

EMBARGO

Access to Justice for Victims of Sexual Violence Report of the United Nations High Commissioner for Human Rights 29 July 2005

Summary

On 3 July 2004, a joint communiqué was issued by the Government of the Sudan and the United Nations on the occasion of Secretary-General Kofi Annan's visit to the Sudan. In the joint communiqué, the Government of the Sudan committed itself, inter alia, to undertake immediate investigations of all cases of violations occurring in Darfur and to ensure that all individuals and groups accused of human rights violations are brought to justice without delay. The Government of the Sudan further committed itself to establish a fair system, respectful of local traditions, that will allow abused women to bring charges against alleged perpetrators.

This report, prepared a year after the joint communiqué was issued, assesses the extent to which the Government of the Sudan has lived up to its commitments with regard to investigating and punishing sexual violence in Darfur, and in bringing such violence to an end.

The Government has taken some action in response to the sexual violence in Darfur, in particular since May 2005, by forming a State Committee on Combating Gender-Based Violence in Southern Darfur and providing technical assistance to improve the investigative capacity of the law enforcement agencies. It is too early to evaluate the impact these measures will have on reducing sexual violence in Darfur, but they indicate that the Government is starting to address the issue.

The United Nations Mission in Sudan has been actively concerned with the issue of sexual violence and has engaged the Government of the Sudan at all levels through the Joint Implementation Mechanism and its subcommittee on human rights and protection. The issue of sexual violence has featured high on the agenda of the recent meetings of the subcommittee. Among other human rights concerns, the Special Representative of the Secretary General for the Sudan has kept the Security Council apprised of this issue.

Rape and gang rape continue to be perpetrated by armed elements in Darfur, some of whom are members of law enforcement agencies and the armed forces, and the Government appears either unable or unwilling to hold them accountable. To date, most perpetrators have not been brought to justice, and it remains to be seen whether the recently established Special Criminal Court for the Events in Darfur will effectively address this crime.

Major obstacles continue to prevent most victims from seeking accountability. Many women do not report incidents, out of fear of reprisals, and are discouraged from reporting by the lack of redress for sexual violence. Some police stations refuse to register and investigate complaints of sexual violence. When cases are registered, police officials often do not vigorously investigate them. Immunity for members of the security forces and the interference of military and security officials in cases involving members of the security forces often cause indefinite delays in the examination of cases or lead to their outright dismissal.

A major obstacle to establishing accountability for sexual violence is the insensitive and often intimidating treatment of victims of sexual violence by the authorities. Failure to comply with the procedure for collecting medical evidence from victims of crimes has resulted in confidential medical assistance being denied to many women. An extreme example was the case of a victim who was forcibly taken from a medical clinic to be repeatedly examined against her will by Government doctors. Furthermore, the courts are not provided with comprehensive medical reports, but only with the medical evidence form (Criminal Form 8), which often does not document the full extent of the injuries that

would assist in the prosecution of rape. When rape is not established by the courts, rape victims can face criminal charges themselves.

The Sudanese authorities generally deny the allegations and intimidate the victims and witnesses into withdrawing their charges. Victims and witnesses have faced arrest for “providing false information” and threats after reporting sexual violence. Local and international humanitarian organizations have faced similar intimidation. The national director of one major international humanitarian organization was arrested and charged with capital crimes after the organization released a report documenting some 500 rapes in Darfur. The charges were ultimately dropped after the intervention at governmental level by the Special Representative of the Secretary-General.

In order to put an end to sexual violence, the Government of the Sudan needs to acknowledge the scope of the problem and to take concrete action to end the climate of impunity in Darfur. Only timely and credible investigations and prosecutions of sexual violence will make it clear to the perpetrators of sexual violence, who include members of the law enforcement and security forces and pro-Government militia, that sexual violence will no longer be tolerated. Arrest, harassment and intimidation of victims of sexual violence and their supporters must end.

This report concentrates on an evaluation of the response of the authorities to the phenomenon, and in particular to individual cases of sexual violence brought to their attention. The findings suggest that while the Government has taken some steps to respond to some allegations of sexual violence, to date, it has failed to act with due diligence to investigate effectively allegations of sexual violence and to end impunity for these crimes, and thus contribute to their prevention. The formation of a Government of National Unity is an opportunity to push ahead and make the reforms that are needed to comprehensively address sexual violence and allow women to access justice in accordance with the Government’s commitments under international law.

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Introduction

1. An armed conflict between rebel movements, mainly the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), and the Government of the Sudan erupted in early 2003. In response to rebel insurgency, the Government of the Sudan and its militias, commonly known as Janjaweed, conducted widespread and systematic attacks on civilians perceived to be supporting the rebel movements.

2. The report of the International Commission of Inquiry on Darfur, established by the Secretary-General in October 2004 pursuant to Security Council resolution 1564 (2004) (S/2005/60), has thoroughly documented the horrors committed in Darfur and represents the most authoritative account to date of the violations of international human rights and humanitarian law that have taken place in Darfur over the past two years. The Commission concluded that the Government of the Sudan and the Janjaweed were responsible for widespread and systematic violations of international human rights law and international humanitarian law, which may amount to war crimes and crimes against humanity. In particular, the Commission found that throughout Darfur, Government forces and militias conducted indiscriminate attacks, including the killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement. The Commission also found that members of the SLM/A and JEM rebel groups had committed serious violations of international human rights and human rights law amounting to war crimes.

3. The Commission recommended that the Security Council refer the situation in Darfur to the International Criminal Court (ICC), which the Council did on 31 March in its resolution 1593 (2005). On 6 June 2005, the Prosecutor of ICC officially declared that he would open an official investigation into the situation in Darfur.

4. Since early 2005, the dynamics of the conflict in Darfur have changed. The large-scale killings and massive displacement that characterized the first two years of the conflict have decreased. Fewer direct attacks on civilians were documented between January and June 2005. Presently, there are an estimated 1,880,000 internally displaced persons – nearly one third of the population of Darfur - in camps and urban settlements throughout Darfur, with another 300,000 Darfurians having sought refuge in neighbouring Chad.

5. There have been no verified reports of air attacks by Government planes since January 2005. At the same time, there have been increasing splits in the rebel groups, with reported fighting between JEM and SLM/A factions and the reported defection of some rebel commanders to the side of the Government. The fractioning of the Darfur rebel groups has led to increased insecurity in Darfur, with an increase in banditry and looting incidents, including against local and international humanitarian organizations.

6. While the international community, in cooperation with the African Union Mission in Sudan (AMIS) and the Government, has provided some protection and assistance to displaced persons inside and around the camps, the displaced remain vulnerable to attacks and other abuses where the international community is not present.¹

7. Based on the initial recommendation of the report of the Acting High Commissioner for Human Rights (E/CN.4/2005/3) and following the visit of the Secretary-General in June and July 2004, the Government and the United Nations signed a joint communiqué on 3 July, in which the Government committed itself to “allow for the deployment of human rights monitors”. In August 2004, four human rights officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR) were initially sent to Darfur. This deployment increased steadily over the following months. Following the establishment of the United Nations Mission in Sudan (UNMIS) by the Security Council in March 2005, the OHCHR human rights officers in Darfur were integrated into the human rights component of UNMIS. At the time of the writing of this report, there were 45 UNMIS human rights officers deployed in four regional offices

(Al-Fasher, Nyala, Al-Geneina and Zallingai) in Darfur. Additional recruitment is ongoing, and the final number of human rights officers, including United Nations volunteers, is expected to rise to 65 by the end of August 2005.

