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UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

# HUMAN RIGHTS SITUATION IN DARFUR

**In 2013**

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## ACRONYMS

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>AU</b>	African Union
<b>CAT</b>	Convention Against Torture
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>CPA</b>	Comprehensive Peace Agreement
<b>CRC</b>	Convention on the Rights of the Child
<b>CRP</b>	Central Reserve Police
<b>DDPD</b>	Doha Document for Peace in Darfur
<b>DRA</b>	Darfur Regional Authority
<b>ECCC</b>	Extraordinary Court Chambers in Cambodia
<b>FGM</b>	Female Genital Mutilation
<b>GII</b>	Gender Inequality Index
<b>HAC</b>	Humanitarian Aid Commission
<b>HDI</b>	Human Development Index
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDP</b>	Internally Displaced Persons
<b>JEM-B</b>	Justice and Equality Movement-Basher
<b>LJM</b>	Liberation and Justice Movement
<b>MI</b>	Military Intelligence (Sudan Armed Forces)
<b>NGO</b>	Non-Governmental Organization
<b>NHRC</b>	National Human Rights Commission
<b>NHRI</b>	National Human Rights Institutions
<b>NISS</b>	National Intelligence and Security Services
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>SAF</b>	Sudan Armed Forces
<b>SGBV</b>	Sexual and Gender-Based Violence

<b>SLA/AW</b>	Sudan Liberation Army-Abdul Wahid
<b>SLA/MM</b>	Sudan Liberation Army-Minni Minawi
<b>UNAMID</b>	African Union-United Nations Mission in Darfur
<b>UNCT</b>	United Nations Country Team
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## I. Executive Summary

i. This joint report by the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) provides an analysis of the human rights situation in Darfur in 2013, on the basis of the monitoring work carried out by the UNAMID Human Rights Section in all five states of Darfur. The report focuses on the progress made and challenges encountered in addressing human rights issues. UNAMID documented human rights violations on the basis of interviews with victims and witnesses of human rights violations, community leaders, local administration, law enforcement officials as well as interaction with civil society groups. Efforts were made at all times to verify information from independent sources and with state authorities.

ii. The Republic of the Sudan has ratified five out of the ten core international human rights treaties, and the 2005 Sudan Interim Constitution provides for the respect of human rights and fundamental freedoms. However, the human rights situation<sup>1</sup> in Darfur remains of serious concern. Darfur has now experienced 10 years of conflict ranging from inter-communal conflicts, fighting between the Government of the Sudan forces and armed opposition movements, as well as the proliferation of weapons, all of which continue to have a negative impact on the security and human rights of the population in Darfur.

iii. Although some progress was achieved during the period under review, particularly on the legislative, institutional and policy fronts, the general human rights outlook remained bleak, with civilians, including particularly internally displaced persons, bearing the brunt of violence and attacks from governmental forces, armed opposition groups, and inter- and intra-communal conflicts.

iv. The main human rights violations reported in 2013 include violations of the rights to life and personal integrity, sexual and gender-based violence (SGBV), arbitrary arrests and detention, torture and violations of the rights to freedoms of expression, movement, peaceful assembly and association. Impunity remains a serious challenge constituting a threat to the peace process and the prospects of communities living a dignified existence. Despite efforts by the Government of the Sudan to prosecute some perpetrators of human rights violations, especially members of the security forces and military groups, various limitations have prevented effective action.

v. This report aims at assisting all stakeholders, including the Government of the Sudan, the armed groups and the international community to reinforce their efforts to

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<sup>1</sup> The concerns raised in relation to Darfur during the Universal Periodic Review of Sudan, on 10 May 2011, remain relevant.

promote and protect human rights in Darfur as well as strengthen the rule of law and accountability mechanisms. This report formulates recommendations in that regard. In particular, the Government of the Sudan needs to take additional steps towards increasing the presence of the state authority across Darfur, especially in rural areas, in order to ensure protection and promotion of human rights; and strengthening rule of law institutions.

vi. This report should be considered as a baseline report for open and transparent exchanges among stakeholders, and can provide valuable indicators for relevant national and international stakeholders towards addressing issues of common concern and challenges in the promotion and protection of human rights. The 2014 public report, which will focus on addressing impunity and accountability in Darfur, will be issued in the first quarter of 2015.

## **II. Introduction**

1. UNAMID was established on 31 July 2007, in accordance with the United Nations Security Council resolution 1769 and the Communiqué of the 79<sup>th</sup> Meeting of the African Union Peace and Security Council of 22 June 2007. The promotion and protection of human rights form an integral part of UNAMID mandate, which has been renewed and expanded in subsequent resolutions<sup>2</sup>.

2. According to United Nations Security Council resolution 1769, UNAMID is mandated to: contribute to the restoration of necessary security conditions for the safe provision of humanitarian assistance; contribute to the protection of civilian populations under imminent threat of physical violence and prevent attacks against civilians; contribute to the promotion of respect for and protection of human rights and fundamental freedoms; contribute to a secure environment for economic reconstruction and development, as well as the sustainable return of internally displaced persons and refugees to their homes; assist in the promotion of the rule of law; monitor, observe compliance with and verify the implementation of various ceasefire agreements signed since 2004; assist with the implementation of the Darfur Peace Agreement and any subsequent peace agreements, as well as assist in the promotion and attainment of an inclusive political process.

3. The conflict in Darfur erupted in 2003 and has since continued to negatively impact human rights. The present report provides an analysis of the human rights situation in Darfur in 2013, highlighting progress achieved as well as challenges encountered in addressing human rights concerns. The Mission's next report will focus on addressing impunity and accountability. The violations documented herein include violations of the rights to life and personal integrity, sexual and gender-based violence (SGBV), arbitrary arrests and detention, torture, and violations of the rights to freedoms of expression, movement, peaceful assembly and association.

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<sup>2</sup> United Nations Security Council resolutions 1828(2008), 1881(2009), 1935(2010), 2003(2011), 2006(2012) and 2113(2013)

4. The report makes recommendations to support the work of all stakeholders in Darfur, including the Government of the Sudan and other relevant actors involved in the promotion and protection of human rights. This report should be considered as a baseline for open and transparent exchanges among stakeholders, and can provide valuable indicators for relevant national and international stakeholders towards addressing issues of common concerns and challenges. The 2014 public report, which will focus on addressing impunity and accountability in Darfur, will be issued in the first quarter of 2015.

### **III. Methodology**

5. This report is based on the human rights work of UNAMID. UNAMID documented human rights concerns from victims and witnesses of human rights violations, community leaders, native and local administration, law enforcement officials and civil society groups. Documentation of human rights violations in the complex and ever changing conflict in Darfur is fraught with difficulties, particularly regarding access to information and sites of incidents, and the absence of law enforcement agencies and judicial institutions in some areas.

6. UNAMID has undertaken regular communication with the Government of the Sudan and engagement with local authorities, community leaders in localities and IDP camps, and civil society groups. It has nevertheless remained a challenge for the UNAMID Human Rights Section to obtain information from governmental sources. Furthermore, logistical and security constraints continue to hamper UNAMID's ability to optimally operate in Darfur, which impacts the effective fulfilment of its mandate.

7. Many victims of and witnesses to human rights violations are reluctant to report such violations to governmental authorities and UNAMID, mostly due to fear of reprisals, the failure by the authorities to address such reports, social stigma and related cultural barriers. This is particularly the case for victims of SGBV. UNAMID has documented several incidents where social stigma conditioned victims to remain silent or seek redress through traditional mechanisms.

8. Despite these challenges, due care and persistence were devoted to documenting human rights violations. In all incidents identified in this report, unless otherwise stated, efforts were made to obtain testimonies directly from victims of alleged violations, abuses, or attacks. When they were indisposed due to distance, fear to speak, or trauma, secondary sources such as family members, independent witnesses, community and law enforcement officials were solicited. As standard practice of UNAMID Human Rights Section, verification with law enforcement officials such as the police was sought, where possible, without prejudice to the protection of victims and witnesses. Due to the dynamics of the Darfur conflict and limitation of access to victims and sites of incidents, UNAMID assesses the veracity of allegations based on the balance of probability.

9. There were instances when, due to mobility difficulties or degenerating security conditions, it was not feasible to undertake verification missions. In these instances, the UNAMID Human Rights Section documented incidents and sought third party verification. Third party sources, though less dependable, were in some cases helpful in providing crucial leads and accounts, allowing the Human Rights Section to make critical follow up on alleged violations.

10. In cases of SGBV, in addition to victims' accounts, testimonies from medical sources were sought and proved valuable in verifying deaths, injuries, assault, and violence of a sexual nature. Most victims who were hospitalised as a result of injuries suffered from attacks and other violations were interviewed upon obtaining their consent and permission from attending relatives in the case of minors, and medical doctors or nurses, or competent authority. Interacting with victims of human rights violations in a hospital setting could be fraught with difficulties ranging from confidentiality to reluctance of victims to speak.

