice and monitoring of implementation were prioritized by the group with a time frame for implementation and indicators for measurement of compliance (A/HRC/5/6). The **Special Rapporteur** submitted the group's final report to the Council in December 2007 (A/HRC/6/19).

4.

In its resolution 6/35, the Council acknowledged the efforts made by the Government of the **Sudan** to implement the recommendations identified by the group of experts, but expressed its concern that, for various reasons, the implementation of many recommendations had not been fully completed so as to lead to the desired level of improvement in the **situation of human rights** in Darfur. It expressed particular concern at the fact that perpetrators of past and ongoing serious violations of **human rights** and international humanitarian law in Darfur had not yet been held accountable for their crimes and urged the Government of the **Sudan** to address urgently this question, by thoroughly investigating all allegations of **human rights** and international humanitarian law violations, promptly bringing to justice the perpetrators of those violations. The Council urged the Government of the **Sudan** to continue and to intensify its efforts to implement the recommendations identified by the group of experts in accordance with the specified time frames and indicators.

5.

In its resolution 6/34, the Council requested the **Special Rapporteur** to ensure effective follow-up and to foster the implementation of the remaining short-term and the medium-term recommendations identified in the first report of the group of experts (A/HRC/5/6) through an open and constructive dialogue with the Government of the **Sudan**, taking into account the final report of the group of experts (A/HRC/6/19) and the replies of the Government thereto, and to include information in that regard in her report to the Council at its ninth session.

6.

The present report covers the period from September to December 2007 and updates the report presented to the General Assembly at its sixty-second session on the **situation of human rights** in the **Sudan** (A/62/354).

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7.

The **Special Rapporteur** would like to thank the Government of National Unity and the Government of Southern **Sudan** for their cooperation during her visit and also during the work of the group of experts on Darfur. She would like also to thank the **Human Rights** Office of the United Nations Mission in **Sudan** (UNMIS) and the African Commission on **Human and Peoples' Rights** for providing her support and all the people who took the time to provide her information on the **situation of human rights** in the **Sudan**, in particular the victims of **human rights** violations who shared their personal stories. The **Special Rapporteur** commends the national **human rights** defenders and the international agencies for their hard work to further the promotion and protection of **human rights** and to provide humanitarian assistance to people in need.

II. GENERAL SITUATION

A. International legal framework

8.

The **Sudan** is a party to the International Covenant on Civil and Political **Rights**, the International Covenant on Economic, Social and Cultural **Rights**, the Convention on the **Rights** of the Child and both Optional Protocols to it, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention of 1926 and the African Charter on **Human and Peoples' Rights**. The **Sudan** is a high contracting party to the Geneva Conventions of 12 August 1949 and acceded to the two Protocols Additional to the Geneva Conventions in 2006. The **Sudan** is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Rome Statute of the International Criminal Court; it signed the Convention on the **Rights** of Persons with Disabilities in 2007. Thus, the **Sudan** is bound to refrain from acts which would defeat the object and purpose of these instruments.

9.

In 2007, the **human rights situation** in the **Sudan** was reviewed by the Committee on the **Rights** of the Child under the Optional Protocol on the sale of children, child prostitution and child pornography and by the **Human Rights** Committee. In their concluding observations, both committees emphasized that progress was still needed in the **Sudan** to address impunity and the protection of women and children's **rights**, and to establish an age for criminal responsibility that corresponded to international standards. The **Sudan** also submitted its third periodic report to the African Commission on **Human and Peoples' Rights** for review at the forty-second session of the Commission, in November 2007.

B. National framework, institutions and reforms

10. Some progress has been made to implement the Comprehensive Peace Agreement during the reporting period. With regard to the national legal framework, according to information provided by the Advisory Council for **Human Rights**, new legislation was drafted and presented to the National Assembly at its fifth session, which convened on 23 October 2007.

On 5 November, the Armed Forces Bill was passed in its second reading. The Bill still has to go through two more readings before its final adoption. However, 10 political parties issued a joint statement raising issues with a number of dispositions included in the Bill and demanded that it not be adopted in its current form. The Police Bill was put on the agenda of the meeting of the National Assembly on 27 November, but was later withdrawn without explanation.

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11. On 21 October, a group of lawyers and law professionals representing different political parties and civil society organizations submitted a case to the Constitutional Court against the Government of the **Sudan** on the issue of prosecution fees, Constitutional Court fees and land registration fees. In its submission, the group argued that the high fees constituted a violation of constitutional and **human rights** principles, including the right to property.

12. On 8 November, the Constitutional Court issued a decision on the case raised in May 2007 by the *Al Sudani* newspaper, which had been suspended for a few days on the basis of article 130 of the Criminal Procedure Act on the “prevention of public nuisance”. The Court determined that article 130 of the Criminal Procedure Act was not meant to be used against the press. In addition, the Court stated that the use of article 130 to suspend newspapers limited the freedom of the press, which is a constitutional right guaranteed by the Interim National Constitution.

13. The **Special Rapporteur** is concerned to learn that, on 17 November, during the eighteenth anniversary celebrations of the Popular Defence Forces (PDF), President al-Bashir called on PDF “to open their camps and gather the Mujahideen”.

14. On 11 October, the **Sudan** People’s Liberation Movement (SPLM) suspended its participation in the Government of National Unity, invoking violations of the Comprehensive Peace Agreement, obstruction of the democratic process, lack of national reconciliation, delay of North-South demarcation and **human rights** abuses in Southern **Sudan** by elements from regular forces. On 3 November, President al-Bashir and First vice-President Kiir announced an agreement on most of the issues.