8. The mandate of the human rights component of UNMIS (UNMIS Human Rights) is contained in Security Council resolution 1590 (2005), which, inter alia, called for ensuring an adequate human rights presence, capacity and expertise within the mission to carry out human rights promotion, civilian protection and monitoring activities. Presently, considerable attention is being devoted to the human rights situations in Darfur. By July 2005, UNMIS Human Rights will extend its activities to other parts of the Sudan, particularly in southern Sudan.

9. The monitoring activities of human rights officers (HROs) in Darfur are based on the joint communiqué. In it, the Government of the Sudan made a number of commitments, including to: (a) undertake concrete measures to end impunity; (b) undertake immediate investigation of all cases of violations, including those brought to its attention by the United Nations and the African Union; (c) ensure that the independent Investigation Committee established by presidential decree in May 2004 receives the necessary resources to undertake its work and that its recommendations are fully implemented; (d) ensure that all individuals and groups accused of human rights violations are brought to justice without delay; (e) allow the deployment of human rights monitors; and (f) establish a fair system, respectful of local traditions, that will allow abused women to bring charges against alleged perpetrators. In its resolution 1556 (2004) the Security Council, welcoming the joint communiqué, called on the Government of the Sudan to fulfil immediately all of the commitments it had taken on therein.

10. In view of this mandate, UNMIS Human Rights investigates, monitors and reports of human rights violations in Darfur, in an impartial and objective manner, including unlawful, extrajudicial and arbitrary killings, torture and other cruel, inhuman, or degrading treatment or punishment, arbitrary detention and arrest, sexual violence including rape, and harassment, threats and intimidation of non-governmental

organizations (NGOs). It also recommends corrective actions to the Government of the Sudan and monitors the police forces, prosecution and judiciary responsible for ensuring accountability for human rights abuses at the local and national levels. When possible, HROs visit and monitor places of detention to follow up specific cases, with a focus on the legality of detentions and on the ill-treatment and/or torture of detained persons. The HROs also work closely with AMIS on human-rights related activities. While their monitoring and reporting roles will continue to be at the centre of the work carried out, in the months to come they will also start implementing a number of technical cooperation and capacity-building programmes.

11. The present report analyses actions by the Government of the Sudan, in accordance with its domestic and international obligations and its own stated commitments, to ensure access to justice for victims of sexual violence.

I. BACKGROUND: SEXUAL VIOLENCE AND THE DARFUR CONFLICT

12. The Government of the Sudan has reacted strongly to accusations of widespread and systematic rape and other forms of sexual violence committed during the Darfur conflict, but the reality is that although the large-scale attacks against civilians have abated, rape continues.² HROs in Darfur document new cases of rape on a weekly basis, perpetrated by armed men alleged to be members of the Government armed forces, law enforcement agencies and Janjaweed.

13. Sexual violence is prohibited under international human rights law and international humanitarian law, which govern the conduct of war. Under international customary law, many acts of violence against women committed by parties to a conflict constitute torture. These include rape, abduction and sexual slavery, forced marriage, forced impregnation, sexual mutilation, indecent assault and other forms of physical violence. Rape and other forms of sexual violence by combatants in the conduct of armed conflicts are recognized as war crimes.

14. Acts of sexual violence have been prosecuted as crimes under the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The jurisprudence of these bodies has reinforced the status of rape as a war crime and a crime against humanity. These tribunals have also recognized that acts of sexual violence can constitute torture, inhuman treatment and, in certain circumstances, genocide.

15. As set out in the Rome Statute of the ICC, the crime of rape includes situations where the victim provides sex to avoid harm, to obtain the necessities of life, or for other reasons that have effectively deprived them of their ability to consent. When sexual violence is committed on a systematic basis or large scale, or as part of a widespread or systematic attack directed against a civilian population, it is a crime against humanity. Rape of women in armed conflict may constitute an element of genocide, as defined by the Convention on the Prevention and Punishment of the Crime of Genocide.

16. In accordance with international human rights standards the Government of the Sudan has a duty to exercise due diligence to prevent, investigate and punish acts of sexual violence and to provide access to just and effective remedies and specialized assistance, including medical assistance, to victims of sexual violence. This obligation exists whether those acts are perpetrated by the State or by private persons (article 4 (c) of the Declaration on the Elimination of all Forms of Violence against Women) or by armed groups or warring factions.

II. PATTERNS OF RAPE IN DARFUR

17. As noted above, the International Commission of Inquiry on Darfur found that “rape or other forms of sexual violence committed by the Janjaweed and Government soldiers in Darfur was widespread and systematic”. The legacy of these violations has had multiple consequences for the survivors and their families. In addition to the trauma of the rape itself, sexual assaults can result in serious physical injury, forced pregnancy, disease, death, and ostracism from the communities of the victims.

18. Sexual violence continues to be perpetrated by armed elements in Darfur, some of whom are members of law enforcement agencies and the armed forces, that the Government appears either unable or unwilling to hold accountable. To date, most perpetrators have not been brought to justice and it remains to be seen whether the recently established Special Criminal Court for the Events in Darfur will effectively address this crime.

19. The pattern of sexual violence and the response of the authorities in the different regions of Darfur have distinct elements. There are, however, common features to the crimes that are explored in this report.

20. The majority of the victims of sexual violence documented by HROs are women and girls who live in camps for internally displaced persons (IDPs), some of which are guarded by forces allied with those responsible for the original displacement. Many of the incidents took place when victims went to collect firewood or grass or were travelling on the roads between major towns in Darfur. Many of the cases were gang-raped by groups of armed men who arrived on camels or horses. Collective rapes of a number of women and girls together were also common. The victims were almost always insulted and humiliated,³ often threatened with death, beaten and, in a few cases, killed. In the vast majority of cases where the perpetrators have been identified, they were either members of the Government armed forces, law enforcement agencies or pro-Government militia.

21. In vast majority of cases victims and their representatives do not ordinarily approach the authorities, for fear of reprisals or because of the futility of reporting given the lack of redress for sexual violence. In cases where the victim has sought legal justice, HROs have observed that the authorities have failed to bring most perpetrators to justice, and in some cases their action has aggravated the situation and revictimized the rape survivor through humiliation and insensitive treatment.

22. Because HROs operate only in some areas of Darfur owing to the volatile security situation, not all cases of sexual violence are reported even to UNMIS. Even where HROs are present, many acts of sexual violence go undocumented. This report does not reach any empirical conclusions on the number of rapes that have taken place in the Darfur region during the reporting period. The analysis concentrates on an evaluation of the response of the authorities to the phenomenon and, in particular, to individual cases of sexual violence followed by HROs that have been brought to the authorities' attention. The findings suggest that while the Government has taken some steps to respond to some allegations of sexual violence, to date it has failed to act with due diligence to effectively investigate allegations of sexual violence and end impunity for these crimes, and thereby contribute to their prevention.

A. Western Darfur

23. Between August 2004 and May 2005, HROs in Western Darfur monitored and followed up on 39 incidents of rape, attempted rape and physical assault involving a total of 82 victims. Half of the incidents included more than one victim. The range of age of the victims was 7 to 60. In 15 cases, the victims were between 5 and 12 years old, while in 17 cases, the victims were between 12 and 18. In 50 cases, the victims were over 18 years of age. The perpetrators were described in the majority of cases as armed men wearing khaki uniforms or pro-Government militia members, often with their faces covered. In most cases, the crimes took place on the outskirts of IDP camps, when the women and girls were collecting firewood or grass, mainly for income-generation purposes.

