



UNHCR's POSITION ON SUDANESE ASYLUM-SEEKERS FROM DARFUR

1. Since the last UNHCR return advisory for Sudan¹ in November 2001, there have been major developments in the country which have impacted upon the situation of displacement within the country.
2. In Western Sudan, following accusations against the Khartoum Government of failure to address ongoing economic and political marginalisation of Darfurians since the 1980s, a crisis erupted in Darfur in February 2003 when two rebel groups emerged to challenge the Government. The Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) claimed that the Government in Khartoum discriminated against African ethnic groups in Darfur. An armed conflict ensued with government forces supported by Arab *Janjaweed* in fighting against SLA and JEM. These Arab militias are understood to be the primary cause of 1,800,000 people becoming internally displaced within the three States of Darfur, together with 200,000 displaced across the border in Chad and the deaths of at least 50,000 people.²
3. Forced returns to Sudan entail risks for certain categories of Sudanese, regardless of their place of origin, including Darfurians. These categories include young men of fighting age who are regularly singled out for detention and interrogation. These arrests are often pursuant to an administrative decree dated 28 February 1993, which authorizes border authorities to arrest returning Sudanese who left after the June 1989 coup and have stayed away for more than a year. Such individuals can be subject to “investigations” and “necessary security measures”. Currently, the decree is applied selectively, depending on the profile of the individual returning. Young men of a fighting age are particularly susceptible to be targeted.
4. The National Assembly passed a new Security Act in July 1999, which allows the security forces to detain individuals for a period of three days for investigation. It is difficult to assess whether the three-day provision of the Act is being strictly implemented. Since the security forces wield considerable power, arbitrary detention for much longer periods persists. In addition, many suspected political opponents are required to report every day to security offices, where they have to stay all day.³

¹ UNHCR's Position on the Return of Rejected Asylum Seekers to Sudan, November 2001, <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssldoc.htm?tbl=RSDLEGAL&page=research&id=%2042822b534>.

² United Nations Commission on Human Rights, *Report of the independent expert on the situation of human rights in the Sudan, Emmanuel Akwei Addo* (E/CN.4/2005/11), 28 February 2005, in UNHCR Refworld 2005, Issue 14, CD 5.

³ Six Committees have been established, as per the Interim Constitution, for the purpose of reviewing the existing laws. The committee appointed to examine the national security legislation of 1993

5. As regards Darfur, the security situation has noticeably deteriorated since August 2005,⁴ in spite of some relative improvements noted in the previous months.⁵ Civilians continue to be targeted by fighting in Darfur. Thousands of Darfurians driven from their homes and lands remain in IDP camps in Darfur. A recent trend is the considerable rise in abductions, harassment, extortion and looting of civilians by primarily Arab militia.⁶ Deliberate attacks by Arab and other unidentified groups, some with apparent links to military or police or rebel groups, have been aimed at civilians in the IDP camps, resulting in the killing of men and abduction of women, looting of livestock, destruction of villages, destruction of crops and water supplies.⁷ Occupation of villages by individuals who are not past inhabitants is a growing phenomenon. The response of the authorities has generally been tardy and lacklustre. Women in some camps and those leaving camps to collect firewood continue to face a high risk of sexual assault.⁸ Some lawyers and others involved in legal aid and human rights networks, together with persons associated with international NGOs have been subject to abduction, harassment and intimidation. The absence of effective protection by the authorities has further exacerbated threats to the physical safety of Darfurians.⁹ Overall, it is assessed that the security situation has not improved; in fact

(amended in 1999) has not finalized its review process yet. The practice and the decree mentioned above are still in place, despite the fact that the emergency state has been lifted, except for Darfur and eastern Sudan.

⁴ Banditry has become the main threat to civilians with no visible effort by the Government to disarm the militia (the *Janjaweed*) or hold them to account; nor does the SLM/A or JEM control their men under arms. See: Secretary-General Report to the Security Council on Darfur (S/2005/592), 19 September 2005.

⁵ Secretary-General Report to the Security Council on Darfur (S/2005/378), 9 June 2005.

⁶ Secretary-General Report to the Security Council on Darfur (S/2005/523), 11 August 2005.

⁷ On 29 September 2005, a significant incident occurred when Aro Sharow camp was reportedly attacked by 250-300 Arab men on horseback. See: UNHCR, *UNHCR gravely concerned over attack on Darfur camp*, UNHCR Press Release, 29 September 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=433bf1004>; Bill Varner, Karl Maier, *Arab Militia Attack on Darfur Refugee Camp Kills 29, UN Says*, 29 September 2005, http://www.bloomberg.com/apps/news?pid=10000087&sid=aGnoiNPk4BEU&refer=top_world_news [accessed 31 January 2006]; Prevent Genocide International, *Global News Monitor for October 16-31, 2005*, <http://www.preventgenocide.org/prevent/news-monitor> [accessed 31 January 2006].