15. On 17 December, the Government of **Sudan** Presidency agreed that the SPLM ministers would return to the Government of National Unity. The new ministers were sworn in on 27 December. The standoff between the two parties has had some impact on **human rights**, most notably with regard to the establishment of the National **Human Rights** Commission, which has, however, been delayed again by the present political crisis. In December 2006, the National Constitutional Review Commission, which is entrusted by the Comprehensive Peace Agreement to draft the legal framework of the Commission, submitted the final draft of the **Human Rights** Commission bill to the Council of Ministers for its approval. There are still some differences among the parties to the Comprehensive Peace Agreement on the criteria of membership and the investigation power of the Commission.

16. The third version of the Southern **Sudan Human Rights** Commission bill is now largely in line with the Paris Principles. The revisions were based on comments made by the members of the Southern **Sudan Human Rights** Commission and the UNMIS **Human Rights** Office.

17. The Commission for the Protection of the **Rights** of Non-Muslims in the National Capital held a meeting on 25 November. The Commission is reportedly working on domestic policies relating to the application by the administration of justice institutions of laws to non-Muslims.

18. In summary, there has been some progress, however significant portions of the Comprehensive Peace Agreement to strengthen the **human rights** record of the **Sudan** have not been implemented; as a result, the **human rights** legal and institutional framework remains weak.

III. NORTHERN SUDAN

19. In northern **Sudan**, despite the potential for democratic transition and the optimism created by the Interim National Constitution and the Bill of **Rights**, violations of civil and political **rights** remain widespread.

20. The National Intelligence and Security Services (NISS) continue to arrest and detain people for prolonged periods of time without charges and legal representation, and frequently without the possibility to receive family visits. Detainees are reported to be held incommunicado for weeks or months, and in some cases longer, without being brought before a judge. Reports of torture and ill-treatment are frequent. In some cases, torture is practised to force confessions that are later used to implicate those detained in criminal cases in court. These violations of the right to liberty and security and to a fair trial are directly related to the fact that the 2001 National Security Forces Act, under which individuals are arrested and detained, contravenes **human rights** guarantees contained in the Interim National Constitution and international **human rights** law and standards.

21. Since September 2006, over 70 people of Darfurian origin have been arrested in Khartoum in the context of an investigation into the murder of Mohamed Taha, editor of the newspaper *Al Wifaq*. In February 2007, 19 people were charged with the murder and taken to court. At the end of August 2007, nine defendants, including two women, one of whom was a minor, were acquitted and released after nearly a year of detention. The court found that, in the absence of confessions by these defendants, the material evidence presented by the investigators was insufficient to obtain convictions. On 10 November 2007, the 10 remaining defendants, including a 71-year-old and a minor aged 17, who was 16 years old at the time of the crime, were found guilty and sentenced to death by a court in Khartoum North. Defence lawyers are appealing the judgement.

22. The convictions were almost exclusively based on confessions which the defendants made after being detained incommunicado for up to four months. This raises serious concerns on the lack of respect of basic **human rights** guarantees in pretrial detention. There have been reports by defendants, their families, defence lawyers and former detainees that many of the detainees were subjected to torture or ill-treatment to force confessions implicating them or other detainees in the murder. The defendants did not have access to legal counsel when their confessions were taken by the judge, and some of them were not informed that they were being taken before a judge and that their statements were being registered as confessions. The court failed to investigate claims that defendants gave confessions extracted under torture or other cruel, inhuman and degrading treatment. The court also failed to grant medical examinations to the defendants, as requested by their lawyers at the beginning of the court case, that could have been used to support claims of ill-treatment in detention.

23. On 31 December 2007, 31 individuals accused of planning a coup against the State in July were set free following a public pardon by the President. The accused, who had been held in detention for over five months, included prominent political figures such as Mubarak Al Fadil, leader of the Umma Reform and Renewal Party, and Ali Mahmoud Hassanein, deputy chairman of the Democratic Unionist Party. Mubarak Al Fadil had been released ahead of the pardon,

24. During the pretrial investigations, there were numerous violations of the Sudanese Criminal Procedure Code, such as prolonged detention without charge. Appeals by lawyers to either charge or release the detainees were dismissed by the judiciary. In addition, most defendants alleged that torture and ill-treatment were used to extract confession from them while they were held incommunicado by NISS. Lack of access to legal representation and contact with family members were reported in most of the cases. Several requests by the UNMIS **Human Rights** Office made to the Advisory Council for **Human Rights** to have access to the detainees were not granted, and concerns raised with the Advisory Council about **human rights** violations remained without response.

25. Prior to the start of the peace talks on Darfur in Sirte, Libya, a wave of arbitrary arrests and detentions of Darfurian supporters of the Abdel Wahid Al Nur branch of the **Sudan** Liberation Army (SLA/AW) by NISS began in and around Khartoum. The majority of those arrested were students at Khartoum universities. From 20 September to 4 December, a total of 30 presumed SLA/AW supporters were arrested, sometimes repeatedly, and held incommunicado for different periods of time. Many were reportedly tortured or ill-treated.

26. The construction of two major hydroelectric dams by the Government in the Kajbar and Merowe regions, in Northern State, are being opposed by local communities and tensions with the Government have been rising. Communities have been denied adequate representation and some were forced to relocate. Security forces have used excessive force in suppressing protests, most recently when four civilians were killed during the policing of a protest march in April 2007 (see A/62/354).

27. On and around 27 August 2007, a wave of arrests were made in the province of Northern State, a province north of Khartoum. The arrests targeted members of the Mahas community, a Nubian tribe, who actively oppose the planned hydroelectric dam near the village of Kajbar. Six people, who were detained for one or two days and released on bail, now face criminal prosecutions on charges related to protest activities.