24. The reporting patterns show that many victims were too intimidated to report the crime, or lacked faith in the authorities: in 16 of the 39 incidents monitored by HROs the victims did not lodge a complaint with the police or wish to pursue legal action. In six cases the prosecutor in Western Darfur filed complaints against unknown perpetrators. In 18 of the incidents, complaints were lodged at the police station, but no action was taken. The police have refused to provide information on those cases and deny having them on

record. In eight cases, the police or prosecutor allegedly refused to investigate the complaint, despite corroborative medical evidence. In only two of the cases were the perpetrators prosecuted, convicted and sentenced. Both cases involved the rape of female minors by juvenile male offenders.

B. Northern Darfur

25. Between August 2004 and June 2005, the HROs in Northern Darfur monitored and followed up on 20 incidents of rape, gang rape and attempted rape involving 29 victims. In the majority of cases the crimes were committed close to military camps.

26. In seven of the incidents, there were multiple victims and in 11 incidents multiple perpetrators. The majority of victims were female minors. In five cases, the victim was between 5 and 12 years old, in 14 cases the victims were between 12 and 18, and in 10 cases the victims were over 18. In nine incidents the perpetrators were unidentified members of the armed forces. In seven incidents the perpetrators were identified as either soldiers or policemen.

27. In two cases the police refused to allow the victims or their representative to lodge a complaint. Complaints were filed with the police with regard to 11 incidents involving 17 victims. Eight cases are under investigation. Out of the 20 cases monitored in Northern Darfur, only one perpetrator has been held accountable for the crime. In May 2005, a police officer was found guilty of the rape of a 7-year-old boy and sentenced to five years' imprisonment and 100 lashes. No compensation was provided to the victim.

C. Southern Darfur

28. Between October 2004 and 30 June 2005, the HROs in Southern Darfur received information about 27 incidents of sexual violence involving 119 victims. The highest number of rapes in one incident were reported during attacks on villages (the *Hamada* case). Fifty-one cases were followed by HROs, in which 17 victims were female minors

aged between 11 and 17, and one of the victims was a male minor aged 14. Thirty-four female victims were aged between 18 and 40. The majority of the cases took place outside IDP camps when women and girls went to fetch firewood and grass; three cases occurred during attacks on public vehicles accompanied by looting and banditry, and in one case the victim was raped in an unofficial military detention facility. In six incidents, the perpetrators were identified as soldiers and policemen. In 21 incidents, the perpetrators were unidentified pro-Government armed militia (Janjaweed).

29. In 13 cases, the police refused to register complaints, reportedly because of lack of evidence provided by the medical examination. In 14 cases, the victims did not report the incidents to the police, either out of fear of reprisals or lack of confidence that the police would investigate effectively or the judicial system provide redress.

30. Out of the 51 cases monitored by HROs only six cases reached the courts. In two cases, the perpetrators were convicted. In the first case, the perpetrators were two policemen sentenced to five years' imprisonment for rape and in the second case the perpetrators were a soldier and a policeman convicted under article 151 of the Criminal Act for the lesser charge of gross indecency rather than the original charge of rape. Both perpetrators were sentenced to 1 1/2 years' imprisonment with 80 lashes and were stripped of their official status. In neither case was compensation given to the victims. Two cases are pending in court; one case is being heard at the national criminal court and one case is awaiting a verdict which was due to be returned on 12 July 2005. One case is pending with the prosecutor and police for investigation because the perpetrators are unknown. In all the cases, the perpetrators were alleged to be from the Government armed forces, law enforcement (police) or pro-Government militias.

III. OBSTACLES TO JUSTICE

31. Victims of sexual violence face the same obstacles as many other victims of violations by Government forces and pro-Government militias in Darfur. Virtually none of the large-scale crimes committed against civilians in the course of the conflict has been

investigated or punished to date. In addition, when they are prosecuted the victims of sexual crimes then confront challenges due to gender bias in the administration of justice and the legal framework. Rather than providing protection and redress, the law and discriminatory judicial and enforcement practices have often revictimized survivors of sexual violence.

32. While the Government has taken steps to improve the investigation of crimes and the identification of perpetrators, a comprehensive prevention strategy has not been developed to address crimes of sexual violence and improve the security of people living in IDP camps in Darfur.

A. Obstacles in the legal framework

33. The Sudan is one of the few countries that has not yet ratified the Convention on the Elimination of All Forms of Discrimination against Women. It has also not ratified the Protocol to the African Charter on the Rights of Women in Africa and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. The Sudan is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights, and a signatory to the Rome Statute. All these international human rights instruments contain general provisions regarding the prohibition of discrimination on the grounds of sex and guarantee the right to equal protection under the law. Some also contain specific provisions for the prevention of sexual violence. For example, the Convention on the Rights of the Child specifically requires States parties to protect children from all forms of sexual exploitation and abuse (art. 34).

34. Under Sudanese law, the offence of rape, as contained in the Criminal Act of 1991, falls under offences of honour and public morality. Rape is defined as an act of sexual intercourse without the consent of the victim.⁴ Consent shall not be recognized where the offender has custody or authority over the victim. Rape involving adultery or

sodomy is an aggravated offence. The punishment for rape is 100 lashes and imprisonment for a term not exceeding 10 years. If rape constitutes the offence of adultery or sodomy it is punishable by death (art. 149). If rape cannot be proven, the perpetrator may be charged with “gross indecency”, defined in the Criminal Act as any act contrary to another person’s modesty or any sexual act which does not amount to adultery or sodomy (art. 151).⁵

35. There are specific legal hurdles to reporting sexual crimes, including the possibility that the rape victim herself may face capital charges. Female victims of sexual crimes are adversely affected by the characterization of the offence of adultery due to discriminatory evidentiary requirements. If an unmarried woman is pregnant and cannot prove that she was raped, she can be charged with the capital crime of adultery (*zina*). In order to convict a man of same offence, a confession or the testimony of four witnesses is required (art. 146).⁶

36. Lack of consent as an element of proof in cases of rape is a particularly insurmountable barrier to justice in Darfur. Rape can be committed without the application of physical force where the victim has acquiesced under the threat of the use of force or coercive circumstances deriving from the conflict. Even when physical evidence exists, it can quickly disappear before it is observed or documented.

37. Furthermore, the criminal procedure for the collection of medical evidence is problematic. Unlike in other countries, where a medical report can be submitted to the court, in the Sudan a criminal form (Form 8) serves as the medical evidence. Form 8 can only be issued in police stations and some hospitals and clinics, preventing many victims from having Form 8 to corroborate their testimony. Moreover, Form 8 only requests limited information (whether there has been recent loss of virginity, bleeding, or presence of sperm), and does not allow for a comprehensive medical report to be written by the doctor. In the majority of cases the full extent of the injuries are not documented and the necessary evidence that would assist in the prosecution of rape is not collected (see below for the controversy surrounding Criminal Form 8).

38. The Government should review, evaluate and revise the laws, codes and procedures, where necessary, to ensure their effectiveness in providing protection from, and redress for, crimes of sexual violence. In accordance with international standards and jurisprudence, and due to the nature of the crimes and the circumstances of armed conflict in Darfur, it is recommended that evidence of these crimes should rely heavily on the testimony of the victim.⁷ Perpetrators of sexual violence should be punished in accordance with the gravity of the crime and international human rights standards, particularly those on cruel, inhuman and degrading treatment or punishment.

