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COMISIÓN DE DERECHOS HUMANOS
61º período de sesiones
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LOS DERECHOS CIVILES Y POLÍTICOS, EN PARTICULAR LAS CUESTIONES RELACIONADAS CON LAS DESAPARICIONES Y LAS EJECUCIONES SUMARIAS

Ejecuciones extrajudiciales, sumarias o arbitrarias

Informe de la Relatora Especial, Sra. Asma Jahangir*

Adición

MISIÓN EN EL SUDÁN**

* Este informe lo presenta a la Comisión en su 61º período de sesiones la Sra. Jahangir, cuya función como Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias termina el 23 de julio de 2004.

** El resumen del informe sobre la misión se distribuye en todos los idiomas oficiales. El informe propiamente figura en el anexo del resumen y se distribuye únicamente en el idioma en que se presentó y en árabe.

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Resumen

Este informe presenta las conclusiones de la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, la Sra. Asma Jahangir, a consecuencia de su misión al Sudán en junio de 2004. Inicialmente la misión fue motivada por un número considerable de alegaciones de violaciones del derecho a la vida, en particular en la región de Darfur en el Sudán occidental, pero también en otras partes del sur. La misión visitó Jartum, los tres Estados de Darfur y el Estado del Alto Nilo y se reunió con un gran número de interlocutores. La misión también celebró reuniones en Nairobi y en El Cairo.

La Relatora Especial encuentra que no hay duda de que el Gobierno del Sudán sea responsable de las ejecuciones extrajudiciales y sumarias de un gran número de personas en los últimos meses en la región de Darfur, así como en el Reino de Shilook en el Estado del Alto Nilo, aunque en una menor medida. Además, el actual desastre humanitario que se está desarrollando en Darfur, por el cual el Gobierno es responsable en gran parte, ha colocado a millones de civiles en una situación de riesgo, y es muy probable que muchos de ellos mueran en los próximos meses a consecuencia de la inanición y las enfermedades.

Lamentablemente, el Gobierno del Sudán ha tardado en permitir un acceso pleno y sin obstáculos a la asistencia humanitaria y se ha mostrado incluso más renuente a permitir el acceso para supervisar la situación de los derechos humanos en la región de una forma más amplia. El Gobierno del Sudán es responsable de proteger las vidas de las personas internamente desplazadas, así como de otras personas afectadas por el conflicto y, en última instancia, será responsable de sus muertes.

En el Sudán la Relatora Especial encontró que una serie de personas habían sido condenadas a muerte por delitos cometidos cuando eran menores de 18 años, lo cual es una clara violación de las normas internacionales y de la legislación nacional.

En cuanto al futuro, la Relatora Especial recomienda que la prioridad inmediata sea garantizar una asistencia humanitaria eficaz y la protección de los derechos humanos de las poblaciones vulnerables en Darfur, así como en el sur, a fin de proteger el derecho a la vida del pueblo del Sudán. Deben cesar todos los ataques contra la población civil. El Gobierno debe garantizar inmediatamente que se desarmen todas las milicias, que las acciones de las Fuerzas de Defensa Populares (PDF) se encuentren bajo el firme control del Gobierno y que se investigue cuidadosamente a todos los miembros de las PDF. El Gobierno debería garantizar, con asistencia internacional de ser posible, que se dé una formación apropiada a las fuerzas armadas para que actúen de acuerdo con el derecho internacional de derechos humanos y el derecho humanitario internacional. El Gobierno debe garantizar que se proporcione acceso inmediato y completo a los agentes humanitarios, así como a los observadores internacionales de derechos humanos, con el fin de que la comunidad internacional tenga toda posibilidad, en cooperación con el Gobierno, de proteger las vidas de las poblaciones vulnerables en Darfur. Los dos movimientos rebeldes en Darfur también deberían garantizar el acceso humanitario seguro. Hay que instar continuamente a la comunidad internacional a que proporcione asistencia humanitaria generosa a la población afectada en el Sudán. Las Naciones Unidas deben seguir insistiendo en la necesidad de proteger los derechos humanos de los civiles. Una presencia internacional tiene importancia capital para garantizar la coherencia, la imparcialidad y la neutralidad. La Relatora Especial también destaca la importancia de ocuparse de los problemas

políticos y económicos del pueblo de Darfur. A este respecto se necesita un proceso de paz amplio, imparcial y transparente que tenga en cuenta esos problemas.