28. Three activists of the Kajbar Dam Popular Committee were detained by police from 28 to 30 August and released on bail pending the outcome of an investigation on charges of conspiracy and public order offences (articles 21, 77 and 69 of the Criminal Act). If found guilty, they could face a prison sentence of up to a year. Three others injured by security forces during a community protest against the dam on 13 June 2007 are now under investigation for “disturbance of public peace” and causing injury (articles 69 and 142 of the Criminal Act), based on complaints brought by police officers. According to lawyers, no forensic reports or other evidence support the claim that the policemen sustained injuries during the demonstration, during which four people were shot dead by security forces.

29. Between 27 August and 20 September, seven other Kajbar activists were held for different periods of time in NISS detention facilities in Northern State. They were not given access to lawyers or allowed to communicate with their families. The men were reportedly told that they

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were being detained because of their opposition to the dam and because of their open criticism of Government policy in relation to the dam. One of them was reportedly arrested to force his brother, who is an active opponent of the dam, to turn himself in.

30. These arrests were part of a pattern of arbitrary arrests and prosecutions in an apparent effort to stifle community protests against the Kajbar dam project. Only days prior to the latest wave of arrests, seven people who had been detained because of their campaigning activities against the dam project were released without charge after over two months of detention by NISS. Another five people were sentenced to fines in Khartoum for alleged public order offences and for “provoking hatred” because they distributed information about an event on the Kajbar

dam.

31. Khartoum media are still subject to restrictions on freedom of expression through case-by-case censorship, imposition of public information bans and use of criminal legislation. Since mid-August, representatives of NISS have reportedly been visiting the print houses and offices of several national Arabic newspapers to inspect the editions of the papers prior to printing. On several occasions, NISS officers were reported to have ordered the removal or replacement of articles and columns from the printing plate. Since the beginning of 2007, a number of public information bans have been imposed preventing newspapers from reporting on court cases of public interest concerning **human rights** violations. Most recently, on 27 December, local newspapers reported that the prosecution office of the press had issued a ban on public reporting on all criminal cases that were under investigation.

32. In addition to the above cases of media restrictions, domestic laws can be used to place limitations on the media. The 2004 Press and Printed Materials Act contains numerous provisions which may be used to curb criticism and does not contain clear guarantees for the protection of the freedom of expression of media practitioners. The Act also puts in place various restrictions and protocols that make it difficult for new media sources to come into existence. Its application is supervised by the Press Council, a body that is generally perceived to lack political independence. Certain provisions of other laws, such as the Criminal Code and the Criminal Procedure Act, have also been used to restrict the freedom of the press.

33. Three journalists and **human rights** defenders were summoned and questioned by NISS in Khartoum on 5 and 6 November. The three people, who are known defenders of the freedom of the press, believe that the summons and questioning were carried out to intimidate them and discourage them from their activities.

34. On 5 November, they were summoned and kept waiting for over six hours at the political department of NISS in the Bahri district of Khartoum. In the afternoon, an NISS official informed them that they should return the following morning. On the following day, the three people were questioned in separate rooms for several hours each. They were reportedly asked about their personal lives and about different **human rights** and journalist groups in whose activities they participate, or whose activities they know about, among them the **Sudan** Organization Against Torture, the Khartoum Centre for **Human Rights**, and groups of journalists working on the freedom of the press. They were reportedly questioned about the organizations' structures, their sources of funding and the activities they conduct, among other things on the freedom of the press, elections and **human rights** issues. They were released without charge but told that they would be contacted again for further investigation.

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35. On the positive side, *Sawt al-Umma*, a newspaper edited by the Umma party, reopened in late November for the first time since the coup. The Women's Awareness-Raising Group in Port **Sudan** was allowed to start working again in December after being suspended earlier in 2007.

36. Justice and accountability continue to be a challenge. Despite their different circumstances, the above-mentioned violations are linked together by the Government's failure to hold perpetrators accountable. In relation to the killings related to the Kajbar dam, at the end of December 2007, four months after the termination of the investigation, the findings of the investigation committee had not yet been communicated to victims and their families. According to unofficial reports, the investigation was stalled because police refused to cooperate in identifying those responsible for the killings. There is no indication that anyone responsible for the killing has been identified and it does not appear that any action has been taken by the authorities to hold the perpetrators to account.

37. In Khartoum State, a police investigation was opened into the killing of one man and the injury of another during a police search on 14 July 2007 in the Omdurman El Salaam camp for internally displaced persons. As reported, four members of the police force were identified as responsible for the killing of the man. However, it seems that, after some time in detention, the four suspects were released on bail. As at December, no information was available as to whether the four suspects continued to serve in the police force and whether they were likely to be prosecuted. Meanwhile, the police have initiated negotiations with the family of the victim of the killing in order to settle the issue outside the judicial system through payment of compensation. In the event that the family accepts compensation, the case will be closed without any judicial investigation or prosecution.

38. Perpetrators of torture or other forms of ill-treatment have rarely been brought to justice. None of the cases of torture or ill-treatment detailed in the present report has been prosecuted.

IV. DARFUR

39. As Chairperson of the group of experts on Darfur, the **Special Rapporteur** participated in a dialogue with the Government of the **Sudan** to foster effective implementation of pre-existing recommendations for the protection of **human rights** in Darfur. In the report submitted to the Council (A/HRC/6/19), the group noted Government efforts to prepare laws and instructions that, if fully implemented, could be instrumental in improving the **human rights situation** in Darfur. However, while acknowledging the activities undertaken by the Government, the group remained concerned that reports received clearly indicated that, with very few exceptions, those efforts had not yet led to an improvement of the **situation of human rights** in Darfur.