39. The following cases illustrate how Sudanese law and its application can re-victimize survivors of sexual violence:

- In January 2005, two women and a 10-years-old girl were allegedly raped by four soldiers from a military camp in Northern Darfur. The four soldiers reportedly confessed the rape to the Military Prosecutor and the case was transferred to a civilian prosecutor in Al-Fasher because of the criminal nature of the charges. The soldiers then changed their plea, and stated that the women had consented and had been paid for sex. The victims' testimony was not sought and despite the fact that one of the victims was a minor, the civilian prosecutor amended the charge from rape to adultery. In April, the *Omda* (tribal leader) made a complaint to the criminal court regarding lack of due process including the failure of the court to hear testimony from the victims or any of the witnesses. In response, the judge sent the case back to the prosecutor's office for further investigation and collection of the victims' and the witnesses' testimony. According to the prosecutor, the trial had not commenced because the *Omda* had not brought the victims and witnesses to Al-Fasher. The *Omda* said he was unable to bring the victims because of security concerns and possible detention of men travelling to Al-Fasher from an SLM/A-controlled area.

- In Western Darfur a woman charged with adultery and attempted murder for abandoning her newborn baby was brought before the courts. The pregnancy was

a result of a rape that had occurred in early 2004, when a pro-Government militia group attacked her village. The same group allegedly also killed her husband and male relatives. At the first hearing, the judge of the First Criminal Court decided not to proceed on the adultery charge but to open a new case after the defendant alleged that she had been raped. The key witness was her mother, who was present during the militia attack on the village. At the second hearing, less than a week after ordering the investigation into the allegation of rape, the judge decided to refuse to hear testimony from the victim's mother, ruled that there was not enough evidence to support the allegation of rape, closed the newly opened case and reinstated the adultery charge. No opportunity was given for the victim's lawyers to present any kind of evidence, including the Form 8 that had been completed after the woman gave birth. The Form 8 noted marks on the victim's wrists, stab wounds on her leg, and the loss of hearing in her right ear as a result of the assault. The defence lawyer appealed this decision on three grounds: (a) the lack of legal provisions, in the Criminal Procedures Act and in sharia, to refuse to hear the testimony of the victim's mother; (b) the "cancellation" of the rape case without hearing further evidence; and (c) the inclusion of questions on the criminal past of the victim, which was not relevant. In June 2005, the woman was sentenced to six months' imprisonment for abandoning her child, and is said to be on probation. The adultery charge was reportedly dismissed, and her defence of non-consensual sex accepted. According to information received, there has been no investigation to identify the perpetrators of the alleged rape.

B. Failure to investigate effectively

40. Law enforcement officials generally fail to investigate complaints effectively and to gather sufficient information on the basis of which a court can safely try and fairly judge each case. They frequently claim that holding the perpetrator accountable is impossible because complaints have been made against an "unknown perpetrator". They do not actively investigate to close the gaps in information made available by victims and

witnesses. The absence of a reasonable time frame within which investigations must be commenced and concluded also allows police to delay their investigations further. In many cases, investigations were supposedly going on for several months without any concrete action being taken.

41. The following case demonstrates that despite the requirement of timely investigations contained in the Code of Criminal Procedure,⁸ in many cases where complaints of rape are made, no prompt and effective action is taken:

- In September 2004, a 14-year-old girl was reportedly attacked by seven soldiers and gang-raped in Northern Darfur. A witness alerted the family and they reported the incident to the police station immediately. However, the police refused to accept the complaint or investigate, arguing that it was too late in the evening. The victim was taken by the family to the office of the prosecutor, who issued an order to the police to investigate the rape. To date, the police have not taken any action to investigate the rape, despite repeated requests.

42. In some cases victims and their relatives who have tried to make a complaint to the police have been subjected to arrest, harassment and intimidation by local authorities:

- In February 2005, two sisters were allegedly beaten and raped by three armed pro-Government militia men in Western Darfur. The women said they did not report the incident to the police because of the harassment they had received when they went to report an earlier rape. One of the women had also been raped by pro-Government militia during the attack on her village. When she reported the case to the police, they allegedly called her a liar and did not accept her complaint despite her physical injuries.
- In February 2005, in Southern Darfur, two female minors aged 12 and 13 were raped by pro-Government militia. They reported the incident to their families, who reported to the sheikh. The sheikh went to lodge a complaint at the police

station and he was arrested for spreading false information. HROs intervened and the sheikh was released on bail after spending two weeks in detention. Following his arrest the two minors refused to file a complaint for fear of further reprisals from the police, despite having a medical report which corroborated their testimony.

43. Investigations in rape cases have not gone far enough to enable a sustainable legal case to be built on behalf of the victims. Rather than actively investigating the complaint to identify the perpetrators, the police and prosecutors have generally tended to reject allegations of rape after a medical examination of the victim. Law enforcement officials need to be informed that it is not the doctor's responsibility to determine whether or not a woman has been raped, but for the court to decide on the basis of all the evidence, and the absence of lesions should not automatically lead to the conclusion that no rape took place:

- On 1 April 2005, four women were allegedly gang-raped by soldiers while collecting firewood near a military camp in Northern Darfur. At around 10 p.m. the uncle of one of the victims together with several *Omdas* took them to the police station in the camp. They were then taken to the main police station to lodge a complaint of rape. They were refused the right to lodge a complaint based on the conclusion of the medical examination. The police also refused to open a complaint of physical assault.
- On 14 March 2005, a woman was raped in Western Darfur and lodged a complaint with the police. Other women had witnessed the incident. As the woman was married and was the mother of six children, the police said that the results of the medical examination did not support the allegation of rape and the case would be dismissed for insufficient evidence. No further steps were taken by the police to investigate the case.

44. There is an ongoing failure by police to prevent sexual violence or actively investigate cases to identify the perpetrators. In April and May 2005, IDP camp residents in Northern Darfur demonstrated to demand greater security and protection after the police refused to investigate a number of rape cases.

C. Failure to prosecute, punish and compensate

45. In many cases of sexual violence in Darfur, the alleged perpetrators are agents of the State, members of the armed forces or police officers who are immune from prosecution for abuses committed during the course of their official duties. In addition, Government officials often shelter security officials from investigation or prosecution, simply by failing to seriously investigate or prosecute. Current procedures make the investigation and subsequent prosecution of security forces subject to the permission of executive bodies responsible for their conduct. Requests by the prosecutor to withdraw the immunity of the officials concerned often meet with no response or are rejected. Similarly, an official will generally only be suspended if permission to prosecute is granted. Whatever the status of the accused, the investigation and prosecution should meet the same standards of thoroughness and accountability. The failure of the State to prosecute and punish those responsible for sexual violence constitutes a failure of State protection.