The attack appears to have been planned and coordinated, as most came from the North but escape to the South was prevented by placement of some horsemen there as well. Two villages located close to the camp – Araja and Gosmeina – were also reported burned. 15-20 IDPs are reported killed. The number of injured people is not known.

On 5 October 2005, IDP Kalma camp in southern Darfur was attacked by unknown armed men, which resulted in the abduction of eight women and one man. Twelve men were beaten and injured. Later, the women were released; however, the men went missing. The security situation in Yassin deteriorated. On 10 October 2005, fighting took place between the Rezagat tribe men and the GOS military forces in the area, which resulted in the death of Rezagat tribe Chief.

⁸ United Nations Commission on Human Rights, *Report of the independent expert on the situation of human rights in the Sudan, Emmanuel Akwei Addo* (E/CN.4/2005/11), 28 February 2005, in UNHCR Refworld 2005, Issue 14, CD 5.

⁹ On 24 January 2006, UNHCR announced that some 800 Sudanese from Darfur had arrived this month to Gaga camp in Eastern Chad, underscoring the deterioration in security. See: UNHCR, *Guterres warns UN Security Council of possible "catastrophe" in Darfur*, UNHCR Press Release

the reverse is true, to the point that a change in the prevailing position of no returns to Darfur is not warranted.

6. In Khartoum, there are approximately two million IDPs in four IDP camps and in some 16 squatter areas in and around the capital. The majority of the IDPs are from South Sudan, but there is a sizable IDP population from Darfur as well, many of whom arrived in Khartoum during the 1980s, as a result of draught. Survey estimates indicate that approximately 10-15% of the two million IDPs in Khartoum are from Darfur. The IDP population in and around Khartoum is socially and economically marginalized and lives in very poor living conditions, despite the activities of the UN and NGOs. Harassment and arbitrary violence on the part of the authorities is a regular occurrence. Internally displaced persons from Darfur in Khartoum also often face protection risks, including forced relocation and forced return.¹⁰

7. Exacerbating the problem, the Government has accelerated, since 2003, a “re-planning process” for the IDP camps and squatter areas in and around Khartoum. This has led to demolition of IDP homes, schools and medical centres. It is assessed by UNHCR that approximately 250,000 IDP households have been made homeless as a result of the ongoing home demolitions. Thousands of families have been left with no place to live, because plots allocated are too few and no alternative shelters have been provided. There is no effective government policy addressing the needs of those excluded from accessing new plots. Especially hard hit are undocumented IDPs, female-headed households and those who arrived in Khartoum after 1996. The latter include most of the IDPs from Darfur who were compelled to move to the capital, as a result of the Darfur crisis.

8. The fact that internally displaced persons are receiving international assistance in Darfur and in Khartoum should not give rise to the conclusion that it is safe or reasonable for the claimants to return to parts of Sudan. Internally displaced persons in Darfur continue to face serious threats to their physical safety and personal security. In UNHCR's assessment, the threats are so widespread that it cannot be said there is an internal flight alternative anywhere in Sudan for asylum-seekers from Darfur, including for those who resided in Khartoum before the Darfur crisis. Sudanese of “non-Arab” Darfurian background returning to Sudan face a heightened risk of scrutiny by the security apparatus. Furthermore, where internal displacement is a result of “ethnic cleansing” policies, denying refugee status on the basis of the internal flight or relocation concept could be interpreted as condoning the resulting situation on the ground and therefore raises additional concerns.¹¹

24 January 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/news/openssl.htm?tbl=NEWS&id=43d657784>.

¹⁰ In 2004, one day after the visit of the UNHCR Inspector General (from 5-19 March 2004) to a camp composed of internally displaced non-Arab Darfurians, the authorities moved into the camp, evicted its residents and forcefully relocated them to the outskirts of Khartoum.

¹¹ UNHCR, *UNHCR Guidelines on International Protection: “Internal Flight Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, in UNHCR Refworld 2005, Issue 14, CD2, <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=3f2791a44>.