40. Concerns remain regarding the Government's use of disproportionate and indiscriminate means of warfare in violation of international humanitarian law. On 23 November, aerial bombardments were reported in the Habila area of West Darfur. Government forces reportedly launched ground and air attacks against a dissident Arab group. On 29 and 30 November, Government forces reportedly carried out several aerial bombardments in areas south of Nyala, South Darfur, in an attempt to flush out another dissident Arab group that had forged an alliance with the SLA/AW group. Unconfirmed reports indicated that there were many casualties,

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including civilians. In West Darfur, several sources, including the police, reported having witnessed aerial bombings by Government Antonov planes in an area south-east of Kulbus, on 4 and 5 December 2007. On 8 December, there were further aerial bombardments in Jebel Moon.

41. Civilians, particularly internally displaced persons, continued to be exposed to violence and abuses either from deliberate attacks from the Government-supported militia or some of the rebel groups, or as a result of being caught in the middle of clashes between warring factions. A number of militia attacks involving physical assaults, harassment, intimidation and sometimes abductions underscore the failure of the Government to protect civilians. On 8 October, a joint attack on Muhajiriya by allied Government forces and militia was reported; people praying in a mosque were rounded up and 48 civilians reportedly killed. People fleeing attacks on Um Dukhun, on 23 November, and on Umdarota, on 24 November, in South Darfur, described large groups of militia in Government-style uniforms entering their villages, shooting randomly, stealing animals and setting fire to households.

42. On 2 December, in West Darfur, armed men attacked three female internally displaced persons from Dorti camp while they were asleep in their home in Um Sebeikha. In another incident, a group of 10 women and girls, aged between 11 and 35, were attacked and held for more than two hours in the Turab el-Ahmar area, three kilometres west of Riyadh camp. A

16-year-old girl from the group was gang raped and at least three other women were whipped and beaten with axes. Two women managed to escape and reported the incident to Riyadh police. Although the community reportedly requested the police and a group of soldiers at a nearby checkpoint to rescue the women, they refused to proceed to the scene of the incident.

43. The proliferation of weapons, the presence of armed elements inside camps and the widening divisions along tribal affiliations adds to the insecurity felt by internally displaced persons in Darfur. In North Darfur, the Abou Shouk camp for internally displaced persons continues to be the stage of frequent shooting incidents.

44. People also continue to be arbitrarily arrested, held for prolonged periods without being informed of the reason for arrest or brought promptly before a judicial authority. In some instances, they have been subjected to torture and ill-treatment and denied access to counsel. Government security agencies, in particular NISS, and Government proxy groups continued to arbitrarily detain and often mistreat civilians who are perceived to be aligned with opposing rebel groups.

45. Between 27 November and 3 December, in West Darfur, at least five people from Kulbus were reportedly detained and ill-treated by NISS, on the suspicion of supporting Ibrahim Abaker Hashim's group. Similarly, in South Darfur, arbitrary arrests were perpetrated by militia belonging to the Gimir faction and directed at Massalit men, some of whom were suspected of supporting a rebel group in Umbreida. The detention followed attacks by Gimir militias and Government forces on Umbreida in May 2007. After the attacks, most of the population fled to Antikaina; reports were received of Gimir militias preventing people from leaving the village and forcing them to cultivate the land. In November, a Massalit man reportedly tried to escape, but was captured by Gimir men. The man was tied to a tree, whipped, and also had finger nails pulled out. He allegedly tried to report the incident in Antikaina, but the police refused to accept his complaint.

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46. Armed rebel movements are also alleged to be violating the **rights** of civilians. For example, in South Darfur, a man from the Arab Reizigat tribe reported that he had been abducted by the Abdul Wahid faction of SLA on 27 October and held in detention for more than 20 days on suspicion of being a Government spy. He was subjected to torture and ill-treatment, including severe beatings and being hanged upside down from a tree.

47. The female population of Darfur, in particular internally displaced persons, continue to be the target of rape and other sexual and gender-based violence. The established pattern of violence against women that emerged at the beginning of the conflict continued during the reporting period. As documented in many previous incidents, the perpetrators were very often armed men in military uniforms or in civilian clothes travelling in groups on horses or camels. In North Darfur, internally displaced persons were victims in 80 per cent of all reported cases of sexual and gender-based violence. Female internally displaced persons were usually attacked when they left the confines of the camps for internally displaced persons to engage in income-generating activities, such as the collection of firewood, grass and fruit. The women reported that they continued to risk being attacked whenever they left the camp.

48. The majority of incidents of sexual violence went unreported. Many victims chose not to file complaints because they felt that the police could not or would not take appropriate action against perpetrators. In many cases, police action was limited to receiving complaints without any steps being taken to investigate and bring the alleged perpetrators to justice.

49. In August 2007, the Minister for Justice issued a declaration outlining measures that the Ministry planned to undertake to eliminate violence against women in Darfur. The Government also publicly condemned violence against women and reaffirmed its zero-tolerance policy for

such crimes. While acknowledging the efforts of the Government, the **Special Rapporteur** is concerned that these efforts have not yielded any discernible improvement on the ground during the reporting period, as shown by the continuing reports of incidences of sexual and gender-based violence in Darfur.

50. Widespread impunity continues to prevail in Darfur. Efforts by the police to investigate crimes allegedly perpetrated by soldiers and other members of the security forces are often frustrated by a lack of cooperation from military authorities. In El Fasher and Kabkabiya, North Darfur, police investigations into two shooting incidents involving soldiers in October 2007 have apparently stalled because the military failed to hand over the alleged perpetrators.