46. Administrative and legal barriers have hindered both the criminal investigation and the prosecution of members of the police and the armed forces. Article 46 of the Police Force Act 1999 states that “no criminal procedure will be taken against any police officer ... for a crime committed while executing his official duty as a consequence of those official duties, without the permission of the Minister of the Interior or [someone] whom he has delegated”. Criminal Circular No. 3/1995, on the prosecution of members of the armed forces with reference to the Peoples’ Armed Forces Act of 1986, states that when the accused is a member of the armed forces, the criminal court should report the case to the local military authority (art. 19). The military authority must then conduct an investigation and report to the criminal court without delay. If the criminal court does not

agree that the case should be heard by the military court, an application for permission to hear the case is required from the head of the judiciary. In some cases this procedure has allowed perpetrators to escape prosecution because of their official status. Another concern is that in many cases, while the investigation is under way no official action, such as suspension from duty, is taken against the alleged perpetrator:

- On 20 December 2004, a convoy of buses was attacked in Southern Darfur by a group of armed men. One female passenger, aged 16, was travelling from Nyala on one of the buses, escorted by a policeman. She was being taken to Al-Fasher to serve a two-year sentence in a juvenile correction facility for a drug-related offence. She was raped by one of the attackers. Eight of the attackers were members of the Popular Defence Forces (PDF); the other two were members of the Border Intelligence, a unit of Military Intelligence. On 10 January, following the incident, the Court of Appeal reviewed the victim's sentence of two years' detention and decided to accept the time already served as sufficient and released her.
- On 19 February 2005, the trial of a rape case started in the Special Criminal Court for the Events in Darfur. On 20 February, the case was transferred to the Military Court following a request by counsel for the defence, who stated that the accused were all members of the armed forces and therefore covered by Criminal Circular No. 3/1995. On 6 March, the victims' counsel filed an appeal against the transfer as the accused were not on duty at the material time. On 2 June, the case was returned to the Special Criminal Court, but it was reiterated that the accused were military and should be treated as such. On 12 June, the Chief Justice decided that the Special Criminal Court for the Events in Darfur had jurisdiction. On 18 June the first hearing was held.
- On 13 February 2005, a group of two girls and a woman out collecting firewood near a military camp in Northern Darfur were allegedly raped by four soldiers. The police, citing lack of evidence in the medical examination (Form 8), refused

to allow the victims to file a complaint of rape and instead opened a case of gross indecency. The police investigator sent a letter to the military legal adviser on 2 March requesting the presence of the suspects for the purpose of an identification parade. According to information received, the identification parade has not been held and no further action has been taken by the police. On 4 May, the lawyer in the case submitted a petition to the prosecutor arguing that the police officer in charge of the case was not taking any action to conduct a proper investigation. As of June, no progress had been made in the case.

47. When identification parades (*tabur*) are held, rape victims, including minors, are brought face to face with the suspects and asked to identify the perpetrator in the absence of any safeguards, thus putting them at risk of intimidation and retaliation. In the majority of cases monitored by HROs the victims were unable to identify their aggressor:

- On 3 June 2005, a 13-year-old girl was raped by a man in uniform near a military camp in Northern Darfur. She was taken to hospital by her family for treatment the following day. As a result of the rape she had a tear between her vagina and anus which required eight stitches. The case was reported at the police station. The Chief Prosecutor reported that on 4 June, a delegation including representatives from the prosecutor's office, the military, the police criminal investigation team and AMIS went to the crime scene with the victim and conducted an investigation. They did not find any evidence and explained that this was due to the terrain and the climate. All the soldiers from the military bases in the area were called for an identification parade. The victim was unable to identify any of the men. The doctor who had treated the victim and completed the Form 8 had not been provided with an evidence collection kit by the police and valuable evidence was lost which could have helped to identify the perpetrator. The police are patrolling the area around the scene of the incident and are still searching for the perpetrator. As the alleged perpetrator is military, jurisdiction to investigate has been passed to Military Intelligence which is now reportedly

trying to identify the soldiers who were on duty at the military camp on the day of the attack.

D. Access to courts and gender bias in the administration of justice

48. Victims of sexual violence, like victims of other crimes, face difficulties in accessing justice due to the absence of courts in certain areas. The total absence of protection for victims and witnesses is another factor impeding justice for rape survivors. As noted, fear of reprisals also prevents many victims of sexual violence from reporting the crime and seeking justice and redress. In addition, there are no specific support services for rape victims such as legal aid or psycho-social counselling.

49. Women also suffer additional obstacles due to gender-based discrimination in the administration of justice. Gender discrimination and lack of understanding of the nature of sexual crimes, in particular the trauma experienced by the rape victim, determine the way trials are conducted and the resulting decisions and sentences, leading to low conviction rates for sexual violence.

50. The legal system is unfairly biased in favour of men so that women have an unduly heavy burden of proof in cases of rape. Victims of sexual violence are often treated differently from victims of other crimes by the exercise of judicial discretion that requires corroboration of a victim's testimony despite the testimony's strength. The underlying assumption appears to be that victims of sexual violence, predominantly women, are untrustworthy. Such stereotypical attitudes and reasoning are a discriminatory barrier and a burden on victims of sexual violence.

51. The following cases are examples of the gender bias among those responsible for administering justice:

- On 2 May 2005, two girls were allegedly raped by soldiers in Southern Darfur. On 7 June, the accused were found guilty of the lesser offence of gross indecency

(art. 151 of the Criminal Act) rather than rape (art. 149). The judge stated that he had not found enough evidence to convict for rape and explained that under sharia and under article 77 of the Evidence Act, for a conviction of rape the testimonies of four witnesses was required. He also had concerns about the medical report of the case (Form 8), which had not stated conclusively that rape had occurred. The judge further stated that he would not sentence an accused under article 149 based solely on evidence such as a clear medical report without also having the testimony of four witnesses. A number of lawyers and judges from the Appeals Court told HROs that the judge had misinterpreted the provision of article 149, as offences under article 149 and article 151 were independent and had different rules of evidence.

- On 8 February 2005, three women were raped by five armed men during an attack on a bus carrying some 30 passengers in Southern Darfur. The attack was reportedly carried out by a group of 35-40 armed men on horses and camels, wearing green uniforms; some had their faces covered. On 9 February, a complaint was lodged at the police station. The medical examination corroborated the allegation of rape. On 10 February, one of the alleged perpetrators, a member of Border Intelligence, was recognized in the cattle market by a male victim of the attack and the suspect was arrested by a group of citizens and brought to the central police station. There, he was identified by other witnesses. On 9 March, the court proceedings started in the District Criminal Court, with the testimonies of four of the 12 witnesses. All eyewitnesses formally identified the defendant during the proceedings, as they had done twice before during the investigation. The three rape victims also had previously identified the defendant, but had not yet appeared in court. The alleged perpetrator was charged with rape and a number of other charges connected to the incident. The witnesses received numerous threats, even before the case went to court. On at least one occasion the threats were reportedly made by a police officer. In general, it seems that the threats are made by people believed to be members of the same armed militias as the accused. As a result of the threats some witnesses failed to appear at various

hearings of the case. On 10 April, the judges working on the case were transferred from Southern Darfur. The case was suspended until 23 May when a judge of the Special Criminal Court for the Events in Darfur was appointed on a temporary basis to hear the case. The investigation regarding the identification of the other alleged perpetrators has reportedly stopped. The police investigator claimed that as the other perpetrators were unknown, no further investigation would be conducted. In mid-June, the case was transferred from the District Criminal Court to the newly formed Special Criminal Court.

52. The Rome Statute of ICC, to which the Sudan is a signatory, sets the international standard for the prosecution of crimes of sexual violence. It addresses numerous procedural issues, seeking not only protection, but also justice for victims of and witnesses to crimes of sexual violence in the context of the proceedings of the International Criminal Court. This includes the need to recruit judges and prosecutors with special expertise in violence against women and children and to establish a victim and witness unit. Rules were also developed specifically to address evidentiary requirements related to crimes of sexual violence. The rules establish minimum international standards for non-discrimination and equality of victims of and witnesses to crimes of sexual violence in the context of genocide, crimes against humanity and war crimes. In the light of the various obstacles faced by victims when addressing the judicial system in Darfur outlined above, it is recommended that similar procedures, including a victim and witness unit, which will provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims and others who are at risk on account of their testimony, be developed for courts in Darfur.