9. UNHCR therefore recommends that:
- States provide international protection to Sudanese asylum-seekers from Darfur of “non-Arab” ethnic background¹², through according them recognition as refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol or under the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, as appropriate;
 - Where a State feels unable to grant refugee status under the law, but the individual is not excluded from international protection, at least a complementary form of protection should be granted; no non-Arab Sudanese originating from Darfur should be forcibly returned until such time as there is a significant improvement in the security situation in Darfur;
 - Due attention is paid to the particular protection needs of especially vulnerable asylum-seekers from Darfur, such as female heads of households, medical cases or victims of past persecution;
 - Due attention should, nevertheless, be paid to possible grounds for exclusion, in accordance with Article 1 (F) of the 1951 Convention and/or Article 1.5 of the 1969 OAU Convention, in certain individual cases.
10. This position will be updated in the coming six months.

UNHCR, February 2006

¹² While UNHCR's recommendation that a presumption of eligibility to refugee status under the above-mentioned instruments applies to non-Arab Darfurians, asylum claims submitted by Darfurians of Arab origin shall be considered on their individual merits.

Sudan: Locator Map¹³



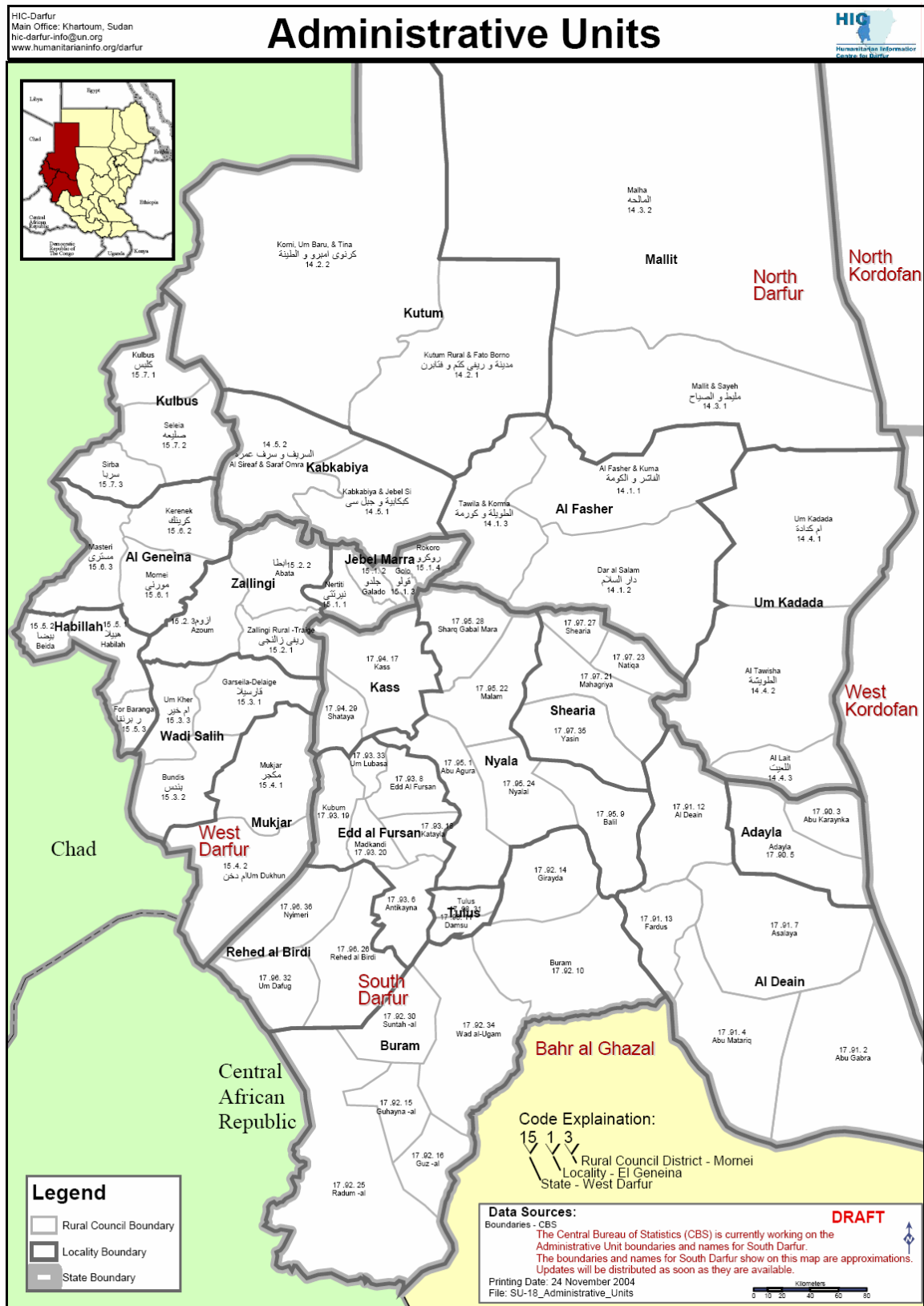
SUDAN
Locator Map: October 2005

Geographic Information Systems
UNHCR Khartoum, Sudan
imai@unhcr.ch



¹³ United Nations High Commissioner for Refugees, Geographic Information Systems, UNHCR Khartoum, October 2005.