11. In the documentation of violations, the UNAMID Human Rights Section took all necessary measures to prevent any breach of confidentiality and undue exposure through a witness protection framework. First, consent from victims was sought and, in the case of minors, approval obtained from parents or guardians. Second, during interaction with victims and witnesses, the Human Rights Section has always emphasised the imperative of seeking redress from existing judicial and law enforcement mechanisms. Third, witnesses and victims have been adequately oriented on the role of community leaders and the possible support they and institutions can provide.

#### **IV. Context**

12. The Darfur region is situated in the western part of the Sudan with a population of about 7 million people covering an area of 493,180 square kilometres. The population is made up of about 100 ethnic groups with diverse cultures and traditions. The administrative structure of Darfur is divided into five states: West Darfur; East Darfur, Central Darfur, North Darfur and South Darfur, each with state-level Governors (Walis) and state-level Ministries. In the wake of the peace agreement signed in July 2011, the administrative system in Darfur was transformed into the Darfur Regional Authority (DRA) with executive and legislative functions. The DRA is headed by a chairperson who reports to the President of the Sudan. Parallel to these structures, but with lesser authority, is the native administrative system comprising traditional leaders, with limited, though influential spheres of authority. The functionality of the Darfur administrative structures has been greatly affected by the conflict.

13. The conflict in Darfur has been on-going since February 2003, initially involving governmental forces and armed opposition groups as the main belligerent actors. Over time, the conflict has acquired new dimensions with the participation of other smaller militia groups with shifting loyalties. The frequency, severity, and unpredictable nature of hostilities between governmental forces and armed opposition groups have resulted in the constant mutation of the conflict, affecting vast expanses of geographic space in the five

states of Darfur. The conflict has had an enormous impact on civilians, who have been facing human rights violations as well as severe and sustained humanitarian problems.

14. In 2006, the Government of the Sudan and the Sudan Liberation Army/Minni Minnawi (SLA/MM), splinter of the Sudan Liberation Army, signed the Darfur Peace Agreement (DPA) whose primary aim was to end the conflict and pave the way for durable and inclusive political order. However, thus far, the agreement has failed to yield results and the conflict continues to rage with impunity. The peace process is currently underpinned by the Doha Document for Peace in Darfur (DDPD), which was signed between the Government of the Sudan and the Liberation and Justice Movement (LJM) as well as the Bashir faction of the Justice and Equality Movement (JEM/Basher). The slow implementation of the DDPD is causing concerns and may aggravate the already unpredictable security conditions.

15. Governmental law enforcement forces have been periodically attacked by armed movements and criminal groups in different states of Darfur. This has contributed to a rise in criminality which has further affected the security and movement of civilians. Attacks by armed groups have also impacted the capacity and willingness of the Government to deploy law enforcement institutions, judicial and other social services in some parts of Darfur.

16. UNAMID operations have been impacted by the tense and precarious security situation and increase in criminality. UNAMID lost 16 peacekeepers in 2013 in 13 attacks/ambushes. Most of the latter occurred during regular patrols or military escorts of civilian staff conducting field missions and delivering humanitarian aid. UNAMID properties have also been subjected to attacks. Carjacking remains a major problem, with 16 UNAMID vehicles carjacked in 2013. The intervention of governmental authorities allowed UNAMID to recover two vehicles. These threats and attacks have had an impact on the work of the UNAMID Human Rights Section in that critical operations and verification missions requiring prompt movement of personnel were sometimes delayed or rescheduled in line with United Nations security requirements.

17. The duration of the conflict has affected the means and methods of livelihoods, which are predominantly agricultural farming and cattle grazing, forcing about 3.2 million Darfuris to be dependent on humanitarian aid. In addition, the protracted and shifting paradigms of the conflict have been major catalysts of social destabilisation, accentuated by regular inter-communal skirmishes, mostly over control of economic resources and access routes to farm lands.

18. The humanitarian impact of the conflict is severe, with an estimated<sup>3</sup> 1.8 million people displaced in 10 years, both internally and as refugees in neighbouring countries, such as Chad and Central Africa Republic. Similarly, the primary sources of livelihood of Darfuris have been severely affected or destroyed, including farming activities. In 2013, according to OCHA, 1.4 million IDPs received humanitarian assistance. In 2013 there were

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<sup>3</sup> OCHA.

380,000 newly displaced persons, the highest annual number of IDPs recorded since the conflict erupted in 2003. According to statistics verified by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations High Commissioner for Refugees (UNHCR), the number of returnees to Darfur in 2013 was 36,406; 16,935 of the returnees were refugees, while 19,471 were IDPs. OCHA figures indicate that 140,427 and 109,211 returnees had been registered in 2011 and 2012 respectively. All these issues have collided to pose challenges and contribute to breaches of human rights law.

19. Humanitarian assistance in Darfur has declined since 2009, largely due to a drastic reduction in the number of aid workers. As of 30 November 2013, 6,850 aid workers in international organizations were active in Darfur compared to 35,000 in 2007. Sudan's low Human Development Index<sup>4</sup> (HDI) ranked the country at 171 out of 186 in 2013. On the Gender Inequality Index (GII), the Sudan fared poorly and ranked 129 out of the 148 countries assessed in 2012, with a value of 0.604.<sup>5</sup> Concerns on infringement of economic and social rights were regularly expressed to UNAMID teams who visited IDP camps or local communities.

## **V. Legal Framework**

20. The Sudan has ratified five out of ten core international human rights conventions: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Rights of the Child (CRC) and its First Optional Protocol on the involvement of children in armed conflict; the Convention to the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. The Sudan is not party to the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and its Optional Protocol; the Convention for the Protection of All Persons from Enforced Disappearance; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

21. The Sudan ratified regional human rights treaties such as the African Charter of Human and Peoples' Rights (ACHPR) and signed the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and

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<sup>4</sup> The 2013 Human Development Report was released on 14 March 2013. The Human Development Report Office releases four indexes each year: the Human Development Index (HDI), the Inequality-Adjusted Human Development Index, the Gender Inequality Index (GII), and the Multidimensional Poverty Index (MPI). The data used in these indices and other human development indicators are provided by a variety of public international sources and represent the best and most available statistics available at the time of the preparation of the report. Sudan's ranking was the same in 2012.

<sup>5</sup> Netherlands ranked 1<sup>st</sup> in the Gender Inequality Index (GII), scoring 0.0045 value; while Yemen which ranked last (148th), with a 0.747 value. The GII looks at disadvantages due to inequality between males and females; females are often discriminated against in health, education and the labour market.

Peoples' Rights on 9 July 1998. It ratified the Constitutive Act of the African Union 22 November 2000, and is a founding member of the Intergovernmental Authority on Development.

22. The Sudan has ratified three of the four Geneva Conventions of 1949, and the two 1977 Protocols Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts, and relating to the Protection of Victims of International Armed Conflicts. It also ratified the Optional Protocol on the involvement of children in armed conflict, with reservations.

23. The 2005 Interim National Constitution<sup>6</sup> of the Sudan is based on the 2005 Comprehensive Peace Agreement<sup>7</sup> and the 1998 Constitution of the Republic of the Sudan. According to Article 27(3) of the Interim National Constitution, all international human rights treaties ratified by the Government of the Sudan form an “integral” part of the Bill of Rights of the Constitution. In addition, the DDPD which was signed by the Government of Sudan and some armed opposition groups and articulates the road map for peace and development in Darfur, incorporates strong provisions on human rights and international humanitarian law.

24. Following South Sudan's independence, a constitutional review process to adopt a new constitution to replace the 2005 Interim National Constitution was announced. During the Universal Periodic Review (UPR) process in 2011,<sup>8</sup> the Government of the Sudan accepted several recommendations in respect of the constitutional review process and legislative reform as part of its action plan to implement the UPR recommendations.<sup>9</sup> These recommendations included, *inter alia*, drafting the constitution in an inclusive process, with the participation of civil society, women, and minorities; ensuring that the new Constitution include a catalogue of human rights, in particular freedoms of speech and assembly, and that it will take the multi-ethnic and multi-religious background of the population into account.

25. The Sudan's Armed Forces Act of 2007 provides regulations and guidance on the conduct of military personnel. Articles 7(1 b) and (1 c) on the organization and functioning of the Sudanese Armed Forces requires that the forces comply with human rights and international humanitarian law, while Article 155 imposes penalties on attacks by the Sudan Armed Forces (SAF) on civilians. According to internationally acceptable standards,<sup>10</sup>

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<sup>6</sup> The Interim National Constitution entered into force in July 2005. It was enacted to provide for the democratic and human rights provisions of the Comprehensive Peace Agreement (CPA) and was intended to cover the interim period in the peace process as laid out in the CPA. A new Constitution for Sudan following the independence of South Sudan in 2011 is yet to be drafted.