53. With the absence of courts in certain areas, extra-legal procedures such as traditional courts may be used as a substitute for formal justice:

- On 6 May 2005, two women were attacked in Northern Darfur. One woman was raped and later killed and the other managed to escape after being raped. The survivor identified the perpetrator. It was reported that on 18 May, a village

council met to discuss the incident. Present at the meeting were the police, a representative of the victim's family and a representative of the suspect's family. The suspect was reportedly found guilty and ordered to pay 600,000 dinars to the victim's family. No further criminal procedures have been instigated against the accused.

54. While the law permits settlements between families, the handling of very serious cases in this way without recourse to the formal justice system may deny victims, particularly female victims, justice, as well as precluding a fair and public hearing in a court of law.

IV. CONTROVERSY OVER CRIMINAL FORM 8: MEDICAL TREATMENT AND COLLECTION OF FORENSIC EVIDENCE

55. This section of the report looks at the history of the debate surrounding Criminal Form 8. It shows that despite the official changes made to the criminal procedure to guarantee a victim's right to confidential medical treatment, certain elements continue to disregard the procedure and threaten and intimidate health care providers and victims.

56. Sudanese law requires the completion of a standardized medical evidence form by a registered doctor in cases of rape and other serious violent crimes such as murder and physical assault. Criminal Form 8 is intended to ensure that standard elements of evidence are collected during the investigation. The Criminal Procedure Act requires that where an offence relates to death, or grievous hurt, the police must take the necessary steps to call a competent physician to examine the body or the injured person and transport him/her to the nearest hospital (art. 48(1)(c)). Accordingly, all victims of grievous hurt (including rape) have to be provided with a Criminal Form 8 by the police, for the medical examination and to serve as evidence.

57. In 2004, in response to concerns that the procedure prevented victims in Darfur from directly accessing medical treatment, the Minister of Justice issued Criminal

Circular 1/2004, dated 11 August 2004. With reference to the circumstances in Darfur, it states that “where urgent medical assistance is required, a patient must receive lifesaving medical aid and treatment in public hospitals without completing a Criminal Form 8”. This circular was further amended by Criminal Circular 2/2004, dated 11 December 2004, to provide clarification on the procedure to be followed. Criminal Circular 2/2004 stipulates that criminal procedures should be undertaken without being restricted by the medical examination requirements. The medical examination and Form 8 should be completed prior to referring the criminal case to trial. It extended the provision of medical aid to private hospitals recognized by the Ministry of Health.

58. A joint mission by the Government of the Sudan and the United Nations to disseminate Criminal Circular 2/2004 was conducted in Darfur between 21 and 24 March 2005. The mission conveyed the message that all medical personnel, national or international, from both public and private hospitals and clinics, recognized by the Ministry of Health, may provide medical treatment without the requirement of Criminal Form 8. However, it should be completed by an authorized medical officer at a later stage if a complaint was filed with the court.

59. The Ministry of Health agreed that 29 private/NGO medical centres/organizations (5 in Northern Darfur, 15 in Southern Darfur, 9 in Western Darfur) were authorized to complete the medical examination, in addition to the official Government medical facilities. Personnel authorized to complete the Form 8 have to meet the following criteria: have graduated from medical school; have completed 16 months’ internship after completing university, and be registered with the Sudanese Medical Council.

60. The Ministry of Health stated that foreign medical personnel did not meet the criteria of an authorized medical officer. In addition, it stated that Criminal Form 8 was a legal document that would be used in criminal investigations; if international medical personnel were authorized to provide it but left the country before the case was brought to court, it would be practically impossible to hear their testimony during the judicial process.

61. However, despite the criminal circulars, and the mission to Darfur, Form 8 continues to be an obstacle to medical treatment of rape victims, rather than facilitating rape investigations. Some police officials have tried to insist that medical treatment can only be provided after the completion of a Form 8, and that only doctors licensed to complete Form 8 can be allowed to provide care to rape victims. In some cases doctors have refused to treat a victim of sexual assault without their first obtaining a Form 8. In one case, law enforcement officials forcibly removed a victim from a medical clinic to take her to a registered doctor to complete the Form 8. It is unclear whether non-compliance with the criminal procedure is due to a lack of awareness of the circular or due to fear of reprisals for not reporting cases to the authorities. In this context, the Ministry of Justice is expected to issue yet another clarification in July 2005.

62. Criminal Form 8 is seen by health care providers as an obstacle to confidential medical treatment and feel that the victims should be given the choice of where to seek treatment. Law enforcement agencies have responded that sexual violence is a serious crime which must be investigated, that the medical examination is an important part of the criminal investigation and that if it is not done within 72 hours valuable information can be lost. The Government has stated that if victims of sexual violence do not complete the Form 8 and as a consequence of the assault they became pregnant, they will not have the evidence to prove that they were raped and could be charged with the capital crime of adultery. The heavy-handed application of the procedure, which has at times involved police forcibly taking victims of sexual violence out of clinics for re-examination by a registered doctor without the victims consent, has clearly violated their rights and shows a lack of understanding of the needs of a victim of sexual violence. This problem is reported to be particularly acute in Southern Darfur:

- At the end of March 2005, a 17-year-old female victim of rape in Southern Darfur at who sought medical assistance from a NGO clinic after being gang-raped was revictimized by a number of different authorities who intervened without her consent, thereby violating her right to confidential medical treatment. The police

forced their way into the clinic and insisted that the woman should not be treated without a Form 8 being completed, and began questioning the victim. They returned later that day with 15 - 20 police officers, an ambulance and three doctors from the State Ministry of Health. The victim was examined again and taken to Nyala Teaching Hospital. Members of the national security forces reportedly insulted her at the hospital and told her to stop lying about being raped when she had committed adultery. After two days in the hospital, the police took her to Nyala police station and interrogated her for four hours, before returning her to the hospital. In response to the incident the Wali of Southern Darfur established a committee to investigate the case, which included the three doctors from the State Ministry of Health who had examined her. The police charged the two doctors at the NGO clinic who treated the victim with furnishing false information.⁹ On 30 May, the Sudanese newspaper, *Sudan Vision*, published an article on the case: it quoted the entire NGO medical report and the medical report issued by Nyala Teaching Hospital on the case; the name and photographs of the rape victim clearly appeared; the article argued that the case was part of an international effort to bring false rape claims to discredit the Government of the Sudan.

63. The controversy over the procedure must be resolved by ensuring that the welfare of the victim is paramount. In order to prevent revictimization the human rights of victim must be at the centre of all efforts to provide legal redress. The victim's right to confidential medical treatment and care must be fully respected by the authorities. Health care providers should inform victims of their right to pursue legal justice and the procedure which needs to be followed (completion of Form 8) so they can decide what is best for them at that time. It is important that the victims be informed that their consent or lack of consent to pursue legal action will not affect their access to treatment. If the victim decides to pursue legal action and gives informed consent, the Form 8 should be completed and forensic evidence collected (preferably within 72 hours) and conveyed to the relevant authorities for use in the pursuit of criminal justice.

