



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/111
11 January 2006

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 19 of the provisional agenda

**ADVISORY SERVICES AND TECHNICAL COOPERATION
IN THE FIELD OF HUMAN RIGHTS**

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

Summary

In resolution 2005/82 the Commission on Human Rights decided to appoint a Special Rapporteur on the situation of human rights in the Sudan for a period of one year. The Special Rapporteur, Sima Samar, travelled to the Sudan from 15 to 22 October 2005 and delivered an oral statement to the Third Committee of the General Assembly on 27 October 2005.

This report presents the findings of the Special Rapporteur following her first mission to the Sudan in October 2005. The Special Rapporteur visited Khartoum, Juba and Nyala in Southern Darfur and met with a large number of interlocutors. The Special Rapporteur also held meetings in Geneva prior to the visit, including with the Permanent Mission of the Sudan in Geneva.

The Special Rapporteur concludes that the framework for the protection and promotion of human rights has been improved through the signing of the Comprehensive Peace Agreement, the creation of the Government of National Unity and the Government of South Sudan, and the Interim National Constitution and the Constitution for the South of the Sudan, which both guarantee human rights and fundamental freedoms.

However, despite the optimism generated by these positive developments at the time of her visit to the Sudan, she saw no significant improvement in the human rights situation. Peace talks in Abuja were in progress while the conflict continued in Darfur. No effective action had been taken to disarm the Government-backed militia or Janjaweed. None of the serious crimes committed during the 2004 conflict had been seriously investigated or the perpetrators brought to justice. Immunities in place for security forces were not repealed. The state of emergency laws continue in certain areas and National Security continued to detain and torture persons they suspected of crimes. Access to National Security detention facilities was generally denied, with some exceptions. New laws were introduced which limited fundamental freedoms of expression and association and were challenged in the Constitutional Court. The culture of impunity continues, especially for the security forces, and the human rights situation remains of great concern.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 6	5
I. OBLIGATIONS OF THE SUDAN UNDER INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW	7 - 9	6
II. GENERAL SITUATION IN THE SUDAN	10 - 17	7
III. HUMAN RIGHTS SITUATION	18 - 80	8
A. Violations of the rights to life and physical integrity	22 - 26	9
B. Women's rights	27 - 29	10
C. Gender-based violence	30 - 33	10
D. Physical abuse in custody of the State and denial of fair trial standards	34 - 36	11
E. Detention conditions in the Sudan	37 - 40	12
F. Impunity and transitional justice in the Sudan	41 - 43	13
G. Justice in Darfur	44 - 49	13
H. Rebuilding justice systems	50 - 53	14
I. The death penalty in the Sudan	54 - 55	15
J. Forced recruitment of children	56 - 60	15
K. Forced relocations	61 - 63	16
L. Economic, social and cultural rights	64 - 70	17
M. Freedom of association	71 - 75	18

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
N. National Security, power and practice	76	19
O. Freedom of expression and the media	77 - 78	19
P. Reconciliation and reparation in Darfur	79	19
Q. Promotion of human rights by UNMIS	80	20
IV. RECOMMENDATIONS AND CONCLUSIONS	81 - 82	20
A. Recommendations	81	20
B. Conclusions	82	23

Introduction

1. The Commission on Human Rights, in resolution 2005/82, decided to establish the mandate of the Special Rapporteur on the situation of human rights in the Sudan for a period of one year. The Special Rapporteur was requested to monitor the human rights situation in the Sudan and to submit an interim report to the General Assembly at its sixtieth session and to report to the Commission at its sixty-second session.
2. In August 2005, the Chairperson of the Commission on Human Rights appointed Sima Samar (Afghanistan) as Special Rapporteur. The Special Rapporteur undertook her first mission to the Sudan from 15 to 22 October 2005 to gather information about the human rights situation and any action taken by the Government to promote and protect human rights. Immediately following her visit to the country, the Special Rapporteur delivered an oral statement at the sixtieth session of the General Assembly in New York. An interim report was not submitted due to the timing of the visit and the reporting deadlines.
3. The present report presents the findings of the Special Rapporteur following her first mission to the Sudan and covers the period from 1 September to 15 December 2005. The Special Rapporteur chose to address the overall human rights situation in the Sudan following the signing of the Comprehensive Peace Agreement (CPA) and the adoption of the Interim National Constitution. The Special Rapporteur will also make an oral presentation to the Commission on the findings of the mission and provide an update based on the information collected since then.
4. During her visit, in Khartoum, the Special Rapporteur met with senior government officials, including the Vice-President, the Minister and the State Minister for Foreign Affairs, the Minister of Justice, the Minister of the Interior, the Minister for Humanitarian Affairs, the Legal Advisor to the President, and representatives of civil society, United Nations agencies and the diplomatic community. She travelled to Juba in Southern Sudan where she met the first Vice-President, the Police Commissioner for Southern Sudan, and representatives of the civil society and United Nations agencies. In Nyala, Darfur, the Special Rapporteur met with local officials including the Deputy Governor, the Chief of the Judiciary, the Prosecutor General, and representatives of the African Union, civil society and national and international non-governmental organizations (NGOs). She visited the Kalma camp for internally displaced persons (IDPs) outside Nyala, and the prisons of Juba and Kober in Khartoum. She also met with representatives from eastern Sudan in Khartoum, journalists and political parties. Prior to her mission, the Special Rapporteur had received a number of briefings from the Office of the High Commissioner for Human Rights (OHCHR), NGOs and representatives of the diplomatic community in Geneva, including the Permanent Mission of the Sudan to the United Nations Office at Geneva.
5. The Special Rapporteur's visit was preceded by visits by Juan Mendez, Special Adviser to the Secretary-General on the Prevention of Genocide, who visited the Sudan from 19 to 27 September, and Walter Kälin, Representative of the Secretary-General on the

human rights of IDPs, who visited the Sudan from 4 to 13 October. The findings and recommendations of both missions were useful for the Special Rapporteur, who benefited from the in-depth analysis of those thematic areas when assessing the overall human rights situation in the country.¹

6. The Special Rapporteur would like to thank the Government of the Sudan, and in particular the Advisory Council for Human Rights, for facilitating her first mission to the country. She would also like to thank the Human Rights Office of the United Nations Mission in the Sudan (UNMIS) for providing her with substantive and logistical support. She would also like to thank all the people who took the time to brief her on the human rights situation in the country, in particular the victims of human rights violations who shared their personal stories with her. She commends the human rights defenders, women's organizations, NGOs, the African Union, UNMIS and humanitarian agencies for their work to further the protection of human rights.