La cuestión de la responsabilidad es fundamental para el proceso de paz, ya que muchas causas clave del conflicto están relacionadas con la sensación de injusticia y discriminación. El Gobierno del Sudán debe hacer todo lo posible por poner fin a la cultura de impunidad. En el contexto de Darfur, el establecimiento de la Comisión Nacional de Investigación es un acontecimiento positivo, y se espera que la Comisión tenga en cuenta las violaciones de los derechos humanos presuntamente cometidas por las fuerzas de seguridad. No obstante, la Comisión puede ocuparse de la cuestión de responsabilidad solamente en parte. En última instancia, es la obligación del Gobierno garantizar la administración de justicia y asegurar que se proteja a los testigos y a las víctimas en este proceso. Aun así, la Relatora Especial tiene la impresión de que el establecimiento de la responsabilidad tendrá graves defectos a menos que la comunidad internacional supervise estrechamente el proceso, e incluso posiblemente le preste asistencia. A este respecto, es de importancia capital que se lleven a cabo investigaciones para averiguar los detalles de los acontecimientos en Darfur, incluidos los asesinatos extrajudiciales, y llevar ante la justicia a los presuntos autores de los delitos. Los más indicados para llevar a cabo esas investigaciones son los agentes internacionales, con el fin de garantizar que se lleven de acuerdo con las normas jurídicas internacionales y también para enviar un mensaje público de que serán imparciales.

La Relatora Especial recomienda que el Gobierno del Sudán emprenda una revisión amplia de la legislación nacional relativa a la pena de muerte con el fin de garantizar que se ajuste a las normas internacionales. Hay que llevar a cabo un examen amplio de los casos de todas las personas condenadas a muerte para garantizar que durante sus procesos se respeten las normas internacionales mínimas.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS, MS. ASMA JAHANGIR, ON HER MISSION TO THE SUDAN (1-13 JUNE 2004)

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Introduction

1. In June 2004 I undertook an official mission to the Sudan, and subsequently also visited Nairobi and Cairo to meet with interlocutors to discuss the situation in the Sudan. This was my last mission as Special Rapporteur of the United Nations Commission on Human rights on extrajudicial, summary or arbitrary executions, as my tenure expires at the end of July 2004. As a consequence of the substantial number of allegations of violations of the right to life I had received, in January 2004 I decided to request the Government of the Sudan to agree to a mission in order that I might ascertain the situation on the ground. In March 2004 the Government agreed to the visit, but stipulated that it could take place only after 1 June 2004. I therefore arrived in Khartoum on 1 June in the afternoon.

2. My mission came at a time of rapid developments - positive as well as negative – in a country that for a long time has been affected by conflict. In the South, the peace negotiations between the Government and the main opposition group of the South, the Sudan People's Liberation Movement/Army (SPLM/A), were advancing rapidly. A number of important protocols had been signed on 27 May 2004, making the prospects for peace more tangible. In contrast, in the Darfur region in the west of the country, a humanitarian disaster was unfolding and growing in magnitude by the minute. Reports indicated that more than 1 million people had been displaced from their homes as a result of an internal armed conflict that erupted in February 2003 between the Government and rebel forces from Darfur – the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). Many reports confirmed that civilians were being deliberately targeted and extrajudicial killings committed in Darfur by government forces or Government-backed militias. In addition, in the South, despite the recent progress achieved in the peace talks, in the area around the town of Malakal in Upper Nile State, 30.000 civilians had reportedly been displaced as a result of attacks by Government-backed militia against the civilian population and some civilians had been extrajudicially killed in these attacks. As a consequence, my mission focused on these areas, while I also made an effort to reach a comprehensive understanding of the situation in the country in general in order to clarify the context in which these killings were taking place. In addition, my mission also focused on the death penalty as applied in the Sudan, and on the extent to which the Government was in compliance with the international safeguards and standards regarding the imposition of the death penalty.