V. ARREST, INTIMIDATION AND HARASSMENT OF HUMAN RIGHTS DEFENDERS AND MEDICAL PROVIDERS

64. As has been noted earlier in this report, the Government of the Sudan has reacted strongly to reports that rape was and continues to be perpetrated in Darfur. Those linked to the rapes have used different strategies to cover their crimes and silence victims, including by creating an atmosphere of fear surrounding the reporting and medical treatment of victims. The sensitivity of the authorities to allegations of rape and sexual violence has reached such an extent that some victims of sexual violence and human rights defenders working to document those crimes in order to demonstrate the scale of the problem have had criminal charges brought against them:

- On 30 May 2005, the Country Director of MSF (Médecins Sans Frontières – Netherlands) was arrested in Khartoum in connection with a report on rape and released on bail. He was charged with spying, providing false information and disturbing the peace. The charge of spying is a capital crime in the Sudan. On 31 May, the authorities arrested the MSF Coordinator for Southern Darfur on the same charges and transferred him to Khartoum. The arrests were preceded by threats in the Sudanese media against the organization. After intense international pressure, the Government of the Sudan dropped the charges on 20 June 2005.

65. There are many other reports of intimidation and harassment of human rights defenders and medical providers which are of concern. The action taken to threaten, intimidate and harass human rights defenders and medical providers violates international law and seriously impedes victims' access to justice.

VI. ACTION TAKEN BY THE GOVERNMENT IN RESPONSE TO SEXUAL VIOLENCE

66. The Ministry of Justice created National Judicial Committees to investigate allegations of rape in Darfur in July 2004. The Committees were delegated the power to

direct investigations, draft charges, file prosecutions and supervise the progress of cases in the court. The Committees ended their work after three weeks and presented their reports to the Ministry of Justice through the Advisory Council on Human Rights. The National Commission of Inquiry into Allegations of Human Rights Violations Committed by Armed Groups in the States of Darfur included the findings of the Judicial Committees in their report. It stated that the National Judicial Committee investigations led to the indictment of a number of persons, including 10 members of the armed forces. The Minister of Justice lifted their immunity so that they could be tried. However, the International Commission of Inquiry criticized the composition and working methods of the Committees, stating that “the work of the rape committees does not provide a sound basis for any conclusion with regard to the incidence of rape in Darfur nor does it satisfy the requirement of State responsibility to investigate cases of serious violations of human rights and the accountability of those responsible” (S/2005/60, para. 487).

67. In Southern Darfur, a State Committee on Combating Gender-Based Violence was established by decree of the Governor of South Darfur No.17 issued on 6 March 2005, amended on 30 March 2005, in which UNMIS Human Rights, AMIS, the Office for Coordination of Humanitarian affairs, the United Nations Population Fund, the United Nations Children’s Fund and the World Health Organization have observer status. The stated aims of the Committee are (1) to analyse problems associated with the investigation and prosecution of cases of sexual violence; (2) to monitor cases presented to the courts of law by the prosecutor; (3) to identify and follow up on ways to improve performance of the responsible authorities of the Government of the Sudan; (4) to determine the number of cases prosecuted, acquittals and convictions; (5) to develop and follow up on ways to prevent the occurrence of sexual violence; (6) to ensure that survivors receive treatment in accordance with the amended circular on Form 8; (7) to receive and follow up on cases of non-compliance; and (8) to ensure that the authorities pursue strategies that create a safe and supportive environment for survivors to seek and receive health, psychosocial and legal services. During April and May 2005, the Government representatives did not attend the Committee meetings but by June 2005 their attendance had improved, and some verbal agreements were made on concerns

regarding Form 8 and the amended circular. However, thus far the Committee has had no noticeable impact on the frequency of sexual violence or ending impunity for sexual violence in Darfur.

68. From May 2005, HROs have monitored a number of apparently positive developments at the local level in efforts to tackle ongoing impunity for sexual violence. While the effectiveness of the measures remains to be evaluated, there are preliminary signs that the authorities are taking some action, both to prevent human rights violations and to ensure prosecutions.

69. The Security Committee for Northern Darfur visited military commanders around Al-Fasher at the end of May 2005 to inform them that many of the crimes reported were allegedly being committed by soldiers. The delegation reportedly called on the commanders to control their soldiers and ensure that they did not commit any more crimes. In response to the problem of identifying perpetrators of crimes because many persons wore uniforms who were not part of the police or military, an order was issued at the beginning of June 2005, which was sent to local authorities, military police and security, to reiterate the relevant provisions of the Criminal Act. It stated that any person who wears a uniform and is not member of the police or armed forces will be arrested and prosecuted.

70. In May 2005, following a decision taken by the Minister of the Interior, the Head of Police for the Sudan and the Ministry of Justice, new criminal investigation teams were deployed to all states in Darfur to provide technical expertise and establish criminal investigation departments like the one already functioning in Khartoum. Training for police was provided by an advance team which visited Darfur before the criminal investigation teams were sent, and will continue. The criminal investigation teams are made up of officers with different expertise, such as criminal investigation, forensic evidence collection and testing, personal identification (fingerprinting) and crime scene processing. Doctors will be provided with evidence collection kits by the criminal investigation teams for use in rape cases, with the victims' consent. Forensic evidence

collected by the teams will be sent to a laboratory in Khartoum for DNA analysis. The criminal investigation teams are reportedly mandated to focus entirely on investigations, including a review of existing cases on which no progress was being made.

71. Furthermore, judges and prosecutors are reportedly being redeployed to towns in Northern Darfur, thus improving the access to judicial structures for victims of crimes, including sexual violence. Judges and prosecutors from the four towns around Al-Fasher (Um Kadada, Kutum, Kabkabiya, Mallit) had been recalled to Al-Fasher because of fears for their security. In June, it was decided to redeploy judges to these four towns, and prosecutors were also deployed to two of them. The impact of the concentration of judges and prosecutors in the state capital has been to limit access to justice for those in outlying areas.

72. The Special Criminal Court for the Events in Darfur was established by the Chief Justice of Sudan on 7 June 2005. So far, however, according to the President of the Court, it had only a total of 12 cases before it. The first case before the Court, on 18 June 2005, was the case of eight members of the Popular Defence Forces and two military servicemen charged, inter alia, with the rape of a 16-year-old girl during an attack on two buses on 20 December 2004.¹⁰ The victim, her lawyers and the Office of the Prosecutor were only informed about the hearing on the morning of 18 June. The lawyers regretted not having been informed earlier and asked for the case to be adjourned to the following day. However, the Chief Justice rejected the request, arguing that as it was a special court, "even five minutes notice" would be considered enough. The lawyers withdrew from the case in protest.

73. In a few cases monitored by HROs the perpetrators of rape have been prosecuted and punished. This provides hope that, with the necessary political will, other perpetrators of sexual violence can be held accountable for their crimes:

- On 8 May 2005, a court in Southern Darfur found two policemen guilty of the rape of a woman while they were on duty on 17 February 2005. They were

sentenced to five years detention and 100 lashes. It is reported that the conclusion of the case was expedited because the victim is related to the police investigator.

74. Local women's organizations, community-based organizations, academics and national human rights organizations are actively working to raise awareness about women's rights, build capacity and provide various services to victims of sexual violence, including legal assistance. Local women's organizations have organized forums to bring together the relevant sectors (legal profession, medical profession, law enforcement and the media) to discuss how to prevent and respond to sexual violence in Darfur. The recommendations that resulted from the forums will be presented to policy makers in the autumn. Other groups are advocating for law reform to address gender discrimination in the law.

VII. OBSERVATIONS

75. While the Government has taken some steps to investigate a small number of acts of sexual violence, its actions have not been sufficiently robust to end impunity for these crimes and thus contribute to their prevention. As a result, every week, more new cases of rape of women and girls are reported.

76. Law enforcement officials are generally failing to investigate complaints effectively to gather sufficient information on the basis of which a court can safely try and judge fairly each case. There is no time frame within which investigations must be commenced and concluded, which has led to long delays without any concrete action being taken.