Darfur – Administrative Units¹⁴



¹⁴ Humanitarian Information Centre (HIC) for Darfur, Map Centre, 24 November 2004. Available at <http://www.humanitarianinfo.org/darfur/mapcentre/index.asp>.

IDP and Refugee Locations – West Darfur and Eastern Chad¹⁵

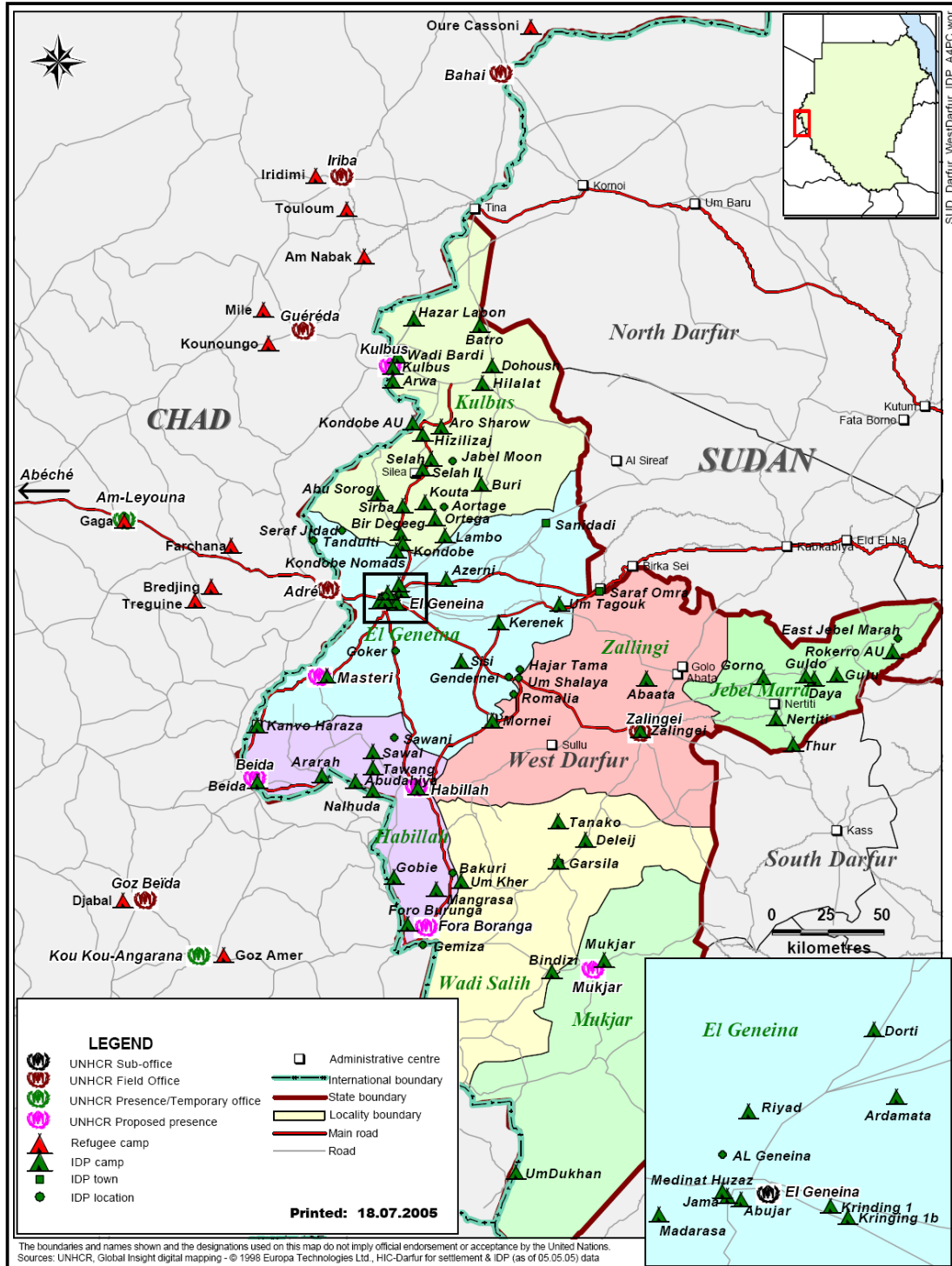


IDP AND REFUGEE LOCATIONS
West Darfur and the Eastern Chad

Geographic Information Systems