<sup>7</sup> The Comprehensive Peace Agreement was signed in January 2005 between the Government of Sudan and the southern-based Sudan People's Liberation Movement (SPLM), putting an end to a 22-year civil war.

<sup>8</sup> Sudan's UPR was held on 11 May 2011, two months before South Sudan's declaration of independence on 9 July 2011.

<sup>9</sup> See para 83(19), A/HRC/18/16; paras. 15, 33, A/HRC/18/16.Add.1

<sup>10</sup> United Nations Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979 (Resolution 34/169), as well as the United Nations Basic Principles on the use of force and firearms by law enforcement officials, adopted by the 8th United Nations Congress on Crime Prevention and Criminal Justice, Havana, 27 August to 7 September 1990.

recourse to force, and in particular to firearms, must be proportionate and in accordance with the principle of "a graduated response." Furthermore, according to the Sudan's Armed Forces Act of 2007, "the Military Prosecution Bureau shall conduct inquiry of any contravention, or offence, upon the directions of the military authority, within jurisdiction of which the contravention has occurred, or upon the directions of any higher authority."<sup>11</sup> An Order<sup>12</sup> of the Commissioner General of the Police No 57/2007 as per the Police Forces Act of 1999 provides guidelines under which police officers can be charged for offences committed.

In 2013, an amendment was made to the Armed Forces Act of 2007 which extended the jurisdiction of the military court to include the power to try civilians accused of involvement in criminal activities against the SAF or collaborating with an enemy engaged against the SAF. A major concern will be the implications on access to justice and on the right to fair trial of this amendment.

26. Subsequent to the ratification of the CRC, the Government of the Sudan amended the Child Act<sup>13</sup> in compliance with international standards. Yet the Act was passed after the deletion of clauses that would have criminalized female genital mutilation. Thus important elements of the CRC have not been reflected in domestic law.

27. Some positive initiatives were taken at the state levels in Darfur. For instance, the South Darfur State Legislature passed the South Darfur State Child Act 2013 in a bid to address gaps in the Child Act 2010, by criminalizing FGM in South Darfur. Differences in the understanding and implementation of the Child Act at federal and state levels generate discrepancies that affect the protection of children.

28. International standards pertaining to SGBV in conflict and post-conflict situations draw from an array of international human rights instruments providing safeguards for survivors, especially women and girls. Acts of sexual violence may be defined as torture if they fulfil the definition under international law or as a crime against humanity, or even as a war crime and constituent of an act of genocide. Nevertheless, the Sudan has not yet ratified CEDAW, nor the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which expressly refers to the "Protection of women in Armed Conflicts" (Article 11). However, under the United Nations Declaration on the Eliminations of Violence against Women (DEVAW),<sup>14</sup> which was adopted by the General Assembly in 1994, all Member States of the United Nations are committed to pursue by all appropriate means and without delay a policy of eliminating violence against women. Furthermore, the 1995 Beijing Platform of Action included women in armed conflict

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<sup>11</sup> Armed Forces Act of 2007; Article 76, "Power to order inquiry".

<sup>12</sup> Issued on 31 July 2007, by then Commissioner General of Police Forces.

<sup>13</sup> The Child Act of 2010.

<sup>14</sup> The Declaration in Article 2, defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life," which should be understood as including physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs." United Nations Committee on the Elimination of Discrimination Against Women, General Recommendation 19: Violence Against Women, ¶ 6, U.N. Doc. A/47/38 (Jan. 29, 1992).

among its 12 critical areas of concern, and specified forms of sexual violence against women that violated the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy.<sup>15</sup>

29. Building on the international standards developed by these Conventions and Declarations, more recent definitions of rape in international instruments have attempted to expand definitions of SGBV, such as rape with a foreign object, that were outside of erstwhile conceptions.

30. The Sudan's national legislation addresses SGBV offences. The Rules of Application of Criminal Circular No 2<sup>16</sup> of the Sudanese criminal justice system provides guidance and encourages victims of SGBV to file complaints, protects healthcare workers providing assistance to victims of SGBV, and recommends expeditious assistance to victims. While this has helped victims of SGBV to access treatment, the negative effects of socio-cultural stigmatization associated with rape remains a challenge that deters many victims of SGBV-related offences from seeking redress. Although the Government of the Sudan has demonstrated its will to address these concerns, major steps need to be taken to further amend national laws so that they fully comply with relevant international standards, with emphasis on protection against all forms of violence against women.

31. Sudan's Criminal Code (Amendment) Act of 2008, amended the 1991 Criminal Code and incorporated "Offences against Humanity, Genocide Offences and Offences pertaining to War" wherein SGBV related offences are criminalized. Articles 187 (g, h, i, j and k) and 189 (f, g, i) relate to SGBV and provide for sentences ranging from "death, life imprisonment or any lighter penalty..."<sup>17</sup>The enforcement and compliance with these amendments require not only the willingness of the Executive and Legislative bodies, but also a highly trained and well-resourced judicial system including a well-functioning and effective bar association.

32. At present there are 405 practicing lawyers<sup>18</sup> for a population of 7,515,445 million<sup>19</sup> in Darfur. This low number of legal experts underlines the issue of inadequate legal representation, especially for rural communities. While several factors could explain this low number, the Darfur Bar Association has suggested that the conflict and hostile terrain it creates make it unattractive for lawyers to practice in Darfur, forcing many to ply their trade in Khartoum and elsewhere in the Sudan. However, the University of Nyala established the law faculty in 2003 and the law centre in 2013, and the University of El Fasher in North Darfur established the faculty of law in 2005 giving graduating students an opportunity to consider legal careers in Darfur.

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<sup>15</sup> The Fourth World Conference on Women, Beijing, Sept. 4– 15, 1995, *Report of the Fourth World Conference on Women*, ¶ 114, U.N. Doc. A/CONF.177/20/Rev.1 (Sept. 15, 1995).

<sup>16</sup> Signed on 24 October 2005 by then Minister of Justice, Mohammed El Mardi.

<sup>17</sup> Sudan's Criminal Code (Amendment) Act of 2008.

<sup>18</sup> 112, 14, 52, 197 and 30 in North, Central, West, South and East Darfur states respectively.

<sup>19</sup> According to the Sudan's 2008 National Census.

33. Subsequent decisions by the Sudan's Constitutional Court have raised doubts as to the validity of sections of the Criminal Procedure Code. In one such instance, the Constitutional Court issued decisions on the basis of Article 135 of the Criminal Procedure Code of 1991 prior to the coming into force of the National Interim Constitution, which incorporates international human rights conventions into the Sudanese legal system. This means, *inter alia*, that the validity of Section 135 of the Criminal Procedure Code remains doubtful, because international human rights conventions, namely the ICCPR, oblige states to provide legal aid to the accused. It is important that Article 135 of the Criminal Procedure Act be amended in line with the Interim National Constitution. Some states in Darfur have introduced legal aid centres along with Prosecution Offices. In addition, a decree was issued in 2010 cancelling court fees for litigants who are economically unable to afford them.

34. Another critical area in line with Interim National Constitution is the legal structure of the security sector, especially, the National Security Act of 2010, the Armed Forces Act of 2007 (renewed in July 2013) and the Police Act of 2008. The National Security Act 2010 gives the National Intelligence and Security Services (NISS) powers provided in the Police Act of 2008 as well as the Criminal Procedure Act 1991. These powers contravene the principal advisory role of the NISS as established in the Interim National Constitution of 2005 specifying the main mandate and mission of the NISS as "*information gathering, analysis and advice to appropriate authorities.*"<sup>20</sup>

35. The NISS Act provides NISS personnel with powers to arrest and detain any suspected person for a period of up to 30 days provided that his/her relatives are immediately informed, without any requirements for a judge or prosecutor to be informed. The Director of the NISS can extend the detention period for an additional 15 days with the purpose of completing investigation and enquiry at the Director's discretion. If the Director considers the detainee as a suspect of a crime against the state, the Director is obligated to refer the issue to the National Security Council, which may extend the detention period for not more than three months.<sup>21</sup> A competent prosecutor, charged with the inspection of the NISS detention centres is to be appointed by the National Minister of Justice. At the time when this report was being written, nominations for such competent prosecutors for the five Darfur States had not been completed. UNAMID will continue to engage the Government of the Sudan on the need for further reform to its national security legislation so as to strengthen the mechanisms for the protection of human rights in line with international human rights standards.

36. On 2 July 2013, Sudan's parliament adopted an amendment to Sudan's Armed Forces Act 2007, which granted extended powers to the military courts to try civilians in relation to offences under its jurisdiction. The scope of the Act and the amendment are incompatible with Sudan's Interim National Constitution and international human rights standards.