51. The administration of justice in Darfur is severely weakened by a culture of impunity, a poorly functioning law enforcement system, staff and resource shortcomings in the judiciary and the public prosecutor's office and lack of political will. The most prominent conflict-related accountability mechanism in Darfur is the **Special Criminal Courts on the Events in Darfur**, established by decree on 7 June 2005. A number of public statements by the Government of the **Sudan** indicated that the **special** courts were established to deal with major criminal offences which had occurred in the states of the Darfur region and which could be characterized as war

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crimes or crimes against humanity. To date, only 13 cases have come before the **special** courts
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and they have all involved ordinary crimes such as theft, possession of stolen goods and murders unrelated to any of the large-scale attacks that have characterized the Darfur conflict. Of the 31 defendants who have appeared before the court to date, 9 were civilians involved in non-conflict-related activities such as armed robbery, unlawful possession of weapons or murder. Only one case before the **special** courts was related to a large-scale attack against civilians in Tama, South Darfur, in October 2005. The men charged in relation to the attack were found guilty of stealing property at the site of the attack. No one was found guilty of being part of the attack or responsible for orchestrating it. One high-ranking official was charged on the basis of command responsibility but was subsequently acquitted. A total of 10 officials were convicted by the **special** courts, but they were all low-level officers. Of these, two military intelligence officers were convicted for the murder of a 13-year-old boy who died as a result of torture while in custody. Although the two defendants were subsequently pardoned for the crime under a settlement reached between them and the relatives of the victim, they were nevertheless sentenced to two years of imprisonment by the court. The defendants were later released pursuant to a presidential amnesty decree issued on 11 June 2006 for rebels who had signed the Darfur Peace Agreement and parties to tribal reconciliation endorsed by the Government. Two other low-ranking military intelligence officers were also convicted and sentenced to death for their role in the death in custody of a 60-year-old man. The two men were hanged on 22 April 2007. No one has been found guilty of war crimes or crimes against humanity. The issue of command responsibility and holding high-ranking officials accountable is effectively being ignored.

52. The **situation** in Darfur was transferred to the Prosecutor of the International Criminal Court by Security Council resolution 1593 (2005) of 31 March 2005. On 27 April 2007, after two years of criminal investigation, the Pre-Trial Chamber of the International Criminal Court issued warrants for the arrest of two persons who had committed crimes against humanity and war crimes. The Court transmitted a request to execute the warrants to the Government of the **Sudan** on 16 June. Interpol red notices were subsequently disseminated. On 5 December, the Prosecutor reported to the Security Council that the Government of the **Sudan** had not complied

with its legal obligation under resolution 1593 (2005) to arrest and surrender the accused persons.

53. Humanitarian services continued to be provided despite the obstacles to the majority of the conflict-affected civilians; however, access to parts of Darfur is very limited owing to increasing insecurity. As a result, humanitarian operations are unable to travel or are forced to relocate staff, thereby leaving hundreds of thousands of people in need without access to humanitarian aid.

54. The Arche de Zoé case of alleged child abduction, allegedly involving some children of Sudanese origin, underscored the importance of international legal instruments on the protection of the **rights** of the child, strengthening the rule of law in the region and justice in accordance with international standards. On 26 December, members of Arche de Zoé were found guilty and

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Four additional cases were referred to the **special** courts in Al Geneina, but it did not appear at the time of writing that the cases would be tried.

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sentenced by the Criminal Court to eight years of forced labour and a fine of 6 million euros. The **Special Rapporteur** is concerned, however, that the children have not been reunited with their families and are reportedly still in an orphanage.

V. EASTERN SUDAN

55. The **Special Rapporteur** reported on the **situation** in Eastern **Sudan** in her report to the General Assembly in 2006 (A/61/469, paras. 39-44) and remains deeply concerned that the victims of a massacre in Port **Sudan** have still not received justice. On 18 February 2005, the Government established an investigation committee. The findings have still not been published and no one has been prosecuted in relation to these events.

VI. TRANSITIONAL AREAS

56. Reports have been received of tribal clashes in Ed Damizin (Blue Nile State), resulting partly from nomads moving their livestock into farmland to graze. Some of the flare-ups are thought to be due to the fact that many Arab nomads continue to be enlisted members of the Popular Defence Forces. In November 2007, clashes between Fallata and nomads were reported near Bikori in Geissan locality (Blue Nile State); several people were stabbed and killed. Even more serious clashes between Arab nomads and Hausa locals were witnessed near the village of Bados in Rosaris locality, culminating in the killing of one Arab nomad and two Hausa men.

57. An annual Dinka Ngok and Misseriya migration peace conference was held in Abyei (Southern Kordofan State) in November 2007. Supported by the United Nations, the meeting brought together several Misseriya and Dinka leaders from all over Abyei to discuss conflict prevention and address **human rights** violations by preventing inter-tribal cleansings within the communities in the Abyei area. Participants decided to deal with cases of murder in relation to possible conflicts which may arise following the migration season.

58. The conflict between the Nuba and the Misseriya in the area of Abu Junuk (Southern Kordofan) has resulted in 3,000 people being displaced in the past two months. According to sources, the Nuba are surrounded by the Misseriya, who are blocking the water point, which has resulted in a severe water shortage in the area.