UNHCR Khartoum, Sudan

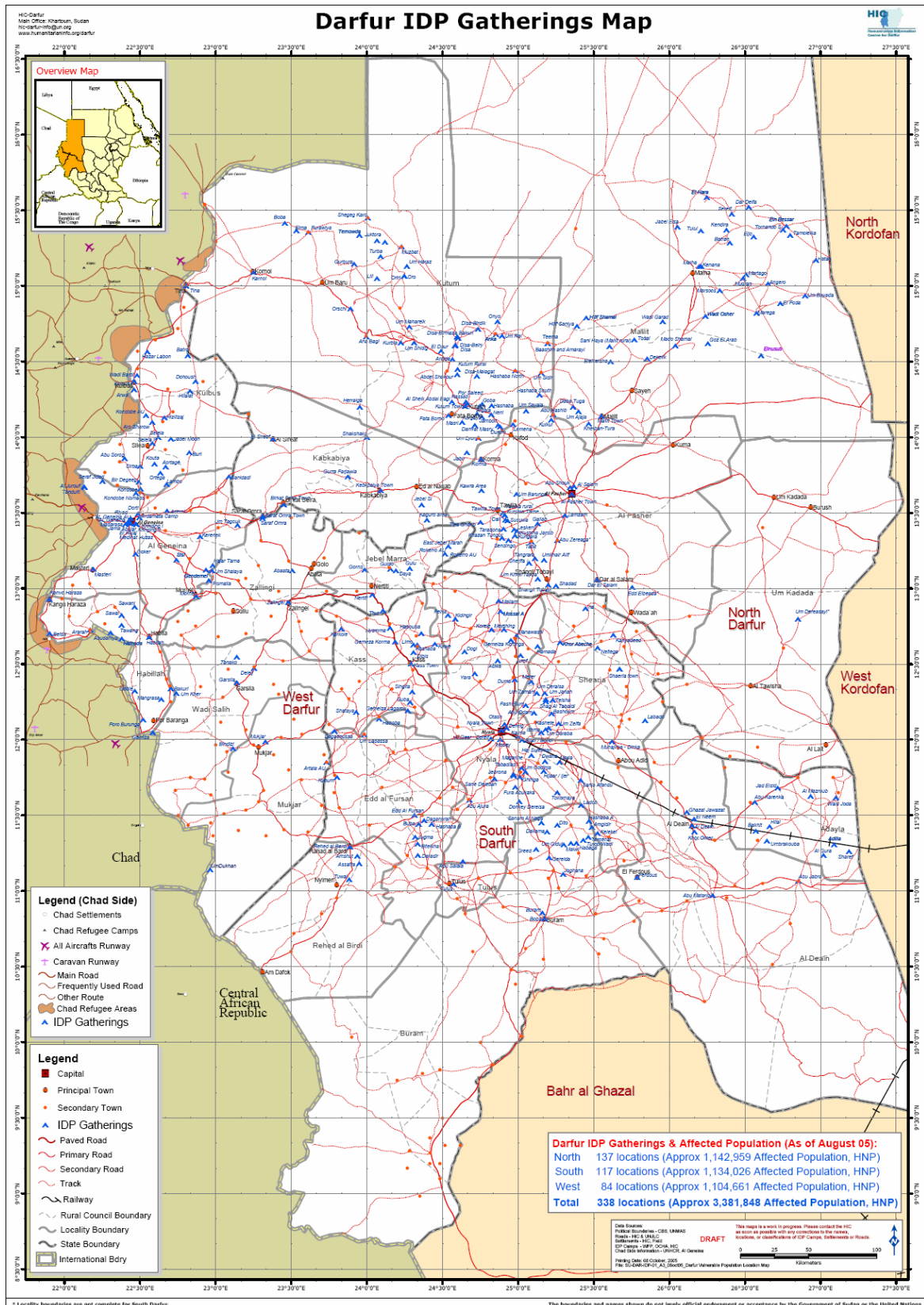
As of 05.05.05

imai@unhcr.ch



¹⁵ United Nations High Commissioner for Refugees, Geographic Information Systems, UNHCR Khartoum, 5 May 2005.

Darfur IDP Gatherings Map¹⁶



¹⁶ Humanitarian Information Centre (HIC) for Darfur, Map Centre, 8 October 2005. Available at <http://www.humanitarianinfo.org/darfur/mapcentre/index.asp>.