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<sup>20</sup> Article 151 (1) (3) of the Interim National Constitution of 2005

<sup>21</sup> Article 50 of the National Security Services Act

37. Darfur continues to be under a State of Emergency pursuant to Sudan’s Emergency and Public Safety Protection Act of 1997. However, Article 48 pertaining to the “Sanctity of Rights and Freedoms” as well as Article 211 of the Sudan Interim National Constitution (INC) of 2005 guarantee the inviolability of the rights and freedoms enshrined in this instrument. Further, the Interim National Constitution expressly stipulates that certain fundamental rights cannot be infringed upon in a declared State of Emergency, such as the right to life, freedom from slavery, torture, discrimination, and the right to a fair trial.

38. In 2013, reportedly due to rising insecurity, criminality, and inter-communal conflicts, further emergency orders were declared in Kutum and El Fasher in North Darfur, and in Zalingei, Central Darfur, by the Walis (Governors) of each State. In some cases, such emergency orders, typically invoked in the interest of stabilizing volatile situations impeded the enjoyment of the right to freedom of association as well as the right to freedom of peaceful assembly.

## **VI. Human Rights Situation**

39. Human rights violations were carried out with impunity during the period under review. Perpetrators within the SAF, the Police, the Central Reserve Police, Border Guards, and pro-government paramilitary forces accused of human rights violations are rarely brought to justice. In addition, violations were perpetrated by armed opposition groups whose belligerent activities continue to cause deaths, injuries, SGBV, destruction of property and mass displacement of civilians.

### **1. Violations of the Right to Life**

40. Article 6 (1) of the ICCPR states that every human being has the inherent right to life and that this right shall be protected by law. This article also states that no one shall be arbitrarily deprived of his or her life. According to the Human Rights Committee, the right to life is “a supreme right from which no derogation is permitted.”<sup>22</sup> Article 9 of the ICCPR recognizes and protects both liberty and security of person. In accordance of the jurisprudence of the Human Rights Committee “liberty of person concerns freedom from confinement of the body”<sup>23</sup> and “security of person concerns freedom from injury to the body, or bodily integrity.”<sup>24</sup> These rights are also protected by articles 28 and 33 of Sudan’s Interim National Constitution of 2005. Furthermore, article 48 of Sudan’s Interim National Constitution indicates the non-derogability of these rights. It is worth noting that the Government of Sudan has obligations with regard to the action of its forces, under the above articles of the ICCPR. According to the Human Rights Committee, “Member States must [...] prevent arbitrary killing by their own security forces.”<sup>25</sup> Thus, any threat to life and or related intimidation, which puts people at risk, necessitates action by the Government to prevent any such violation.

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<sup>22</sup> Human Rights Committee, General Observation No. 6: Article 6 (Right to life), para. 1.

<sup>23</sup> 854/1999, *Wackenheim v. France*, para.6.3.

<sup>24</sup> 613/1995, *Leehong v. Jamaica*, para. 9.3.

<sup>25</sup> Human Rights Committee, General Observation No. 6: Article 6 (Right to life), para. 3.

41. In 2013, UNAMID verified and documented the killing of 514 civilians, mainly linked to the on-going conflict. However, information on various other cases of violations of the right to life could not be verified due to inaccessibility of sites and witnesses, victims, families or witnesses' unwillingness or fear to share information and file complaints, or difficulties in verifying and eliciting information from state authorities in relation to alleged violations. Difficulties in identifying perpetrators have posed challenges to accountability processes.

42. On 15 March 2013, UNAMID received information that following a clash with rebels in Um-Gunya, SAF personnel<sup>26</sup> reportedly shot and killed four IDPs and injured two others in Al Salam IDP camp in South Darfur. The six IDPs were reported to have cheered at the SAF contingent that was passing by, which was mistakenly perceived as a sign of support to the rebels. Governmental officials have held armed opposition groups responsible for the killings.

43. On 9 June 2013, a SAF convoy on routine patrol in the town of Nertiti was reportedly attacked by an unidentified armed group at about 200 metres south of the North IDP camp in Nertiti. During the attack, one SAF soldier was killed and five others injured. In response to the attack, the SAF attacked the North IDP camp twice during the same night and fired randomly toward the IDP camp, killing a male IDP and injuring three others. Twenty-one structures were set ablaze. Although during UNAMID verification exercise governmental authorities disclosed that an investigation was being carried out in relation to the attack on the North IDP camp, no further actions were known to have been taken at the time of publishing this report.

44. According to the information-gathering methodology outlined above, evidence indicates that aerial bombardments by governmental forces added to civilian casualties and destruction of property. On 17 August 2013, a SAF logistics convoy was immobilised in the mud between El-Fasher and Nyala. While the convoy was awaiting support, the SAF bombarded the area, especially East Jebel Marra on 17 and 18 August, reportedly to secure it. According to information gathered by UNAMID based on witness accounts, the bombing resulted in an unconfirmed number of civilian deaths. The bombardment of the area, which was not a military target, and reported killing of civilians may amount to gross human rights violations as well as serious violations of international humanitarian law.

45. The UNAMID Human Rights Section also documented killings resulting from attacks on villages by armed opposition movements. Such cases were documented in Graidia, Muhajeria, Kile Muzu<sup>27</sup> and Abu Ajaras in South Darfur. Intentional attacks by organized armed opposition groups on civilian persons and targets may constitute gross violations of human rights and/ or serious violations of international humanitarian law.

46. Since the start of the conflict, civilians have been indirect victims of fighting between governmental forces and armed opposition movements. For instance, on 6 and 16

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<sup>26</sup> Um Gunya is located approximately 85 km south east of Nyala, capital of South Darfur.

<sup>27</sup> Kile Muzu village is located 45km southeast of Graidia town in South Darfur State.

April 2013, clashes between the Government of the Sudan and SLA/MM resulted in killings and injuries of an unknown number of persons and the displacement of approximately 15,000 people to various locations, from Labado in Yassin locality and Muhajeria in Sheria locality of South Darfur. According to witness, nine male civilians were reportedly abducted by governmental forces, remained missing as of November 2013 and there was fear that they may have been executed.

47. UNAMID's protection capacity was also seriously undermined by attacks in Muhajeria on 18 and 19 April, resulting in the killing of one peacekeeper and injuring of two others. Investigations indicate that the attack was launched by SAF allied militias and this is proven by the fact that on 19 April, a group of Government of the Sudan military personnel came to the Team site and demanded blood money for the death of one of their officers during the attack. The government initially withheld a consignment of UNAMID's weapons that were to be deployed to the Team site in Muhajeria, seriously undermining the protection mandate of the Mission.

48. Several cases of human rights violations targeting IDPs, including violations of the right to life, were reported during the farming season when some of the IDPs seasonally return for farming. In one instance, in Birmedina, East of Mornei, a 50 year-old male Massalit IDP was allegedly shot and killed by armed Arab juveniles. Reportedly, they accused the family of having complained about crop destruction. The victims described the alleged perpetrators as unknown armed persons when they were filing cases at the local police stations.

49. Witnesses reported to the UNAMID Human Rights Section that perpetrators in many of the cases were unidentified armed men in military uniform. The availability and use of military uniforms by various armed groups makes it difficult for victims and witnesses to identify their attackers. In West Darfur, UNAMID gathered information from witnesses who suggested that in 17 cases of killings, the alleged perpetrators were armed Arab men in military or civilian clothes.

50. The documented aerial bombardments by the SAF have led to civilian casualties and injuries. On 11 November 2013, a governmental official disclosed to UNAMID the injury to 10 nomads, following SAF bombing of a nomadic camp at Hajer Dabak, about 40 kilometres northwest of Shaeria, East Darfur. The official reported that he had contacted senior governmental authorities to request that the incident be investigated, and reiterated the need for compensation for victims and punitive actions against the pilots who carried out the bombings. On 3 April 2013, UNAMID interviewed two victims who reportedly fled from Um-Gunya following an alleged SAF aerial bombardment of 20 villages on 14 and 15 March 2013. The victims, one of whom was pregnant at the time, disclosed that they lost most of their property and that many wounded civilians had taken refuge in Um-Gunya Wadi<sup>28</sup> and were unable to reach Nyala for medical attention.

51. The proliferation of arms across Darfur has exacerbated the climate of insecurity. UNAMID continued to receive reports that many armed groups and unidentified armed

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<sup>28</sup> *Wadi* is Arabic for river bed.

persons were seen carrying heavy weapons such as AK-47 rifles and rocket-propelled grenade launchers, which are prohibited for personal possession, except by governmental regular forces.<sup>29</sup> The relatively easy acquisition and possession of these deadly assault weapons has contributed to unleash violence and aggravate skirmishes between groups, posing a great risk to civilian life and property.

## **2. Violations of Right to Physical Integrity**

52. The “right to physical integrity”, as guaranteed in Articles 6, 7 and 8 of the ICCPR, encompasses protection against attacks to personal security, life and or related intimidation or attack. Every State has the obligation to prevent and protect its population from such violations and attacks.