I. OBLIGATIONS OF THE SUDAN UNDER INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

7. The Sudan is a party to a number of international human rights treaties. These included 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, the International Convention on the Elimination of All Forms of Racial Discrimination and the Slavery Convention of 1926. The Sudan is also a party to the African Charter on Human and Peoples' Rights. Under these treaties, the Government of the Sudan has the obligation to respect, protect and fulfil the human rights of those within its jurisdiction. The Sudan is a signatory to the Rome Statute of the International Criminal Court and therefore is bound to refrain from acts that would defeat the object and purpose of the Statute. The Government is not a State party to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Convention on the Elimination of All Forms of Discrimination against Women.

8. In addition to human rights treaties, the Government is bound by international humanitarian law. With respect to conventional international humanitarian law, the Government is bound by the Geneva Conventions of 12 August 1949, and during 2005 Darfur has experienced a level of violence that appeared to meet the criteria for an internal armed conflict. There was protracted armed violence, and the parties to the conflict were organized and capable of applying common article 3.

¹ See the statement by the Representative of the Secretary-General on the human rights of internally displaced persons of 17 October 2005, "Much more needs to be done to ensure protection of internally displaced of Southern Sudan, rights expert says", available at <http://www.unhcr.ch/hurricane/hurricane.nsf>; and the Report of the Special Adviser on the Prevention of Genocide: Visit to Darfur, Sudan, 19-26 September 2005.

9. In addition to treaty law, the Government is bound by the customary rules of international humanitarian law. These customary law provisions include: protecting civilians against violence against life and person; prohibiting deliberate attacks on civilians and civilian objects; prohibiting attacks aimed at terrorizing civilians; taking precautions to minimize incidental loss and damage as a result of attacks; and ensuring that when attacking military objectives, incidental loss to civilians is not disproportionate to the military gain anticipated, and prohibiting pillage.

II. GENERAL SITUATION IN THE SUDAN

10. The Sudan has embarked on the path of peacebuilding, reconciliation and reconstruction with the signing of the CPA in January 2005. On this path it has surmounted a number of hurdles. However, much more remains to be done if the Sudan is to become the State described in the Interim National Constitution (INC) as being founded on “justice, equality and the advancement of fundamental human rights”.

11. The CPA provides for a federal system of government. It provides for a six-year interim period, after which the people of Southern Sudan are to determine, through a referendum, if they wish to secede or remain part of federal Sudan. On 9 July, the Government adopted the INC, which includes a Bill of Rights. On 20 September, a new Government of National Unity (GNU) was formed with multiparty representation. Southern Sudan also began its political transition. The new Government was sworn in on 24 October and on 5 December, the Constitution of Southern Sudan was adopted.

12. Following initial delays, the GNU made progress in implementing some of its commitments under the CPA and INC. On 30 October, the key body charged with monitoring the implementation of the CPA, the Assessment and Evaluation Commission, was formed. The establishment and staffing of the National Judicial Service Commission, which will oversee management of the nation’s judiciary, was finalized and the new Constitutional Court Act was passed.

13. On 19 October, the Minister of Justice established the Law Reform Committee, which was charged with the crucial responsibility of ensuring that national legislation is consistent with the INC, including the international human rights provisions. To date, the Committee has had 34 legislative acts referred to it. Its work will begin during the April 2006 parliamentary session.

14. The establishment of the Sudan’s national human rights machinery, the Human Rights Commission, has been unfortunately delayed. Several draft laws have been created by both the Sudan People’s Liberation Movement, and the GNU, with little political or community consultation. One of the drafts, reportedly submitted directly to the President, was based on previous legislation which failed to guarantee the independence of the Commission. Southern Sudan will also establish its own Human Rights Commission and work has not commenced in this regard.

15. The GNU strengthened its international human rights commitments in a number of ways. Significantly, the INC makes international human rights treaties ratified by the Sudan an “integral” part of the Bill of Rights. Three international instruments were ratified in 2004

and 2005: the African Charter on the Rights and Welfare of the Child and the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. The Sudan also took steps in 2005 to ratify the two 1977 Protocols Additional to the Geneva Conventions.

16. The new peace that accompanied the political and legal reforms in the Sudan seemed fragile after the death of First Vice-President John Garang on 30 July 2005. His death sparked violent riots in Juba and Khartoum followed by mass arrests and detention of IDPs living around Khartoum. Eastern Sudan also had the potential to support or threaten the greater peace brought about by the CPA. There, various armed movements resorted to violence in the mid-1990s to protest their historical marginalization.

17. In Darfur, where peace had not taken hold but was hoped for, armed exchanges involving rebel groups, government forces, and nomadic militia increased. There was intertribal violence as well. African Union personnel working with the African Union Mission in the Sudan (AMIS) were killed and abducted. Civilians in IDP camps and villages were the target of attacks. Humanitarian workers were regularly ambushed and looted. The presence of Chadian military deserters further increased tensions. The peace talks in Abuja, which entered into a seventh round late in 2005, were threatened by the splits within the Sudan Liberation Army/Movement (SLA/M) at the highest levels. The possibilities for peace were also under threat by militia groups that had not been disarmed and other groups who felt marginalized by their exclusion from the talks.

III. HUMAN RIGHTS SITUATION

18. The promise of political reform has not yet translated into improvements in human rights at the local levels. Some efforts, such as law reform, take time. However, too often human rights violations that could have been prevented continued to occur.