59. Reports have been received of SPLM abuses and violations against the civilian population owing to religious or political affiliation. Violations by SPLM police and Government police in Southern Kordofan area have also been reported. On 11 November 2007, a priest from a northern episcopal church was arrested and detained by police in Kurchi (Southern Kordofan State), an area controlled by the Sudanese People's Liberation Movement/Army (SPLM/A). Police officers

tied his wrists and ankles behind his back and then beat him with a whip. The priest's dead body was found in the woods on 16 November. According to a police report, the death was caused by two or three bullets fired from a Kalashnikov. In December 2006 and January 2007, 12 members of the church were arrested by the 25th SPLA brigade in Kurchi and held for up to nine weeks. The tension has taken on political overtones, with followers of the church in the Kurchi area accused of supporting the National Congress Party. The Sudanese People's Liberation Army (SPLA) authorities have described the conflict as inter-tribal rather than political. In another incident, on 15 November 2007, northern episcopal churchgoers were ordered to dismount with their luggage by Kurchi police while travelling to Kurchi. A group of four priests and a sheikh

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were arrested and received 101 or more lashes. Police also tied their hands and legs behind their backs and accused them of being spies. They were released on 17 November. Members of a group of volunteer polio vaccination workers were given 20 lashes each by SPLM police in Regifi near Kurchi on 19 November, and made to pay 300 Sudanese pounds. They were accused of being spies.

60. Administration of justice, arbitrary arrests and ill-treatment of detainees are causes for concern. Suspects are often detained for several days without appearing before traditional courts. For example, in Abyei, two women, aged 16 and 18, were arrested by Joint Integrated Units and a police officer for allegedly preventing the police officer from beating street children in Abyei market and did not receive any judgement for several days. A manager of a gas station was reportedly arrested on 29 November by Kadugli police, following nearly two weeks of harassment, after he failed to provide the police with 220 gallons of diesel fuel, which he did not have. He filed a suit against a Government police captain, who has counter-sued. The police officer sought immunity under section 46 of the Police Act; however, the State Attorney prosecutor dismissed the appeal. The police have appealed to the Attorney General in Khartoum against the decision.

61. Serious deficiencies in the enjoyment of economic, social and cultural **rights** are common in the transitional areas. In some areas, there is a trend towards favouritism in the distribution of education and health-care services based on ethnicity and/or political affiliation. In a positive development, the Ministry of Finance launched the Blue Nile Relief Project, which will focus on access to water, health, education and roads.

VII. SOUTHERN SUDAN

62. Serious challenges remain in the protection and realization of **human rights** in Southern **Sudan** while institutions struggle with meagre **human** and financial resources to redress this **situation**. Several of these institutions have reviewed or are currently reviewing their plans, budgets, structures and legal frameworks and are strategizing on their future and compelling priorities. Several of them have welcomed and benefited from assistance provided by the international community, including that of the United Nations, namely in terms of training, infrastructure, logistics and review of basic documentation. However, enormous challenges remain ahead as key laws still need to be passed or amended so as to comply with the Comprehensive Peace Agreement, the Constitution of Southern **Sudan** and international **human rights** treaties. Adequate protection and viable mechanisms need to be put in place for the protection of basic **human rights** and increased awareness on **human rights** needs to be ensured throughout Southern **Sudan**.

63. The establishment of the Southern **Sudan Human Rights** Commission will be of paramount importance to provide the Southern Sudanese with an independent oversight mechanism that people can refer to, that will promote **human rights** standards and draw **human rights** concerns to

the attention of the relevant authorities. To date, the Commission has not been fully operational, as the enabling law has not been passed and signed. In September, a revised version of the enabling bill on the Commission was submitted to the Southern **Sudan** Ministry of Legal Affairs and Constitutional Development. The new version is in line with the Paris Principles, as it recognizes the independent character of the Commission and ensures a pluralistic representation of various social groups. At the end of December 2007, the Southern **Sudan** Legislative

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Assembly had not adopted any of the key bills that would advance the implementation of the Comprehensive Peace Agreement or other important legislation, such as the Penal Code, Code of Criminal Procedure, the Child Bill, the Prisons Bill and the Police Bill. Owing to the delays in the passing of legislation at both the executive and legislative levels, the executive has indicated its willingness to adopt certain pressing laws, including those relating to the commissions and codes, by provisional orders.

64. SPLA demobilization and integration into civilian life has been a source of difficulty for the justice sector institutions of the Government of Southern **Sudan**. The integration of thousands of SPLA members into the Southern **Sudan** police and Southern **Sudan** prison services has caused considerable strain, as it is being conducted without due consideration for the skills and numbers required or the limited resources within those institutions. In addition, former SPLA members continue to maintain their old ranks upon transfer into the new services, causing dissatisfaction among professional staff. Of concern is the recent deployment to Jonglei State of a new police unit that appears to be independent of the Southern **Sudan** police service and close to the local governor and national security forces.

65. The administration of justice is challenged by interference and abuse of power by officials, both civil and, to a larger extent, military. While several cases have been reported, the Yambio killings of 4 November are certainly a case in point as they openly challenged institutions responsible for rule of law and raised underlying tensions at the local level, which were fortunately controlled thanks to the opportune intervention of Government of Southern **Sudan** officials, assisted by UNMIS. On 4 November, five SPLA/Joint Integrated Unit soldiers killed three senior members of the local police at the local police station inside Yambio town (Western Equatoria State). The Yambio police headquarters and other police stations were abandoned during that time and many civilians fled the area. A few days after, many people took to the streets in solidarity with the victims' families and to protest against what the local population considered an attack against their own people by the Dinka-dominated SPLA contingent. A large number of soldiers have been arrested in connection with this case and are currently awaiting trial in Yambio central prison. An ad hoc committee was established and is currently investigating the case. It remains to be seen whether the results of the investigations will bring the perpetrators to justice.

66. Cases of military personnel asserting powers of arrest over civilians continue to be reported. In September, for example, illegal arrests of foreign commercial traders by security forces were reported in Wau. An ad hoc committee was formed to investigate the case but the results remain unknown. This **situation** of military personnel illegally arresting people not only feeds into the population's existing mistrust of State authorities and institutions, but encourages disrespect for the institutions responsible for rule of law.