53. In 2013, UNAMID recorded 212 cases of violations of the right to physical integrity involving 689 individuals, and that include abductions, physical assaults, and armed attacks on civilians, particularly IDPs, causing injury or death. In most cases, abuses were perpetrated by persons whose identities and affiliation remain difficult to ascertain, while in other instances identities of perpetrators were established. On 24 March for example, 31 IDPs (7 women) from the Wadi Saleh, Mukjar and Mornei/Azoum areas travelling on three buses from Zalingei (Central Darfur) to Nyala (South Darfur) were taken captive by a group of armed men in the Arga area.<sup>30</sup> UNAMID was escorting the convoy of buses when the incident occurred. The IDPs were on their way to an IDP Conference in Nyala. Media reports quoted the Sudan Liberation Army-Abdul Wahid (SLA/AW) as claiming responsibility for the act. The SLA/AW also asserted that the IDPs were “arrested” because they were not IDPs but Government security personnel pretending to be IDPs.

54. Witness reports and first-hand assessments have indicated that various factors have contributed to violations of the right to physical integrity in the context of the on-going conflict. The widespread illegal possession of arms, disproportionate and indiscriminate use of force by the SAF, armed opposition groups and other security forces, insufficient oversight and accountability mechanisms within the security forces and armed opposition groups, weak chain of command, and conflict over control and ownership of natural resources, are all important elements which generated violence.

55. On 26 November 2013, witnesses reported to the UNAMID Human Rights Section that a group of Central Reserve Police (CRP) had opened fire at a wedding in Zamzam IDP camp, in El Fasher, which resulted in injuring nine persons. According to witnesses, one male victim was shot at point blank range. Two other persons were injured following a row with two CRP members. Six other persons were injured by another group of CRP members who opened fire on an ambulance which had been called to the scene for medical evacuation. UNAMID was subsequently informed by governmental officials that two of the alleged perpetrators were arrested and investigations were underway. As of the date of this report, none of the perpetrators were known to have been prosecuted.

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<sup>29</sup> Article 10, Sudan Arms, Ammunitions and Explosives Act of 2001

<sup>30</sup> Arga is located approximately 25km south of Nertiti, South Darfur

56. In December 2013, in West Darfur, a Tama man was shot and injured by members of the Border Guards who reportedly accused the victim of stealing Border Guards' agricultural equipment, which the victim denied.

57. In December 2013, a group of 15 armed men in military uniform believed to be members of JEM-Bashar,<sup>31</sup> attacked a commercial vehicle in Edwa village, 76 kilometres northeast of El Geneina in West Darfur, causing injuries to six civilians.

58. On 30 March 2013, witnesses reported that heavily armed pro-government militia in 15 Land Cruiser vehicles equipped with mounted machine guns, looted several shops in the market in Nyala, South Darfur. A merchant confirmed to UNAMID that the group of pro-government militia, which arrived in Nyala in the last week of March 2013, had been harassing civilians, especially in the market, by stealing goods and robbing shops.

59. UNAMID received reports from IDPs from different camps in Darfur of continued harassment by armed persons inside IDP camps, in farms, during firewood collection and during other livelihood activities. One IDP man was shot and seriously injured on 14 December 2013 in south of Kerenek, West Darfur, when he tried to intervene and save three IDP women being sexually assaulted by two armed Arabs. Several IDP camps reported armed robberies some of which resulted in injury. The pattern suggested that the IDPs were targeted due to their vulnerability. Generally, the perpetrators of such armed attacks and robberies were unidentified. The IDPs have regularly reported the futility of attempts to exercise their rights to effective remedy through the formal justice process. The IDPs further alleged that no action is taken to investigate cases reported to police.

### **3. Sexual and Gender-Based Violence**

60. In 2013, UNAMID documented 156 SGBV cases involving 162 victims. These cases included rape, gang-rape, attempted rape, and sodomy. UNAMID investigations indicate that documented cases are a fraction of the actual number of SGBV incidents in 2013. There is indeed considerable under-reporting of SGBV cases due to victims' fear of reprisals, of social stigmatization, and distrust in the ability or willingness of the police to take appropriate actions. In addition, there is the issue of geographic isolation of some victims who live in areas where there are no police or judicial services, such as in the localities of Kutum, Saraf Omra, Korma, and Tawilla in North Darfur. When victims and their family members have sought appropriate remedies, the police frequently refused to register the complaints. This failure on the side of the police to register SGBV cases can be attributed to various factors, including lack of capacity and lack of willingness to take action against alleged armed perpetrators who may belong to influential groups.

61. Lack of systematic action on reported cases of SGBV continue to be reported. These cases often take place outside camp settings, when IDP women and girls venture out to engage in various livelihood activities such as farming, firewood collection, grass cutting. Girls have faced a higher level of risk than women. Trends in Darfur indicate that perpetrators of SGBV are often in groups and usually armed. There are also reported

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<sup>31</sup> A signatory to the Doha Document for Peace in Darfur (DDPD).

instances of perpetrators wearing uniforms and reportedly from different ethnicities than the victims.

62. The increase in frequency and spread of inter-communal clashes in Darfur has added to the risk of exposure and vulnerability of civilians to SGBV, especially women IDPs. Cases reported to UNAMID indicate that incidents of SGBV mainly happen during inter-communal fighting, hostilities between government forces and armed opposition movements, and during counter insurgency operations.

63. In addition, there have been several instances where SGBV cases were reported to have occurred inside IDP camps. Overcrowding in IDP camps, which forces people to live in very confined and intimate spaces, may have in some way contributed to the rise in SGBV cases. Due to the unpredictable security conditions in Darfur and the constantly changing nature of the conflict and the rise in civilian displacements, there is concern that cases of SGBV within IDP camps will increase.

64. While the identification of alleged perpetrators has generally been a challenge, many victims and witnesses have described signs, such as facial markings associated with specific ethnic groups, accent, posture, and physique, in attempts to indicate the identity of the alleged perpetrators. SGBV cases brought to the attention of UNAMID are documented but often not investigated and therefore do not advance in the judicial system, adding to the distrust of civilians and furtherance of impunity related to these violations.

65. In order to deal with this issue, UNAMID and other United Nations entities have been conducting awareness campaigns on various aspects of SGBV. These capacity building and promotional activities were undertaken with governmental security forces, prison officials, medical personnel, prosecutorial staff, rural court judges, and other stakeholders. UNAMID continued to strengthen its reporting mechanism and procedures in the context of SGBV in collaboration with the State Committee on SGBV and the United Nations Country Team (UNCT) partners. The referral pathway, in its present format, is not conducive to victims being able to see appropriate forms of redress.

66. One of the key challenges victims of SGBV face in accessing the formal justice system is the requirement to complete Form 8<sup>32</sup> even though, in 2004, the Federal Ministry of Justice issued Criminal Circular No.2, which allows victims of SGBV to access medical help and register cases without being subjected to the mandatory Form 8 procedures. The Criminal Circular No.2 was further clarified and validated by Rules of Application of the circular issued by the Federal Ministry of Justice in 2005. Despite nearly a decade, some SGBV victims still face this issue of completion of Form 8 procedures before any medical or criminal justice help can be provided.

67. UNAMID and other stakeholders have been conducting advocacy and sensitization with police authorities and medical personnel to contribute to the promotion of victims'

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<sup>32</sup> Form 8 is used by Sudan Police to obtain medico-legal opinion regarding a crime from an authorized government medical expert.

rights, especially in the context of SGBV. UNAMID has facilitated the distribution of Form 8 at police stations in Darfur to help ease of access by victims of SGBV.

68. Another obstacle for SGBV victims seeking remedy is that the burden of proof or responsibility for providing evidence is still expected of them. This discourages victims to seek appropriate redress. In a number of cases in which governmental security forces, such as the military and the police, have been involved, traditional dispute resolution methods have been used to settle the cases. The social stigma associated with SGBV cases, especially for unmarried young women, influences the families of victims and community leaders to deny or suppress evidence pointing to SGBV.

69. Victims of SGBV face other challenges such as inadequate or expensive medical care, lack of psychosocial support, and limited legal assistance and legal aid. This is particularly problematic for victims living in remote villages and localities with no access to basic medical services. In the few cases where victims have received medical treatment, the local health services could not provide specialized medical treatment, such as Post Exposure Prophylaxis (PEP) against HIV infection, preventative drugs against Sexually Transmitted Infections (STIs), and unwanted pregnancy emergency pills, which UNFPA provides through the Ministry of Health. Given that most of these treatments are time-sensitive, victims are exposed to risks of long-term and chronic infections and unwanted pregnancy. The lack of awareness by victims of SGBV issues and unavailability of required medicines, weak referral mechanisms in health centres, as well as the low numbers of trained medical personnel are some of the main challenges in addressing the health related problems of SGBV.