19. In Khartoum, eastern Sudan and Southern Sudan State authorities continued to use power arbitrarily under the guise of national security. Non-violent gatherings and criticism of the Government remained a trigger for harassment and arrest by National Security and police. Individuals taken into detention were regularly physically abused and even tortured. The absence of fair trial guarantees throughout the country also called into question the Government's commitment to human rights.

20. The human rights situation in Darfur worsened from July 2005. The renewed level of armed conflict too often left civilians the target of attacks by government forces, militia, and rebels. Armed men travelling in small groups by camel or on horseback continued to murder, beat and sexually assault IDPs and villagers. Humanitarian aid was looted or blocked from being delivered to those who needed it most. Police failed in their obligation to carry out effective investigations. The perpetrators of abuses were rarely brought to justice, with special courts and investigatory committees serving more as window-dressing than real solutions.

21. The human rights situation in the Sudan was further defined by the years of marginalization and war that left people unable to adequately enjoy their economic, social and cultural rights. In Southern Sudan and the transitional areas, the problem of resources was exacerbated by the movement of thousands of displaced persons back to their places of origin.

A. Violations of the rights to life and physical integrity

22. In Darfur, victims and witnesses have reported that government forces, at times in cooperation with militia forces, carried out at least eight organized armed attacks from September to November on over a dozen IDP camps or villages. These attacks occurred in such areas as Jebel Moun, Gereida, Shearia, Tawilia and Shangil Tobiya. The attacks left civilians dead and injured, and homes destroyed. Despite statements by Sudanese officials that these attacks were usually in response to rebel activities, in most of the cases there was strong evidence that civilians and civilian property were deliberately targeted. The use of force by the government forces appeared to be indiscriminate and disproportionate to the stated military objective. Thousands of people were displaced by these attacks.
23. The Special Rapporteur was also informed that civilians were killed, abused and harassed by armed groups such as SLA, the Justice and Equality Movement (JEM) or unknown perpetrators in Southern and Northern Darfur. On the issue of violence against women and girls alone, over 60 incidents perpetrated by members of armed militia were documented between June and November - a number which, given under-reporting, is significantly lower than the reality. The cases involved over 130 victims. Other violations reported include looting, extortion and unlawful taxation of civilians.
24. The human rights situation was worsened by the failure of the Government to prevent and protect the internally displaced and villagers from being killed, assaulted and raped by armed militias. In attacks where government involvement was not evident, it was clear that it nevertheless had failed in its obligation of due diligence to protect the rights of the people of the Sudan from the violence of third parties. It also failed to bring perpetrators of human rights abuses to justice, which serves as a critical deterrent to future abuses.
25. In the region of Southern Darfur that the Special Rapporteur visited, harassment and attacks on IDPs by armed men continues to be reported outside IDP camps. Kalma camp, the biggest in Southern Darfur, continues to be the main concern of the international community. The situation is tense as there is continued insecurity outside the camp, with a rapid increase in the number of incidents of gender-based violence, in particular rape of IDP women and girls. Incidents reported to have been committed on the northern and southern perimeters are alleged to have been carried out by the Popular Defence Forces, police reserve forces and militia. There have been no government police stationed inside the camp since the 19 May 2005 riots. Joint African Union-government patrols on the camp perimeter are failing to protect the population. In many areas of Southern Darfur, IDPs are forced to stay within the boundaries of their camps since venturing even a few kilometres is dangerous.
26. Government officials have provided a multitude of reasons why they failed to investigate human rights abuses in Darfur. The police could not investigate reported crimes because they had been ordered not to move from their station. The police could not effectively confront the militia or patrol areas in or around IDP camps because they were outnumbered, or did not have

sufficient numbers of functioning vehicles or fuel. In Mornei IDP camp (Western Darfur) the Central Reserve Police required residents of the camp to provide fuel for police cars so that the police could patrol outlying farmland. During the rainy season the police claimed they could not access certain camps and villages because of seasonal rivers (*wadi*). Police also stated that they could not confront armed men in the act of committing a crime because it would result in an exchange of fire that would breach the ceasefire agreement.

B. Women's rights

27. The INC provides for the "equal rights of men and women to the enjoyment of all civil and political rights. Social, cultural and economic rights, including the right to equal pay, shall be ensured"(art. 32). It also provides that men and women are equal before the law (art. 31), authorizes affirmative action (art. 32.2), and commits the State to eradicating all harmful traditional practices (art. 32.3). The national machinery for the promotion and advancement of women was strengthened in 2005 with the creation of the Women's Center for Human Rights under the General Directorate for Women and Family Affairs of the Ministry of Welfare and Social Development.

28. These steps are welcome. However, law reform and new legislation are still required to close the gaps in the legal framework for the promotion and protection of women's human rights. The Family Law, the Criminal Law, the Evidence Act and practices resulting from Public Order Laws contain discriminatory provisions which should be amended in accordance with the Constitution and international human rights standards. Women's organizations highlighted the need for an improved definition of rape in the Criminal Law and the need for a legal prohibition of female genital mutilation.

29. Ratification of the Convention on the Elimination of All Forms of Discrimination against Women is still a matter of debate in the country; however, the majority of persons who discussed the issue with the Special Rapporteur during her visit favoured ratification with reservations on some articles. Those who were against ratification appeared to be misinformed as to the content and implications of the Convention.

C. Gender-based violence

30. In Khartoum, the Special Rapporteur was briefed on the action taken by the GNU to end violence against women in Darfur. The Advisory Council for Human Rights (ACHR) informed the Special Rapporteur that a process of law reform had started to provide greater protection to female victims, and that the criminal procedure had already been amended (Rules of Application to Criminal Circular 2) to ensure that victims have access to medical care prior to filing a complaint and to prohibit harassment of medical care providers who provide treatment. An action plan to eliminate gender-based violence against women in Darfur has been promulgated and committees will be set up in each of the three Darfur States to implement the plan. The ACHR acknowledged that rape did exist in Darfur but insisted that the number of cases have been exaggerated.