77. In a number of cases, the alleged perpetrators are members of the armed forces and the police. Current procedures make the investigation and subsequent prosecution of security forces subject to the permission of the executive bodies responsible for their conduct. Requests by the prosecutor to withdraw the immunity of the officials concerned often meet with no response or are rejected. Similarly, an official will generally only be suspended if permission to prosecute is granted. Whatever the status of the accused, the

investigation and prosecution should meet the same standards of thoroughness and accountability.

78. Individuals are reluctant to report incidents of sexual violence or to serve as witnesses because they lack confidence in the police and the judicial system and fear reprisals.

VIII. RECOMMENDATIONS

79. **Special measures are needed to deal with the particular demands of investigating, prosecuting and judging crimes of rape and other forms of sexual violence to ensure that the revictimization of women does not occur because of gender-insensitive laws and treatment by judicial and police bodies. Prosecutors must ensure that investigators have expertise in dealing with such cases and that investigations are conducted in a manner which does not cause unnecessary additional trauma to the victims and their families.**

80. **Judicial and administrative mechanisms should be strengthened to enable victims to obtain redress through procedures that are expeditious, fair, inexpensive and accessible. The adoption of the Comprehensive Peace Agreement and the constitutional review process provides an opportunity to establish a legal framework that offers comprehensive protection of women's rights and procedures in accordance with international standards to ensure that sexual crimes and their victims are properly treated, including through protective measures at trial and the creation of victim and witness units to provide support services.**

81. **In order to bring sexual violence to an end, the Government of the Sudan needs to acknowledge the scope of the problem and take action to end the climate of impunity that continues to fuel sexual violence in Darfur. Only timely and credible investigations and safe prosecutions of sexual violence will make it clear to the main perpetrators of sexual violence that rape will no longer be tolerated. Arrest,**

harassment and intimidation of victims of sexual violence and their supporters must end.

A. Recommendations to the Government of the Sudan

82. It is recommended that the Government:

- **Respect the wishes, the rights, and the dignity of the victim when taking action to prevent or respond to an incident of sexual violence;**
- **Undertake prompt, thorough and impartial investigations into all reports of sexual violence to identify those responsible and bring them to justice, whether the crime is perpetrated by law enforcement officials, armed groups or private individuals;**
- **Establish victim and witness units for courts, which will provide protective measures and security arrangements, counselling and other appropriate assistance during the investigation and trial process and any subsequent period when the safety of the victims or witnesses so requires;**
- **Remove procedures that grant State officials immunity from prosecution in cases of serious human rights violations, such as rape;**
- **Take appropriate disciplinary action (e.g. suspension from duties) during investigation and prosecution of any accused members of law enforcement agencies and armed forces;**
- **Train police, prosecutors, judicial authorities and medical staff in the treatment of victims of sexual violence, and in the conduct of criminal investigations and the collection of forensic evidence;**
- **Train doctors and medical staff on protocols for the clinical management of rape victims to ensure that the necessary medical evidence is collected and that victims are treated with dignity;**
- **Create a safe and supportive environment for victims to seek and receive medical and legal services;**
- **Implement a public awareness-raising campaign so that victims are informed of their rights in seeking redress through justice mechanisms;**

- In the context of the work of the Legal Reform Commission under the Comprehensive Peace Agreement, undertake a comprehensive review of the current legal framework relating to sexual crimes to ensure its effectiveness in the prosecution of acts of sexual violence;
- Amend the evidentiary requirements for adultery to remove discrimination on the basis of sex and to prevent rape victims who become pregnant being at risk of prosecution for the crime;
- Ensure that the punishment of perpetrators and compensation for victims are in accordance with the gravity of the crime and international human rights standards, particularly those on cruel, inhuman or degrading treatment or punishment.

83. The Government of National Unity should demonstrate its commitment to human rights by ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

B. Recommendations to the international community

84. The international community should:

- Provide assistance to the Government of the Sudan in restructuring and training the police force and establishing a competent, impartial and independent judiciary with the necessary resources to function effectively and fairly;
- Provide training to prosecutors, judges and other officials in handling cases involving rape and other forms of sexual violence, in accordance with current standards of international law - notably the Rome Statute of the

International Criminal Court and jurisprudence of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia;

- **Provide training for the law enforcement officials and armed forces in international human rights and humanitarian law and women’s rights;**
- **Provide technical assistance on the conduct of criminal investigations and the collection and processing of forensic evidence for law enforcement officials.**

Notes

¹ According to information provided by humanitarian agencies, patrols by AMIS monitors and civilian police along firewood collection routes have since March 2005 led to a decrease in the harassment experienced by women and girls.

² As the International Commission of Inquiry on Darfur stated in its report: “It is apparent from the information collected and verified by the Commission that rape or other forms of sexual violence committed by the Janjaweed and Government soldiers in Darfur was widespread and systematic” (S/2005/60, para. 360).

³ With derogatory epithets such as “slaves” (*Abid*), “Blacks” (*Zurja*), “Nuba” or other insults related to race, tribe and ethnicity

⁴ According to article 149, consent means acceptance, and it shall not be deemed consent if given by: (a) a person under the influence or mistake of fact, where the person doing the act knows that consent was given as a result of such compulsion or mistake; or (b) a person who is not an adult; or (c) a person unable to understand the nature or the consequences of that to which he has given his consent by reason of mental or psychological instability.

⁵ According to article 151, punishment may not exceed 40 lashes or imprisonment for a term not exceeding one year, or a fine. Where the offence is committed in public or without the consent of the victim, the punishment is not more than 80 lashes, or imprisonment for a term not exceeding two years, or a fine.

⁶ Adultery (*zina*) is defined as sexual intercourse between a man and a woman, with consent, outside of marriage (art. 145). Adultery, according to sharia as contained in the Law of Evidence Act 1993, can be proved by one of the following: (a) confession before a court in judicial proceeding unless retracted before execution; (b) four male eyewitnesses; (c) pregnancy of an unmarried woman, unless there is doubt about being married; (d) the oath of the husband that she committed adultery, and she refused to take the oath to the contrary. Penalties vary according to the marital status of the offenders and whether they are from northern or southern states. If the offender is married the penalty is execution by lapidation. If the offender is not married the penalty is 100 lashes. The non-married male offender may be punished with expatriation for one year in addition to the lashes. The penalty is three years’ imprisonment for married offenders from the southern states (art. 146).

⁷ See rule 96 (ii) of the Rules of Procedure and Evidence of ICTY and ICTR, which states: “In cases of sexual assault ... consent shall not be allowed as a defence if the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear”.

⁸ Article 48(1) of the Criminal Procedure Act of 1991 provides that the officer in charge of the case, after submission of the record of inquiry, where the nature of the offence so requires, immediate shall: (a) proceed to the place of the facts to inquire therein; (b) take the necessary steps for the search and arrest of the suspect; (c) where the offence relates to death, or grievous hurt, take the necessary steps to call the competent physician, to examine the body, or the injured person, or transport the body or the injured person

to the nearest hospital, where necessity so requires, and to inform the next of kin of the deceased or injured person, and record any statements on their part in the record of inquiry.

⁹ Article 97 of the Criminal Procedure Act (Furnishing False Information) states : “Whoever furnishes a public servant with false information, knowing that the same is false, intending thereby to mislead such public servant, or to compel him to do a certain act, shall be punished with imprisonment for a term not exceeding one year, or with fine, or with both”.

¹⁰ The case has been followed by HROs and concern was expressed that military authorities had previously tried to move the case from a civilian court to a military tribunal.

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