#### **4. Arbitrary Arrests, Detention and Torture**

70. In 2013, UNAMID documented 26 alleged incidents of arbitrary arrest and illegal detentions involving 42 persons in the NISS and the Military Intelligence detention cells.<sup>33</sup> UNAMID reports indicated that detainees were often held incommunicado in very confined and unhygienic conditions.

71. In the Sudan, a number of state security forces are legally granted powers of arrest and detention. There are issues of concern regarding the nature and scope of these arrest and detention powers, and their compatibility with international human rights laws. While there are some procedures in respective legal instruments providing for the protection of rights of arrested and detained persons, UNAMID has observed that arrests and detentions in Darfur do not often systematically comply with these procedures established by Sudanese law, particularly in the context of national security policies and the armed conflict.

72. Reports indicate that the NISS and the Military Intelligence continue to arbitrarily arrest and detain civilians without providing access to judicial remedies. UNAMID

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<sup>33</sup> It is worth noting that due to difficulties in access to detainees, UNAMID often interview victims well after their release from detention.

gathered information that the NISS have often conducted arrests and detentions on charges of provocation and disobedience causing instability. UNAMID further gathered that arrests carried out by the Military Intelligence were mostly conducted on the suspicion that those being arrested were part of or collaborating with armed opposition groups. Governmental officials have often argued that the powers under the Emergency and Public Safety Protection Act of 1997 are not being used, and that arrests and detentions are generally made under the NISS Act of 2010 and the Criminal Act of 1991. The continued existence of a State of Emergency in Darfur and the slow pace to repeal the Public Safety Protection Act of 1997 have a negative impact on adherence to due process and judicial guaranties.

73. UNANMID received a report that in April 2013, a male IDP was arrested by the NISS personnel in Zalingei, Central Darfur. His family was not allowed access for the duration of his detention until July 2013. In May 2013, a family member of a detainee informed UNAMID in North Darfur that his relative had been arrested by the Military Intelligence in May 2013 in El Fasher. According to information gathered by UNAMID, the victim was detained in an unknown location and numerous efforts by the family to have access to him were unsuccessful. He was eventually released after 20 days of detention on suspicion of having links with SLA-MM. In none of these cases were victims brought before a competent judicial authority.

74. UNAMID gathered information on cases where the NISS and the Military Intelligence often detained civilians for long periods without judicial review. In one such case, the NISS detained a civilian in Darfur without trial or legal counsel for three years on allegations of terrorist acts, links with rebels, and helping recruit Arabs for JEM and SLA/AW rebel groups. Reportedly, the victim was initially arrested in 2008, released, and subsequently arrested and held for several months. UNAMID has gathered information indicating that during his detention, the victim was reportedly subjected to cruel and inhumane treatment. Similarly, a male Zaghawa was arrested by the NISS in February 2013 in North Darfur and detained for several months allegedly for providing information to the media on human rights violations.

75. UNAMID received reports from victims arrested by the NISS and the Military Intelligence. Reports indicated that these victims were subjected to cruel and inhumane treatment which, in some cases, may have amounted to torture. In most cases, the victims were reportedly beaten with plastic pipes, iron bars, or sticks, electrocuted, hung from a tree or a pole, and detained with their hands and legs tied. They were not allowed to have family visits and, in some cases, food and water were not provided for an extended period or not in adequate amount. Former detainees of the Military Intelligence complained to UNAMID of being subjected to forced hard labour during the period of their detention.

76. The victims arrested by the NISS mainly include members of opposition parties, members of civil society organizations, professionals, and IDPs. Detainees' and witness testimonies provided to UNAMID indicate that the Military Intelligence appears to target civilians deemed to have links or perceived links with rebels, ex-combatants and members of armed opposition groups

77. On 15 October 2013, in Nyala, South Darfur, a 32-year-old male civilian reportedly telephoned his family to inform them of his arrest for allegedly driving after curfew hours. At midnight, a police officer informed his family that he was unwell and had been taken to a hospital. In the morning of 16 October, the relatives went to the hospital and were told that the police from Nyala North station had brought the body of the arrested person to the hospital after midnight. UNAMID was able to confirm through testimonies of the victim's relatives, medical personnel, and other witnesses at the hospital, that there were wounds on the head and signs of ill-treatment on the body, which may have amounted to torture.

78. A Zaghawa male was abducted from his residence in South Darfur in October 2012. According to information gathered by UNAMID, the abductors, believed to be members of an armed opposition group, reportedly released him after establishing that he had no money. He was then arrested by the police, reportedly on the suspicion of having links with armed opposition groups and was handed over to the NISS, who reportedly held him incommunicado for nine months.

79. On 24 December, in West Darfur, the Military Intelligence arrested and detained a 45 year-old Massalit IDP man for allegedly supporting armed movements, an allegation the IDP denied. UNAMID was informed that, while in detention, the victim was undressed, beaten, electrocuted, and interrogated over alleged affiliation with armed movements.

80. In some areas, illegal arrests have been carried out by other government forces, such as the Border Guards.<sup>34</sup> In various meetings with governmental officials involved in the criminal justice system, UNAMID was informed that such arrests were illegal. In one case, following advocacy from the UNAMID Human Rights Section, the SAF facilitated the victim's release. However, sources later informed UNAMID that the family had to pay a fine for the victim's release.

## **5. Rights to Freedom of Expression, Association and Peaceful Assembly**

81. The right of peaceful assembly is guaranteed in article 21 of the International Covenant on Civil and Political Rights and the right to freedom of association in article 22.<sup>35</sup> They are also reflected in the Universal Declaration of Human Rights (article 20) as well as in other specific international<sup>36</sup> and regional<sup>37</sup> human rights treaties or instruments.<sup>38</sup> Any restrictions of these rights must be motivated by one of the permissible purposes mentioned in the Covenant, have a legal basis (be "in conformity with the law" or

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<sup>34</sup> The term "Border Guards" is used in reference to a proxy armed force with members mostly drawn from Arab communities.

<sup>35</sup> Freedom of association is also regulated in article 8 of the International Covenant on Economic, Social and Cultural Rights as the freedom to form and join trade unions.

<sup>36</sup> Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labor Organization (ILO) Convention No.87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

<sup>37</sup> African Charter on Human and Peoples' Rights, arts. 10 and 11.

<sup>38</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art.5.

prescribed by the law, which implies that the law must be accessible and its provisions must be formulated with sufficient precision) and be “necessary in a democratic society.”<sup>39</sup>

82. In 2013, the exercise of the rights to freedom of expression, association and peaceful assembly in Darfur have been constrained by the protracted conflict, unpredictable security conditions, mass civilian displacements, and several other factors related to belligerent activities. These factors are aggravated by normative and procedural fault lines in Sudan’s domestic laws, which impose severe restrictions on rights to freedom of expression, association, and peaceful assembly. Sudan’s Criminal Procedure Code of 1991<sup>40</sup> provides for the powers of law enforcement officials and prosecutorial officials to deal with unlawful assembly and related situations. However, under the National Security Act of 2010, NISS members, in addition to having other broad powers and functions, are also given the police powers detailed in the Police Act 2008 and the Criminal Procedure Code 1991.<sup>41</sup>

83. Given the existence of these laws and corresponding powers of arrest by the various agencies, the exercise of the rights to freedoms of peaceful assembly and association has become a major challenge in Darfur. UNAMID continued to receive reports of intimidation and harassment of civilians, banning of meetings and peaceful protests, illegal arrests, and threats targeting university students and members and supporters of opposition parties, along with civil society organisations.

84. In Nyala, South Darfur, four persons previously arrested and detained for two months without trial in relation to their participation in demonstrations in July 2012 were arrested again on 19 January 2013 by the NISS on charges of disturbance of public order and were released a few days later. The NISS informed UNAMID that the arrests were carried out to restore public order while the individuals concerned claimed that their arrest was never substantiated.

85. On 19 September 2013, in Nyala, South Darfur, witnesses informed UNAMID that security forces used excessive force to disperse civilians who were peacefully marching to the State Governor’s office to protest against the deteriorating security conditions in South Darfur on the same day. Reportedly, two civilians were killed by firearms and 11 were injured, including six through gunshot. According to information received by UNAMID, no investigation has been conducted into this incident.

86. The dispersal of peaceful assemblies should only be a measure of last resort. Law enforcement authorities should not resort to force during peaceful assemblies, and they should ensure that force is only used on an exceptional basis.<sup>42</sup>

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<sup>39</sup> See A/HRC/20/27, paragraph 16.

<sup>40</sup> ‘Prevention of Offences relating to Public Tranquility,’ Branch II, Chapter V, Part III. The Criminal Procedure Act of 1991

<sup>41</sup> Article 50 (1) (c). The National Security Act of 2010.