31. Despite the positive developments in Khartoum, with respect to commitments to take action to end violence against women in Darfur, evidence was provided to the Special Rapporteur that rape and sexual violence against women and girls continues. In the majority of cases received by human rights officers in Darfur, the attacks are perpetrated by armed militia who have camps close to IDP camps. Furthermore, some government officials are accused of rape, attempted rape, and other forms of violence against women and girls. In Nyala, the Special Rapporteur met with the Southern Darfur State Committee to eliminate gender-based violence and was informed by the Chairman about planned activities. The Special Rapporteur encouraged the Committee to take urgent action to prevent and respond to cases of gender-based violence. She noted her concern that regrettably no achievements had been noted since the Committee started its work in March 2005.

32. The Special Rapporteur interviewed a victim of rape and her mother one month after they were attacked by armed men while collecting firewood outside an IDP camp. The mother described how she was beaten and separated from her daughter. The girl was raped by three men. The incident was witnessed by a man who took the two women to the police station to report the crime. They were given a Criminal Form 8 (required for filing a rape case) and sent to the hospital. No action was taken to investigate the case, interview the witness, visit the crime scene or trace the perpetrators.

33. Sexual violence and other forms of gender-based violence are a concern not only in Darfur. Women's organizations briefed the Special Rapporteur about their concerns in regard to gender-based violence and emphasized that it is perpetrated in different forms all over the country. They mentioned rape, sexual assault, sexual harassment, domestic violence and child abuse, harmful traditional practices including female genital mutilation, underage marriage, forced abduction and honour killings. Certain groups of women, for example IDPs, female-headed households, domestic maids, and tea or alcohol sellers, are particularly at risk of being targeted for violence and harassment by employers or the police, due to multiple forms of discrimination.

D. Physical abuse in custody of the State and denial of fair trial standards

34. People arrested, detained and tried in Darfur and Khartoum regularly have their human rights violated. Reports by former detainees and NGOs describe how individuals are routinely subjected to torture or other ill-treatment upon arrest, during interrogation, and in pretrial detention. Arresting authorities regularly fail to promptly notify detainees of the reason for their arrest. Detainees are held unlawfully for prolonged periods of time and denied their right to meet with lawyers. They are commonly intimidated so they will not speak with the international community upon their release. These abuses persist in violation of the national Constitution, which prohibits torture and guarantees fair trial rights at all times, including during a state of emergency.

35. The majority of arrests and unlawful detentions documented were linked to operations that targeted anti-government activities either directly or indirectly and to quell public disturbances such as riots. In Khartoum, this included the Government's response to student activism critical of the Government in Khartoum and Soba Aradi. In Darfur, people accused of being rebels or having rebel links or sympathies are regularly physically abused. The types of mistreatment include beatings with electric wire, wooden sticks and hosepipes; punching,

kicking and whipping with plastic whips; being forced to lift heavy stones; being hung upside down from a metal bar with hands and legs tied while being beaten with electric wire; having sand forced into one's eyes; death threats at gunpoint; being left in the sun for eight hours without water; burning with cigarettes; and being forced to drink large volumes of water.

36. In addition, the arrests and trials that followed the Khartoum riots in August 2005 after Vice-President Garang's death illustrate the multiple violations people experienced. Over 70 inmates from Kassala and Gederef prisons in eastern Sudan reported receiving beatings with sticks and plastic hoses upon arrest as well as in pretrial detention at the hands of police and military. Some of the men who were taken to Mudarat military camp in Khartoum for two to three days said they were given very little food and water and had to sit outside in the sun all day. Prisoners consistently described being summarily tied up in groups of 10 or more. They were not given an opportunity to speak during the brief proceedings, except to state their names. They also said they were not informed of the nature and cause of the charges, nor did they have access to legal counsel. Some of the defendants were unable to speak Arabic and therefore did not understand the details of their arrest or summary trial. The judges handed down sentences of imprisonment and/or lashes. As is regularly done in the Sudan, the floggings were carried out immediately after the sentencing without giving the defendant an opportunity to appeal. Judges in charge of the trials denied the absence of fair trial guarantees.

E. Detention conditions in the Sudan

37. During her visit, the Special Rapporteur visited Kober prison in Khartoum and Juba prison in Southern Sudan. Kober prison holds approximately 900 prisoners. The Special Rapporteur was given access to all parts of the prison, including death row, detainees from Soba, and the National Security section. The Special Rapporteur also visited all sections of Juba prison, including sections holding women, men, death row inmates and the mentally ill.

38. She was able to confirm reports that detention facilities raise serious concerns about the right of detainees to be treated humanely and with dignity. People in detention facilities throughout the Sudan suffered from overcrowding, poor sanitation and hygiene facilities, dilapidated infrastructure, and other conditions that appeared to amount to inhuman treatment. Corporal punishment for disciplinary infractions was administered that was cruel, inhuman or degrading treatment. Death penalty prisoners were generally subjected to living conditions worse than other inmates. At many of the prisons, they were shackled at all times, received a lower quality of food, and their movements were severely restricted.

39. Another major concern was related to the treatment of prisoners with mental illnesses who were not getting access to proper diagnosis, facilities, or treatment. In Juba the Special Rapporteur saw women who were mentally ill handcuffed and shackled in crowded cells.

40. During her visit the Special Rapporteur received reports that Omdurman women's prison is severely overcrowded. It has a capacity of 350-400 but holds around 900 prisoners. There are also 210 children under the age of 5 who were either born in the prison or arrived with their mothers. According to information received, the prison is particularly overcrowded in the section holding women from IDP camps near Khartoum for alcohol-related crimes. In that section, there are three cells intended to hold 40 prisoners; the section is said to hold approximately 720 women.

F. Impunity and transitional justice in the Sudan

41. The Special Rapporteur believes that lasting and sustainable peace is not possible without justice and reconciliation. Ending impunity and ensuring accountability is a significant deterrent to future atrocities and is essential for demonstrating the rule of law.