67. Numerous incidents involving loss of life caused by law enforcement officials have been reported, many occurring while they were intoxicated. For example, on 5 September, a policeman stabbed to death a leader of the Ugandan trader community in Juba when the man intervened to stop the beating of another man by the police. On 23 October, a shooting involving five SPLA soldiers and two Arab traders was reported in Rubkona market, Unity State,

following an argument over food. As a consequence, the soldiers were arrested by military police.

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68. Several cases of sexual assault and rape, including of minors, by SPLA and Joint Integrated Unit members have been reported. In Wau, a 14-year-old girl was allegedly raped by two SPLA soldiers. In September, in Warap State, serious allegations of abuse and sexual assault by SPLA soldiers patrolling Gumbo and Rejaf, not far away from Juba town, were reported; incidents of harassment, intimidation, looting, occupation of dwellings and land, and sexual violence were also registered. In the same month, Ugandan traders in Juba customs market were sexually assaulted by men in uniform. The alleged perpetrators were police and military personnel who roamed the market during night patrols. Only two members of the local police force have been arrested in connection with the case, in spite of the fact that the other members of the police involved had been identified and their whereabouts widely known. The SPLA member involved was not arrested. Three Ugandan women were allegedly raped by six SPLA or SPLA/Joint Integrated Unit soldiers in the new market in Torit on 29 December. The victims reported the case to the police, but they were referred to national security. The local police force has refused to take the victims' statements and to open an investigation, possibly because it involved SPLA members. In addition, medical evidence has been lost due to the fact that not only did the victims not have adequate means to pay for the medical examinations, but also because of the lack of adequate testing instruments and willingness by medical staff to take such cases seriously. In Malakal, harassment over dress codes, whereby women are subjected to lashings, public humiliation and arrest, is frequent. The Presidential Adviser on Gender and **Human Rights** and a senior SPLA member have raised their voices against such cases. Alarmed by such reports, the Central Equatoria Legislative Assembly has established an ad hoc committee to investigate the alleged disappearances of people in and around Juba. The report of the investigation has not been made public.

69. To date, the establishment of ad hoc commissions has been an inadequate accountability mechanism for such incidents; findings are not public, and no prosecution efforts follow against those found to be responsible for violations. For example, in May, 54 civilians from the Didinga tribe were killed, allegedly by Toposa tribesmen, in Budi county, Eastern Equatoria State. The findings of the ad hoc commission to investigate the killings have yet to be revealed. A report on the findings was presented by the Peace and Reconciliation Committee of the Government of Southern **Sudan** Legislative Assembly to the Speaker's Office, but has not been disclosed nor discussed at the Assembly.

70. Illegal, prolonged and arbitrary detention continues to be a major concern in Southern **Sudan**. Large numbers of people in detention have been arrested by unauthorized people, without the mandated legal warrants or even for acts pertaining to their relatives or close ones, or are in prison for their inability to pay debts. Furthermore, many cases of people in "protective custody" without any charges and without their consent have been documented. A large number of women, including some with their children, are found in detention centres on unclear charges of adultery or even accusations of rape. Many of these women are put in detention by their own husbands and relatives and left to their fate. Cases of women placed in detention, including in private dwellings, by customary courts have been reported, for example in Nasser county. People with alleged mental health problems are placed in prison "for safekeeping and treatment" without being charged with any offence. Juveniles and young children have been and continue to be detained, even though Sudanese laws stipulate that children under 10 years of age are not subject to penal laws. Detainees continue to be held in detention and prison facilities for extensive periods without their cases being reviewed or

without receiving adequate legal assistance. Of particular concern are the cases of people on

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death row who do not benefit from any legal assistance. Cases of illegal transfers from one State to the other without their corresponding files based on orders from senior civilian authorities have been documented and fortunately readdressed following the intervention of the UNMIS **Human Rights** Office. Poor detention conditions and lack of progress in their files causes widespread dissatisfaction among the prison population, as was demonstrated by a prison strike in Rumbek on 19 December.

71. Ill-treatment used to punish suspects and to extract information is widely practised during arrest and in detention by local authorities, chief courts and law enforcement officials. The practice is sometimes performed in public as an example to others. A case in point was witnessed in Malakal, where the customary court sentenced 10 young women to 50 lashes each for public nuisance under section 232 of the Penal Code. The punishment was illegal as it went beyond the limits permitted by Southern Sudanese law.

72. Tribal clashes over water points, land and cattle continue. In Jonglei and Bor, clashes between the Murle and the Dinka Bor were reported on various occasions, resulting in **human** and material loss. Cattle rustling, abduction of children and revenge killings have continued. In one attack, more than 7,000 cattle were reportedly stolen by the Murle in Meden Boma, leading to a subsequent attack by the Dinka on a hospital operated by Médecins Sans Frontières, where some Murle were undergoing treatment. Reports suggest that at least 45 people were killed during the attack. Tension subsequently rose among the population; as a result, Joint Integrated Unit troops were sent to the area. A high-level delegation from the Government of Southern **Sudan** also visited the area to calm the **situation**. The insecurity in the border area between Warap and Unity States resulting from attacks and cattle rustling was reported to have caused the displacement of people.

73. Organized returns were temporarily suspended in Jonglei owing to the insecurity in the area caused by tribal clashes. Concerns over the return of refugees from Uganda and Kenya into the Equatoria States remain as land continues to be occupied by internally displaced persons and SPLA members. The conflict between those claiming the land and those occupying it in many cases appears to be a conflict between ethnic groups. Owing to the gravity of the **situation**, the Central Equatoria Legislative Assembly has established a committee of investigation on land grabbing and malpractices; a draft bill on land tenancy has been submitted to the Ministry of Legal Affairs and Constitutional Development for approval.