<sup>42</sup> A/HRC/22/28, para.13

87. On 26 September 2013, a human rights defender was arrested, for allegedly expressing his opinion regarding the 19 September 2013 demonstration. According to information received by UNAMID, he was held without charge for 32 days by the NISS in Nyala, before being transferred to Kober prison in Khartoum on 8 October 2013. He was released on 28 October. He reported not to have been interrogated or ill-treated during detention and was given an air ticket to return to Nyala as well as some money for his trip. Reportedly, government authorities claimed that the lawyer was arrested due to his involvement in disrupting national security by inciting civilians to demonstrate.

88. On 24 March 2013, the Central Reserve Police and the regular police interrupted a gathering organized by students who are members of the United Peoples' Front Party (a political party supporting SLM/A/AW<sup>43</sup>) at Nyala University. UNAMID was informed that the NISS arrested six students allegedly for breaking the rules of the university by discussing political issues at the university premises. One student was reportedly released after four days, while the other five students were released on 28 March 2013.

89. UNAMID further documented that, in late December 2012 and early January 2013 in El Geneina, West Darfur, the NISS threatened seven students from Zalingei University (who are members of opposition parties) as well as their families with serious repercussions if they continued political activities in the university campus. The threats were issued on campus by phone and also by summoning some of the students to the NISS premises in Nyala.

90. Community leaders mainly from the Fur tribe in Foro Baranga, West Darfur, complained about continued harassment of civilians by the NISS and the Military Intelligence. They reported infringement of the rights to freedom of peaceful assembly and association, as they are required to obtain prior permission from the NISS before conducting any kind of activities. Community leaders in IDP camps in Mornei, West Darfur, also complained of being threatened with arrests for holding what the NISS and the police considered to be subversive meetings. The community leaders were reportedly meeting to discuss on-going insecurity and other challenges faced by IDPs.

91. UNAMID was informed of the arrest of a student at the University of Nyala, in March 2013, for involvement in political activities at the University. He was released 32 days after being forced to sign a statement, reportedly under duress, to terminate his studies at the University of Nyala. Again in March 2013, a number of students from the University of Nyala were arrested by the NISS. According to information received by UNAMID, some of them were subjected to severe beating and forced to sign a declaration denouncing any future participation in political activities in their life time. Another student of the University of Nyala was arrested on 15 May 2013 for his affiliation with a local civil society organization and related activities. According to information received by UNAMID, the student was detained for nine days under harsh conditions: he was beaten, hung in the air, and plunged into filthy water.

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<sup>43</sup> SLM/A/AW: Sudan Liberation Movement/Army/Abdul Wahid

92. Many victims of arrests and illegal detention by the NISS and the Military Intelligence have reported sustained surveillance after their release. Fearing constant harassment, many victims have migrated to other areas, leaving family, friends, established livelihoods, and social networks behind. It is recalled that no one should be criminalized or subjected to any threats or acts of violence, harassment, persecution, intimidation or reprisals for addressing human rights issues through peaceful protest or for reporting on human rights violations and abuses committed in the context of peaceful protests.<sup>44</sup>

93. Local civil society and grassroots organizations are crucial in the promotion and protection of human rights. They are often the primary respondents to victims of human rights abuses and violations, providing guidance, assistance and even protection. UNAMID strategy entails empowering local partners to support their communities in human rights promotion.

94. Insecurity, continued threats and harassment from the intelligence services have partly led to the weakening and in some cases, the non-functioning of many local civil society organizations in Darfur, especially those working on human rights issues. Since 2009, many international non-governmental organizations (NGOs) have left Darfur for various reasons, leading to a substantial loss of essential service providers. At least 25 international NGOs have been expelled by the Government of the Sudan or forced to leave due to difficulties in their operating environment.

## **VII. Technical Assistance**

95. In 2013, UNAMID technical cooperation activities have focused on capacity building by UNAMID Human Rights Section mainly targeted at law enforcement officials to improve their awareness in handling civilians and also deal with the rights of victims and perpetrators alike. The next phase of the programme will target members of civil society and community opinion leaders. The latter phase requires medium to long term engagement with authorities as access to remote areas has not always been smooth.

96. The capacity building achievements were modest and suggest that there is a continued need for technical assistance, especially in relation to helping build strong and effective national institutions capable of promoting and protecting human rights, and facilitating initiatives toward the positive implementation of the DDPD. UNAMID continues to solicit the cooperation of the Government of the Sudan and to advocate for meaningful legislative reform, especially in areas that hinder the enjoyment of fundamental rights and freedoms in Darfur.

97. The protracted nature of the conflict in Darfur and its wide ranging impact on human rights calls for sustained and integrated engagement to consolidate and improve human rights monitoring and accountability mechanisms. Critical to this is UNAMID work undertaken to facilitate the strengthening of Sudan's national institutions.

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<sup>44</sup> A/HRC/22/28, para.15.

98. During the course of 2013, UNAMID collaborated with the UNCT to provide support to the Sudan's National Human Rights Commission (NHRC). UNAMID participated in the assessment conducted to evaluate the capacity needs of the National Human Rights commission and made recommendations for technical support. UNAMID also facilitated the familiarisation visits of the board of the NHRC to Darfur.

99. In December 2013, UNAMID facilitated a Commissioner of the NHRC's participation in the Regional Consultation on Strengthening the Protection Mandate of National Human Rights Institutions (NHRIs) in East Africa, which took place in Kampala, Uganda, with UNAMID giving support for the participation.

100. As part of its on-going collaboration with the judiciary, UNAMID interacted with and facilitated the work of judges in some areas where critical assessments of backlog of cases and detentions had stalled, amounting to human rights violations especially in Kabkabiya and Kutum, North Darfur. UNAMID facilitated the transportation of six witnesses from Zalingei to Khartoum, to enable them to testify before the Special Court for Darfur Crimes during the Court's hearing in Khartoum.

101. UNAMID has undertaken regular capacity building activities to contribute to the knowledge and skills of the state authorities and civil society organizations. Human rights awareness campaigns have been led through periodic promotional activities in different geographic areas with local partners.

102. The assistance provided by UNAMID went a long way in complementing some of the progress made by the Government of the Sudan in addressing issues affecting human rights in Darfur. Three of these are worth mentioning. On 19 August 2013, with the view to harmonizing efforts in Darfur, the Federal Unit on Violence Against Women, under the Ministry of Justice, and with the support of UNAMID, launched a 5 Year National Strategic Plan (2012-2016)<sup>45</sup> to combat violence against women at a generally inclusive stakeholder workshop in El Geneina, West Darfur. With the support of UNAMID, State Committees to Combat Violence against Women have been established in two of the five Darfur States, and have been active as UNAMID partners in sensitization against SGBV. The State Committees' plan envisages legislative and policy reforms to ensure compliance with national and international human rights norms and standards, as well as the establishment of a Darfur-wide database management system.

103. In June 2013, with the support of UNAMID, the Government of the Sudan launched a 10 year National Human Rights Action Plan for the protection of human rights in Sudan, which focuses on eight major priorities including human rights education, legislative reform, awareness-raising and capacity building for human rights and international humanitarian law, and strengthening partnerships between governmental institutions and

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<sup>45</sup> The 5 Year Strategic Action Plan's main objectives include: good governance and rule of law, sustainable development, institutional capacity building, information management, and scientific research. The Plan's activities also include the revision of existing laws and policies in light of national and international human rights standards and legal frameworks.

civil society organizations. Its implementation will be monitored by UNAMID and other human rights actors.

## VIII. Conclusions

104. In 2013, the conflict in Darfur continued with renewed inter-communal fighting, severely affecting security and human rights. During the period under review, modest efforts were made by the Government of the Sudan to tackle some of the considerable challenges facing Darfur.

105. The creation of the Special Court for Darfur Crimes in 2012 was a step forward by the government of Sudan. Since the creation of the Court, 66 cases were reported to have been received by the General Prosecutor and some have been adjudicated upon through the efforts of the General Prosecutor.<sup>46</sup> In light of the human rights violations and abuses that have occurred and the necessity to have an effective administration of justice system in Darfur, UNAMID will be supporting the Government efforts in this regard.

106. The issue of impunity for violations and abuses remained a major concern. The slow speed of implementation of the DDPD meant that there was negligible impact of the peace process on the overall human rights situation in Darfur.

107. UNAMID continued to monitor and document human rights violations in Darfur, mainly violations of the rights to life and personal integrity; sexual gender-based violence; arbitrary arrest and detentions; torture; violations of the rights to freedoms of expression, peaceful assembly and association.

108. Victims and witnesses mostly described perpetrators as “unidentified armed men.” The fact that many of them were in uniform, carried heavy weapons, and were operating with impunity, indicates the seriousness of the issue and the urgent need to curb this trend.

109. The lack of accountability for human rights violations in Darfur can be attributed to multiple factors, including non-reporting of cases by victims due to fear of reprisals; general lack of will among law enforcement officials to take action; and victims’ distrust in the law enforcement officials effective response to their concerns. While inaction by authorities can be described in some instances as lack of political will, lack of capacity by law enforcement agencies, especially the police, also resulted in the failure to address human rights violations.