42. As part of the peace process, the GNU is required to initiate a comprehensive process of national reconciliation. Unfortunately, a comprehensive strategy responding to transitional justice has yet to be developed in the Sudan.

43. During her mission, the Special Rapporteur raised the issue of transitional justice with members of the Government and other officials in Khartoum. They consistently indicated that the Sudanese people were not interested in transitional justice. They said looking into the past would destabilize the peace. Rather, the CPA was said to be the most important factor. A different view was given to the Special Rapporteur by civil society representatives. Community groups indicated that they did indeed want a mechanism for transitional justice. The Special Rapporteur met with representatives of civil society in Juba and was made aware of the loss and suffering faced by the people of Southern Sudan who had endured years of conflict. People assured her of their desire for a transparent process to reveal the truth and hold those responsible for crimes accountable. About 2.5 million people were killed during the conflict in Southern Sudan, millions were displaced and many disappeared, were tortured or killed. Many relatives cannot even grieve as the graves of the victims are unknown. Some interlocutors hoped that the Human Rights Commission could be given a mandate for national consultation and propose a mechanism for transitional justice in accordance with the desire of the public and the victims. Providing justice will help the peacebuilding in any post-conflict country, including the Sudan.

G. Justice in Darfur

44. The failure of the GNU to ensure accountability for major human rights violations, particularly for high-ranking officials, shows the ongoing need for prosecutions by the International Criminal Court in the Sudan. The Special Rapporteur urges all parties to cooperate with the Court, in accordance with Security Council resolution 1593 (2005).

45. The most prominent accountability mechanism in Darfur was the Special Criminal Court on the Events in Darfur, which was established by decree in June 2005. Its wide jurisdiction covers crimes in the Sudanese Penal Code, any charges concerning investigations into the violations cited in the report of the National Commission of Inquiry, and any charges pursuant to any other law, as determined by the Chief Justice. On 10 November 2005, the Chief Justice issued a decree amending the subject matter jurisdiction of the Court to explicitly include crimes under international humanitarian law. The Court was also made to sit permanently in El Fasher, while two separate decrees established satellite courts with the same jurisdiction in Nyala and El Geneina.

46. The Special Rapporteur met with the Chairman of the National Investigation Commission into the events in Darfur, the Chairman of the Reparation Commission, and a judge from the Special Criminal Court on the Events in Darfur. She was informed that 200 perpetrators had been identified by the Investigation Commission and that the Office of the Special Prosecutor for Crimes against Humanity had been established in September 2005. However, only six cases had been referred to the Special Criminal Court.

47. As of December, the cases prosecuted before the Special Criminal Court did not reflect the major crimes committed during the height of the Darfur conflict in 2003-2004. All except one of the cases involved incidents from 2005; one was for sheep theft. Further, only one of the cases involved charges brought against a high-ranking official, and he was acquitted. Thus, the Court failed to address command responsibility issues or convict high-ranking officials directly involved in human rights abuses and violations of international humanitarian law. The Court was also inadequately resourced. In Southern Darfur, the Court had no administrative officer, registrar or clerk to assist the Court or to provide information and assistance to the public.

48. The Government has taken other justice initiatives, but they too have fallen short of producing accountability. In 2005, the Governor of Southern Darfur established various investigation committees that have been presented to the international community as a swift government response to the alleged violations of human rights and humanitarian law committed by government armed forces and allied government militias. Such committees were established for attacks in Hamada and Buram (January 2005), Khor Abeche (April 2005), and Marla and Labado (December 2004). More recently, similar committees were established in relation to the attacks on Aro Sharow IDPs camp and Guzminu village in September in Western Darfur and in Tama village in October in Southern Darfur. The committees suffer from serious shortcomings. These shortcomings include a lack of transparency in methodology and outcome, inadequate investigations, a lack of impartiality and a failure to address State responsibility for the attacks.

49. National laws that effectively protect Sudanese law enforcement officials from criminal prosecution also contribute to a climate of impunity in the Sudan. Amendments made to the People's Armed Forces Act in August 2005 left criminal prosecution of members of the armed forces at the discretion of the General Commander. Similar forms of immunity from prosecution are also provided for police and members of National Security for acts connected with official duties. Such examples highlight the urgent need for legislative reform to ensure the rule of law and establish accountability for State violations.

H. Rebuilding justice systems

50. A strong and impartial judiciary will be crucial in the Sudan's transition to a system based on the rule of law. Training of judges, their adequate remuneration, tenure of position, and the provision of resources to enable courts to function, are needed. The administration of justice also requires an environment free of threat and intimidation by security and police.

51. The Special Rapporteur learned that in Rumbek, where formal courts were available, the SPLA/M had never paid the judiciary or other court officials. The salaries of staff came from court fines and, as a result, the officials had on occasion increased the amount of the fines and had cases pending for longer periods of time to ensure that they were paid. In Abyei, which was in a transitional territory whose status as part of the North or South had not been decided,

citizens there were living in a legal limbo as State officials were unclear about what law was applicable; moreover, the Government was reluctant to implement projects with the justification that its status was unclear. This left State institutions such as courts and law enforcement agencies without resources, and worse off than some of the other resource-deficient areas.

52. In Darfur, the Government needs to channel human and other resources into the judicial system in order to strengthen it. In Garsila (Zalingei area of Western Darfur) there was no judge for over four months from 25 June 2005, and also no prosecutor for two years. Individuals detained at the Garsila police station were, therefore, held without any judicial authority to evaluate the lawfulness of their detention. A local lawyer reported that two of his clients were detained for two months without judicial review.

53. Rural courts were being relied on to reduce a backlog of cases in Garsila, and rural courts were taking over cases that were outside their jurisdiction. Rural courts were usually headed by people who were not trained judges. The Criminal Procedures Act of 1991 permitted these courts to hear cases involving crimes that carried penalties of a prison sentence of up to one year or 80 lashes. However, it was common for the courts to hear serious crimes outside its jurisdiction.