74. The lack of respect for economic and social **rights** is of particular concern in Southern **Sudan**. A recent Southern **Sudan** Ministry of Health report showed that the **Sudan** had the world's worst maternal mortality rate: 102 infants in every 1,000 live births die; 13.5 per cent of Southern Sudanese children die before they reach the age of 5; it takes an average of 45 minutes to reach a water source; only 16 per cent of children go to primary school; only 1.9 per cent complete it. Access to basic facilities is further endangered by insecurity in certain areas following tribal clashes, as has been reported on numerous occasions. For example, women are unable to collect water or work in the field where cases of harassment by men in uniform have been reported, while those displaced as a result of the conflict continue to face enormous challenges when attempting to fulfil their basic needs.

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VIII. CONCLUSIONS

75. The protection of **human rights** in the **Sudan** remains an enormous challenge. **Human rights** continue to be violated, including freedom of expression and association. Political opposition parties, journalists, students, internally displaced persons and tribal leaders continue to be targeted because of their activities. This is of particular concern as the country prepares for elections in 2009.

76. In the Darfur region, gross violations of **human rights** continue to be perpetrated. The Government of the **Sudan** has the primary responsibility to ensure protection of civilians. To date, however, the steps taken have been insufficient to have a tangible impact on the ground in Darfur. After all the debates, the **Special Rapporteur** sincerely hopes the deployment of the African Union - United Nations Hybrid Operation in Darfur (UNAMID) will increase security and the protection of civilians in Darfur. Unfortunately, in December 2007, UNAMID was still facing difficulties, including shortages in troops and assets. The Government of the **Sudan** is not facilitating the deployment by opposing some non-African contingents; also, flight clearances and access to land and water have been obstructed. The protection of civilians during armed conflicts is an absolute priority.

77. Justice and accountability continue to be a major challenge, especially with regard to serious crimes. Several investigative committees have been formed following allegations of serious **human rights** violations in the north and in Southern **Sudan**. However, the findings have not been made public and, according to information received, no perpetrators have been prosecuted.

78. The advancement of economic, social and cultural **rights** is going at an extremely slow pace. Widespread poverty and marginalization continue to be sources of political unrest throughout the country. This **situation** is seriously inhibiting the delivery of basic social services, such as health care, education and water supply, especially in Southern **Sudan**.

IX. RECOMMENDATIONS

79. The **Special Rapporteur** reiterates all previous unimplemented human rights recommendations contained in her reports, those of the High Commissioner for Human Rights and of the Group of Experts on Darfur. In addition, she recommends that:

(i) The Government of National Unity:

(a) Continue and intensify efforts to implement the recommendations compiled by the group of experts on Darfur, in accordance with the specified time frames and indicators (A/HRC/5/6, annex I);

(b) Accelerate the implementation of the Comprehensive Peace Agreement and establish the remaining commissions, in particular the national human rights commission, in accordance with the Paris Principles;

(c) Revise national laws to conform with the Comprehensive Peace Agreement, the Interim National Constitution and international human rights standards; priority attention should be given to the National Security Forces Act;

(d) Address impunity and ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are brought to justice promptly, in particular those with command responsibility;

(e) Fully cooperate with the International Criminal Court and the international community to arrest those who are accused of war crimes and crimes against humanity;

(f) Ratify the remaining international instruments for the protection of human

rights, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Rome Statute of the International Criminal Court;

(g) Fully cooperate with the United Nations and the African Union to facilitate the deployment of UNAMID to Darfur and remove any obstacles that may hinder this humanitarian effort;

(ii) The warring factions:

(a) Respect obligations under international human rights law and international humanitarian law, in particular with regard to the protection of civilians;

(b) End all attacks on civilians, including human rights defenders and humanitarian workers;

(iii) The Government of Southern Sudan:

(a) Ensure adequate means and resources are provided to the institutions responsible for the administration of justice and rule of law so as to facilitate a necessary improvement in access to justice, including the provision of legal aid services;

(b) Accelerate the process of legal reform, in accordance with the Comprehensive Peace Agreement, the Interim Constitution of Southern Sudan and international standards of human rights;

(c) Urge the Ministry of Legal Affairs and Constitutional Development and the Southern Sudan legislature to pass the revised enabling legislation for the Southern Sudan Human Rights Commission;

(d) Prevent SPLA interference in the administration of justice, especially in the work of the police and the judiciary, and provide appropriate training to former SPLA members integrated into the institutions of the Government of Southern Sudan;

(e) Address impunity and ensure that all allegations of violations of human rights are duly investigated, the findings of ad hoc commissions made public, perpetrators promptly brought to justice and reparations provided to victims;

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(iv) The international community:

(a) Continue to provide technical and financial support to the Government of National Unity and the Government of Southern Sudan, on the basis of a needs assessment, to fully implement the Comprehensive Peace Agreement and build democratic national institutions for the protection of human rights and the equality of all people in the Sudan;

(b) Support UNAMID politically and financially in accordance with the principle of responsibility to protect those who are not being protected by their own Government;

(v) The United Nations:

(a) Urge UNAMID, in accordance with its mandate, to take the necessary measures to protect civilians, proactively deter attacks on civilians and prevent violations of international human rights law;

(b) Provide support and technical assistance to the Government of the Sudan, in accordance with assessed needs, for the implementation of its obligations under international human rights law;

(c) Provide technical assistance in the area of justice and encourage the Government of the Sudan to ensure that there is no amnesty for war crimes and crimes against humanity;

(d) Ensure that OHCHR and the UNMIS Human Rights Office continue to provide

technical assistance to the Southern Sudan Human Rights Commission.