110. Armed groups, much like Government forces, must be conscious of their obligations under international human rights and humanitarian law. It is imperative, that in addition to compliance with international law, armed groups continue to take steps toward playing an active part in the Darfur peace process.

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<sup>46</sup> Some were investigated and forwarded to Court for trial; while some remain ‘open’ because of a variety challenges encountered by the Special Prosecutor, e.g. inaccessibility to suspects hiding in rebel controlled areas.

111. The practice of addressing human rights violations through traditional mechanisms and out of court settlements partly contributed to impunity, particularly when cases required considerable technical knowledge for their resolution.

112. In addition to its on-going initiatives such as the increasing number of judges and prosecutors in the main cities and localities, the Government of the Sudan needs to take further steps to strengthen rule of law institutions, improve the quality of legal, medical and social services and restore or increase the presence of state authority across Darfur, especially in rural areas where Government services are much needed.

113. An environment conducive to the enjoyment of human rights also entails the lifting of the State of Emergency, which has been in place in Darfur since 1999. The corollary to this is the need for the Government of the Sudan to adopt a multi-pronged approach to strengthen the administration of justice. Attaining peace in Darfur depends on a multi-stakeholder strategy involving the effective implementation of such multi-dimensional documents as the DDPD. Involvement of UNAMID, in all on-going efforts to improve the human rights situation in Darfur, and engagement with various stakeholders, is essential to the implementation of the mission's human rights mandate in line with the United Nations Human Rights Due Diligence Policy.<sup>47</sup>

## **IX. Recommendations**

114. In light of the aforementioned assessment, it is critical that the serious human rights concerns and violations in Darfur are addressed with urgency and through an integrated and effective process of engagement and collaboration with the government, in accordance with international human rights standards. GoS should provide an enabling and conducive environment for civil society by removing all legal, policy, and administrative obstacles to the realization of human rights and fundamental freedoms.

115. UNAMID recommends the following:

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

- (a) Cease henceforth using indiscriminate aerial attacks on civilian areas and objects, and take measures to ensure respect for international human rights law and international humanitarian law;

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<sup>47</sup> The Human Rights Due Diligence Policy (HRDDP) on United Nations support to non-United Nations security forces and entities was endorsed by the UN Secretary-General Ban Ki-moon in July 2011.

- (b) Grant unfettered and unimpeded access to all areas to human rights and humanitarian actors to ensure the effective protection of civilians;
- (c) Disarm proxy forces, militias, and other government-affiliated armed groups that are not official members of established military or police institutions.
- (d) Repeal Emergency laws in Darfur and ensure an end to their application;
- (e) Conduct legislative reforms especially to bring the NSA (2010), the Police Act (2008), the Sudan Armed Forces Act in line with international human rights law;
- (f) Halt and address long-standing impunity by establishing the transitional justice mechanisms provided for in the DDPD, and ensuring that the General Prosecutor for Darfur Crimes takes cognizance of all the incidents in Darfur since 2003 that fall within the mandate of the Special Court for Darfur Crimes;
- (g) Ensure the restitution of houses, land and other properties to IDPs and refugees upon their return, in line with the relevant provisions of the DDPD and the United Nations Principles on Housing and Property;
- (h) Take positive steps toward completely abolishing obstacles experienced by victims of gender based violence in seeking redress particularly in relation to the difficulties of having access and completing Form 8.
- (i) Investigate and prosecute all attacks on UNAMID peacekeepers, as such attacks constitute crimes against humanity, and bring the perpetrators to justice.

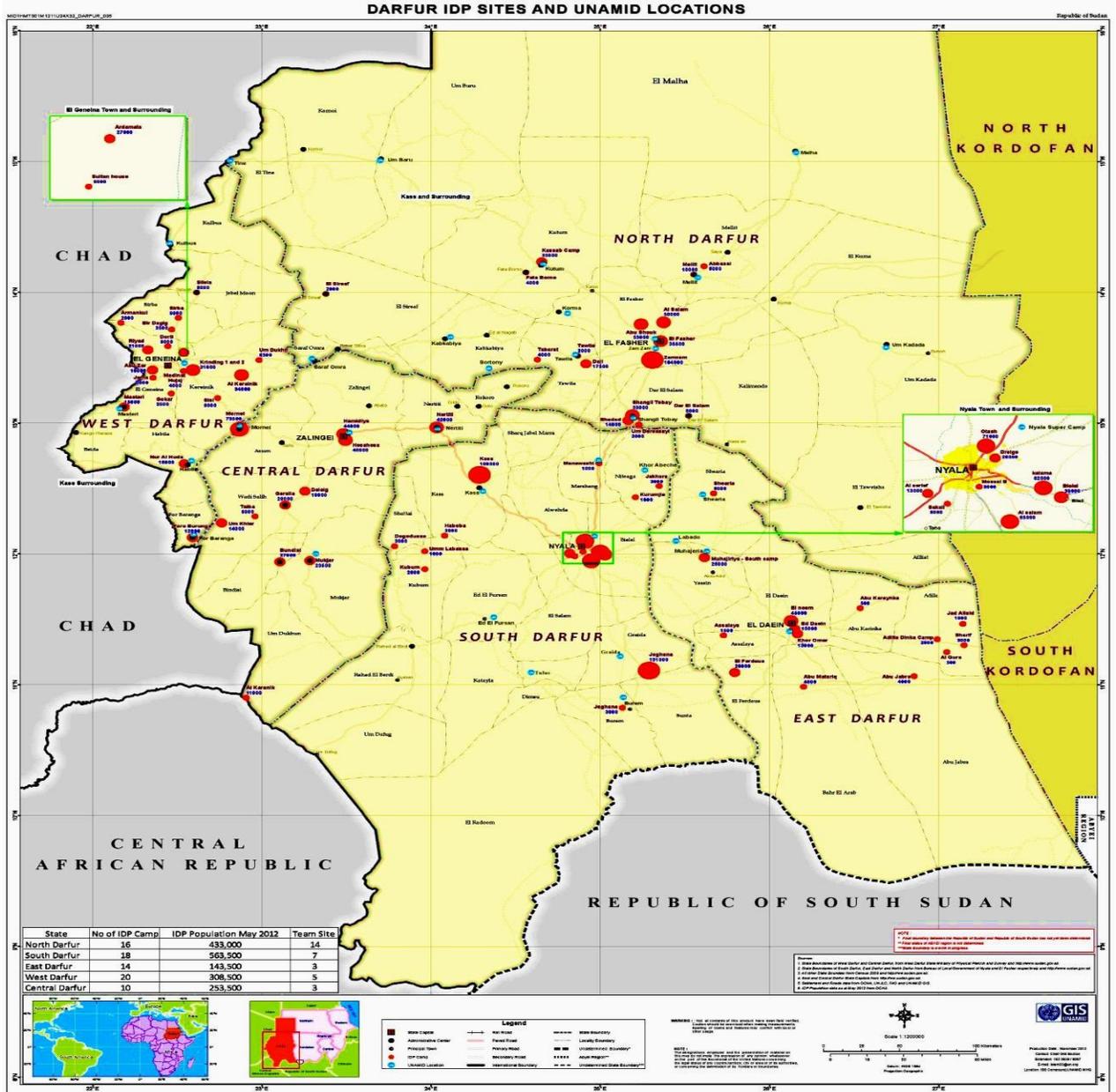
### **To the Armed Opposition Movements**

- (a) Allow full, unhindered, and timely access to all areas under their control for all human rights and humanitarian actors and ensure that no obstacles are imposed on UNAMID and humanitarian actors by any of their members;
- (b) Refrain from attacks on civilian persons, objects, habitats, and sources of livelihood;
- (c) Abide by obligations under international human rights and humanitarian laws; and
- (d) Participate in, commit to, and abide by the spirit and provisions of the DDPD as well as other initiatives intended to bring lasting peace to Darfur.



# X. ANNEXES

## 1. Darfur IDP Sites and UNAMID Locations



## 2. Human rights violations recorded in 2013

<b>HUMAN RIGHTS DOCUMENTED VIOLATIONS IN DARFUR 2013</b>						
	<b>Number of Victims Arbitrary Arrest</b>	<b>Number of victims <b>Right to Life</b></b>	<b>Number of Victims <b>Physical Integrity</b></b>	<b>Number of Victims <b>SGBV</b></b>	<b>Total number of Victims</b>	<b>Total Number of Incidents</b>
<b>First Quarter</b>	8	125	176	38	347	117
<b>Second Quarter</b>	8	283	236	30	557	126
<b>Third Quarter</b>	16	29	113	31	189	87
<b>Fourth Quarter</b>	10	77	164	63	314	156
<b>Grand Total</b>	<b>42</b>	<b>514</b>	<b>689</b>	<b>162</b>	<b>1407</b>	<b>486</b>

### 3. Sudan Government Administration System in Darfur