I. The death penalty in the Sudan

54. During her prison visits, the Special Rapporteur met with a number of prisoners on death row. The GNU stated that as of 18 September 2005 there were 479 persons in the Sudan who had been sentenced to death and were awaiting execution. Both the national and Southern Sudan Interim Constitutions provide for the imposition of the death penalty for “extremely serious offences”. Unfortunately, the failure of the Government to ensure fair trial guarantees raises serious doubts about its compliance.

55. The Special Rapporteur was also disappointed that the INC fails to comprehensively protect children under 18 years of age from the death penalty, in violation of the Convention on the Rights of the Child. The death penalty can also be imposed on persons who committed a capital offence as a child if the sentence is imposed when the convicted person is 18 years old or older. In this regard, the Special Rapporteur learned that in late August 2005, two individuals were executed at Kober prison in Khartoum who were reportedly under 18 years at the time the offence was committed. This is to be contrasted with the Southern Sudan Interim Constitution, which prohibits the death penalty for children under 18. Children in the Sudan should not receive different levels of protection from the law depending on where they live. Such inconsistencies also violate the right to equality before the law.

J. Forced recruitment of children

56. Militias who were on the fringe of various peace processes scrambled to increase the number of soldiers in their ranks. In Southern Sudan, militias allied to the Government of Southern Sudan forcibly recruited children, sometimes with the support of elements within the Sudan Armed Forces. In eastern Sudan, children were recruited by rebel militias. In Darfur, child soldiers were present in militias and regular government forces.

57. Recruitment had long-lasting implications. Recruits became entrenched in military life by becoming dependent on the food or care it provided. Soldiers entered into relationships with internally displaced girls that resulted in pregnancies; some girls were at risk of abandonment by soldiers when they were redeployed. Children born to soldiers from a different ethnic group faced stigma or abandonment. Of 103 abandoned children in one southern town, 36 were the children of northern soldiers.

58. Thousands of children were abducted during the North-South civil war. These abductions are being addressed, but often in ways that undermine the rights of the abductees. The Committee for the Elimination of Abduction of Women and Children (CEAWC), set up by the Government in 1999, has a mandate to end abductions, prosecute the perpetrators and return abductees. Under the authority of CEAWC, some abductees were forced to leave new homes in the North, some were separated from their children, and some were sexually assaulted en route. There was no preparation for their return and reintegration. CEAWC is currently organizing a new round of returns. In its last round (May 2005), it allowed UNICEF to monitor returns. UNICEF, with partners, intends to monitor upcoming returns.

59. The Special Rapporteur was also concerned to hear that new forms of trafficking in persons may be emerging. Several CEAWC returnees who failed to find their way home to Bahr al-Ghazal this year are working in prostitution or living on the streets. In Equatoria, girls in relationships with redeployed soldiers have sometimes followed them when they were redeployed, against the wishes of their families and outside the marriage customs of their area.

60. The Special Rapporteur urges the GNU to fulfil its obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and to ensure that children under 18 years do not take part in hostilities and are not compulsorily recruited.

K. Forced relocations

61. The Special Rapporteur expressed concern about the Government's attempts to forcibly relocate IDPs from Soba Aradi in May and the Shikan areas in August. The Soba Aradi operation resulted in violent riots, during which 15 policemen and at least 5 civilians were killed and many others wounded. Similarly, at Shikan, a large police and military presence was used to relocate several hundred families from the area, without prior notification of residents. Those residents who did not obey orders to relocate were reportedly beaten and had their houses burned.

62. Future relocation sites are reported to have inadequate provision of water or social services such as health care, schools and transport. The Special Rapporteur was pleased to learn that high-level consultations on the issue are taking place between the United Nations, humanitarian partners and the Governor of Khartoum to discuss joint proposals for urban planning and development in Khartoum State.

63. The GNU should adopt appropriate procedural and legal safeguards to ensure that the human rights of the urban poor are protected. These measures include adequate planning and consultation with the affected communities, compensation for property damaged, and relocation to sites fit for human habitation.

L. Economic, social and cultural rights

64. With respect to Darfur, the reporting period saw the Government not only failing to protect the civil and political rights of individuals, but also their economic, social and cultural rights. Attacks perpetrated by armed militias restricted Darfurians from farming land, collecting firewood for cooking, and collecting grass for feed. Such activities provide food and shelter, and were a source of income with which other livelihood essentials could be purchased. Militias also destroyed crops and set fire to arable land. Both militias and rebels were also responsible for targeting humanitarian convoys and thus reducing overall quantities of aid.

65. Freedom of movement was violated by the ad hoc policies of local officials. In Northern Darfur, government authorities quarantined Abu Shouk camp on 30 and 31 October 2005, which resulted in IDPs not being permitted to access latrines, water points and primary health services inside the camp. In Southern Darfur, a ban on commercial traffic in and out of Kalma IDP camp created trade and travel obstacles for IDPs. As a result, IDPs were left to travel by foot or donkey cart which significantly limited types and quantities of goods they could transport and sell. This restriction on economic opportunity violates the right of IDPs to progressively enjoy an adequate standard of living (e.g. by using the proceeds of trade to purchase food, clothing and shelter). Moreover, the ban on motorized transport restricted the ability of many IDPs to enjoy the employment opportunities they had secured in Nyala, as well as access to secondary schools.

66. Prior to the signing of the CPA, the Southern Sudan and the transitional areas provided extremely limited economic, social and cultural opportunities. After the signing, the death of Dr. Garang, and the riots in Khartoum, large portions of the 4 million IDPs started to return to their places of origin. This placed a considerable strain on the available resources. Throughout Southern Sudan and the transitional areas medical facilities, secondary schools, and other services essential to the enjoyment of economic, social and cultural rights were scarce.

67. Humanitarian services mitigated some of the problems. But the State had an enormous task in meeting the needs of its people. In Abyei, where people from the North were returning, the population of the town increased from approximately 6,000 to 10,000 in three weeks. Poorly equipped schools became overcrowded. This problem was exacerbated by the occupation of some schools by military personnel. Almost non-existent medical facilities already lacking basic drugs and medical personnel were overwhelmed by the sudden increase of patients and were unable to provide even basic assistance. The international humanitarian aid presence in the area was unable to cope sufficiently with the increased caseload of people seeking medical assistance. Patients sometimes had to walk considerable distances to receive urgent treatment. The only two water pumps in Abyei became the centre of violence among women (not necessarily between returnees and locals, but rather among whomever happened to be queuing at the time) who fetched water for their families, queuing under the hot sun.

68. In Juba, people arrived from the North and from other locations in the South. But due to insecurity caused by landmines, banditry and looting, and the Lord's Resistance Army (LRA), the returnees were reluctant to travel outside of Juba. This too resulted in a strain on resources. Attacks by the LRA in late October and November against employees of international humanitarian groups, as well as looting of humanitarian supplies, also threatened commerce and the provision of aid and services to those in need.

69. As this population shift in Southern Sudan and the transitional areas increases, national, State and local governments will have to make decisions about what resources to allocate where. In making these decisions it is paramount for the Government to ensure that it is not violating its immediate obligations under the International Covenant on Economic, Social and Cultural Rights. To accomplish this, and to go beyond, it should set benchmarks for progressively achieving the rights in the Covenant, and budgetary decisions should be informed by human rights considerations. In this regard, the Special Rapporteur welcomed the workshop run by the UNMIS Human Rights Office for 50 members of the National Assembly on “A human rights approach to national budgeting” in December.

70. The Special Rapporteur concurs with the main conclusions of Walter Kälin, the Representative of the Secretary-General on the human rights of IDPs, who visited the Sudan in October 2005. The volatile security situation, the lack of resources and infrastructure, as well as the absence of State institutions in the South pose serious threats to the human rights of returnees and IDPs.

M. Freedom of association

71. Respecting the rights of people to come together, organize, discuss and deliberate on the issues that affect them is crucial to a functioning democracy. In a positive display of these rights a peaceful march organized by civil society and the Advisory Council for Human Rights to call for an end to violence against women went ahead without interference on 30 November in Khartoum.

72. It was of concern, however, that the Special Rapporteur received reports that some local lawyers and activists in Darfur and Khartoum who participated in civil society functions such as attending legal training courses or workshops were subjected to harassment by national security officials.

73. On 27 September, during a three-day UNHCR workshop on legal aid in El Geneina, six lawyers from the Darfur Lawyers Committee were detained for four hours by National Security and released following United Nations intervention. National Security maintained that the workshop was not authorized by local authorities and that the subject matter was inappropriate while the Abuja talks were ongoing in Khartoum.

74. On 4 August 2005, the President issued the Provisional Decree on the Organization of Humanitarian Voluntary Work Act 2005. The Decree prohibits NGOs from carrying out activities unless they are registered by the Government. The Special Rapporteur met with a number of NGOs, media representatives and civil society organizations who expressed concerns about the Act's incompatibility with the Constitution and with freedom of association. It requires all NGOs to reregister within 90 days of the issuance of the decree and contains an overly bureaucratic list of requirements for registration and broad grounds on which registration may be refused. These requirements included the NGO violating “general policies of the State”. Additionally, there is no mechanism for independent judicial oversight of registration-related decisions.

75. The Special Rapporteur welcomes the initiative by the Advisory Council for Human Rights to commence a dialogue with NGOs on concerns about the law in December. The law will be reviewed by the National Assembly at the next parliamentary session in 2006.

N. National Security, power and practice

76. The Special Rapporteur was informed of arbitrary arrests of people by the National Security. On 17 October eight students from the Islamic University were tortured by National Security personnel out of the concern that they might criticize the Government over an agricultural scheme it had instituted in Al Gazeera. The Special Rapporteur was also informed of the existence of approximately 100 political prisoners, including 80 detainees in Khartoum, 10 in Darfur, and 3 in Kassala. Most of them are allegedly accused of being involved in activities against the State. Some of them have been in detention for over 1½ years without having a clear idea about their future. There are also allegations that some detainees have been tortured.

O. Freedom of expression and the media

77. On 10 July 2005, National Security personnel notified journalists in Khartoum that State media censorship would be lifted. After this date, Military Intelligence officers ceased arriving at the offices of newspapers in the evening to tell the staff what they could and could not print. This announcement marked a dramatic shift in the State's previous approach to freedom of media. That said, more selective censorship did continue from time to time. For example, officials censored articles criticizing the Government's handling of the Khartoum riots after Dr. Garang's death.

78. Further, legislative reform is needed. National press laws continue to place rigid and often unattainable material and professional requirements on journalists and newspapers that stifle the media. The laws, for example, allow a National Press Council to impose expensive licensing fees, they require that journalists register with the Council and require an editor-in-chief of a newspaper to be over 40 years of age and have 15 years of professional experience. Journalists have also advocated changing other laws, such as those pertaining to trade unions and detention, which have been used against them in the past.

P. Reconciliation and reparation in Darfur

79. In Darfur, more than 2 million people are displaced, most of whom live in IDP camps. Some of them have lived for more than two years in the camps, where they are almost entirely dependent on foreign assistance. They remain vulnerable to violence. Most displaced persons are not able to return to their homes due to the insecurity created by the security forces and Janjaweed. Where individuals have attempted to return, they face continuing harassment and deadly attack by growing numbers of armed groups, including the rebel movement, in some cases at the hands of the same persons who forcibly displaced them. The Government has established a reparation commission which tries to pay reparation and to reconcile the people in that area, but the successful cases are few.

Q. Promotion of human rights by UNMIS

80. The UNMIS Human Rights Office has engaged with civil society, members of Parliament and relevant government officials to raise awareness of key human rights issues. To that end, human rights workshops and consultation meetings were held in November and December in Khartoum, Southern Sudan (Juba and Abyei), in the east (Port Sudan), as well as in Darfur (Nyala, Zalingei). Activities with NGOs were held to raise awareness of the Bill of Rights in the Constitution and the monitoring role of NGOs in relation to the Sudan's periodic human rights reports. In relation to the establishment of the National Human Rights Commission, UNMIS continued to work to reach a consensus among the various partners on the drafting of legislation in line with international standards. Considering the important role of parliamentarians in the promotion of human rights, UNMIS Human Rights organized meetings and also engaged in regular dialogue with members of the Parliaments in the North and in Southern Sudan

IV. RECOMMENDATIONS AND CONCLUSIONS

A. Recommendations

81. **The Special Rapporteur addresses the following recommendations:**

(a) To the parties to the conflict:

- **All parties to the conflict should cease all hostilities and sit at the negotiation table. Furthermore, all parties should respect international humanitarian law and human rights law, in particular with regard to the protection of civilians and the recruitment and use of child soldiers;**
- **All parties to the conflict should strengthen their cooperation with the International Criminal Court and ensure that in any peace agreement there is no amnesty for persons who committed war crimes and crimes against humanity.**

(b) To the Government of National Unity:

- **Comprehensive law reform in consultation with civil society should be a priority to ensure conformity with the Interim National Constitution and international human rights. The immediate focus should be on legislation regulating the police, the armed forces, the press, NGOs and the criminal law;**
- **Institutional and legislative reform of National Security should be undertaken immediately to ensure that its functions are consistent with the Interim National Constitution. In particular, broad powers of arrest and detention should be repealed (articles 31 and 33 of the National Security Forces Act) and judicial oversight mechanisms established;**

- **The institutions provided under the Comprehensive Peace Agreement and the new Interim National Constitution should be established without delay. This includes national institutions crucial for the protection and promotion of human rights such as the Constitutional Court and a National Human Rights Commission in accordance with the Paris Principles. These institutions should be established in accordance with the provisions of the INC and the CPA and wide consultation with the relevant sections of society should be undertaken prior to their establishment. The independence of the Human Rights Commission must be guaranteed;**
- **A comprehensive plan with time lines should be established to fulfil the Government's obligation to disarm the Janjaweed. This should include disarmament of all irregular groups not formally within the military. Efforts should be made to remove militias integrated into Joint Integrated Units from areas of return;**
- **The GNU should ensure that law enforcement officials have the necessary training, resources and logistics to fulfil their functions in a manner consistent with international law enforcement and human rights standards;**
- **All reports of human rights violations should be investigated and the perpetrators brought to justice without undue delay. The GNU should publicly commit itself to bringing to justice perpetrators of human rights violations, including gender-based violence and torture, and to ending impunity;**
- **The action plan to eliminate gender-based violence in Darfur should be implemented according to its time frames;**
- **The Government should encourage and facilitate larger participation by women in the institutions responsible for the implementation of the CPA;**
- **Urban rezoning that results in relocations should occur in a manner that respects the dignity and rights of the affected communities. Procedural and legal safeguards including consultations, adequate notice to residents and compensation should be established. Relocation sites must be fit for human habitation. The GNU should continue to cooperate with its humanitarian partners in the design and implementation of planning and development of poor areas;**
- **In accordance with its agreement with the GNU, UNMIS should be given full, unfettered and unannounced access to all places of detention in the Sudan, including those operated by National Security and Military Intelligence. The policy should be unequivocally communicated to the authorities who implement it;**

- **To demonstrate its commitment to human rights, the GNU should ratify the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court;**
- **Clear mechanisms for reparation and reconciliation should be adopted by the Government in consultation with victims and civil society in order to respect the full human dignity of the victims. The implementation should be monitored closely by the United Nations and civil society.**

(c) To the international community:

- **In view of continuing violence around IDP camps in Darfur, AMIS and Member States should increase their efforts to ensure an AMIS civilian police presence in all camps and returnee villages;**
- **Member States and the AU should cooperate to provide AMIS with the necessary financial, logistical, communications and transport support to implement their protection mandate;**
- **The pledges made at the Oslo Conference and other bilateral agreements should be honoured;**
- **Technical and financial support should continue to the GNU to implement the CPA. In particular, appropriate resources should be made available for the process of law reform and harmonization of national legislation with the Interim National Constitution;**
- **The international community and the United Nations should help the GNU to implement comprehensive disarmament, demobilization and reintegration of the armed groups, including the Government-backed militias;**
- **The international community should support the people of the Sudan to overcome their suffering after more than two decades of war and destruction in order to facilitate the creation of a non-violent society that respects human dignity.**

(d) To the SLA and JEM and other rebel factions:

- **They should take every appropriate measure to prevent and punish human rights abuses and violations of international humanitarian law by rebel commanders and combatants, including abductions and attacks on civilians and aid workers, AMIS non-combatants, and humanitarian convoys. They should stop obstructing the freedom of movement of civilians.**

B. Conclusions

82. The Sudan has embarked on a difficult path of peacebuilding, reconciliation and reconstruction. There are positive developments in the political process: a new Government of National Unity has been inaugurated; a new Interim National Constitution has been adopted; peace talks on Darfur are under way in Abuja and Khartoum; the new Government of Southern Sudan was sworn in on 24 October; and the Constitution of Southern Sudan was adopted. Three international instruments were ratified in 2004 and 2005. Various commissions have been established. However, the people of the Sudan have seen little change in their everyday lives. The emergency laws are still in place in Darfur and the east of Sudan, and are also applied in Khartoum. People are arbitrarily arrested and held in incommunicado detention by security forces. The torture, ill-treatment and killing of civilians continue. Discrimination against and marginalization of groups continue and basic human rights such as access to food, shelter, health care and education are not guaranteed. The CPA and INC should become a reality for the people of the Sudan. The GNU and the international community have to work together to make human rights and respect for human dignity a reality for the people of the Sudan. Peace and justice in the Sudan will contribute to national, regional and global peace and security.