3. To briefly summarize the main findings of my mission, I can conclude that it is beyond doubt that the Government of the Sudan has been responsible for the extrajudicial and summary execution of a large number of people in the Darfur region over the past several months, as well as in the Shilook Kingdom in Upper Nile State, albeit on a lesser scale. In addition, the current humanitarian disaster unfolding in Darfur, for which the Government is largely responsible, has put millions of civilians at risk, and it is very likely that many will die in the months to come as a result of starvation and disease. Regrettably, the Government of the Sudan continued at the time of my departure to be reluctant to give full access to humanitarian assistance and has shown itself to be even more reluctant to allow access for more comprehensive monitoring of the human rights situation in the region. In the meantime, however, reports indicate that the Government has improved its cooperation with the international community during the months of July. The Government of the Sudan has a responsibility to protect the lives of the internally displaced persons as well as others affected by the conflict and will ultimately be responsible for their deaths. With regard to the death penalty, I found that a number of individuals had been sentenced

to death for crimes committed when they were under the age of 18, which is in clear violation of international standards as well as national legislation. At the end of this report I put forward a number of recommendations to the Government, the international community and other actors. They include recommendations for addressing the current situation in order to avoid further deaths, but also recommendations for the future, including mechanisms and processes of accountability.

I. PROGRAMME OF THE VISIT

4. In addition to myself, my mission team was composed of a human rights officer from the Office of the High Commissioner for Human Rights (OHCHR), and two free-lance United Nations interpreters recruited outside the Sudan. The mission was assisted in the planning phase by the Sudan-based Office of the United Nations High Commissioner for Human Rights. In addition, the United Nations Country Team and the various United Nations offices in Darfur, as well as in the South, provided essential logistical support throughout the mission. The mission was in the Sudan from 1 June to 13 June and spent five days in Darfur, two days in Upper Nile State and the remaining six days in Khartoum. In addition to the programme in the Sudan, I also had meetings in Nairobi and Cairo from 14 to 16 June.

5. In Khartoum I had meetings with a number of government officials, including the Minister of Defence, Major General Bakri Hassan Saleh, the Adviser to the President, Mubark Al Fadil Al Mahdi, the State Minister for Foreign Affairs, Al Najib Al Kheir, the Acting Minister of Justice, Ali Kharti, the Minister of State of the Interior, Ahmed Haroun, the President of the Constitutional Court, Jalal Ali Lutfi, the Head of the Human Rights Committee at the National Assembly, Hamattu Mukhtar Musa, and the Chairman of the National Commission of Inquiry, Dafallah El Haj Yousif. I also met with some of the heads of United Nations agencies, including the Acting Resident/Humanitarian Coordinator, Kevin Kennedy, as well as with representatives of the diplomatic and consular missions accredited to the Sudan. I had meetings with a number of national non-governmental organizations (NGOs), intellectuals and members and representatives of political parties, including the Leader of the Umma Party, Sadigh El Mahdi.

6. In Darfur I visited the capitals of the three states that make up the greater Darfur region: Nyala, in South Darfur, El Fashir in North Darfur, and El Geneina in West Darfur. In all three towns I had meetings with the governors (or acting governors) as well as representatives of the armed forces, the National Security and Intelligence Agency, the police and the judiciary. I conducted a number of field visits to sites hosting internally displaced persons, as well as rural communities throughout the region. I visited the towns of Nertete (West Darfur) and Kass (South Darfur), where I interviewed a great number of internally displaced persons in camps and other settlements. In El Fashir I visited the Abu Shook camp and conducted interviews there, and also visited three camps around El Geneina (Ardamata, Durti and Kringding), as well as displaced persons hosted in various localities inside the town. I also met with a number of United Nations officials as well as staff of international and national humanitarian and development organizations.

7. In Malakal I met with the Governor of the Upper Nile Province and other government officials. I also travelled on the Nile to the town of Fashoda to meet with the King (*Reth*) of the

Shilook tribe. In Malakal I also met with a number of private individuals, staff of United Nations and other international entities, as well as community and religious leaders.

8. In Nairobi I met with representatives of SPLM/A, as well as a number of women refugees from the South of Sudan, including individuals from Upper Nile State**.** In Cairo I had discussions at the Cairo Institute for Human Rights and with individuals from the Sudan, in particular from the Darfur region. I also spoke to representatives of the SLA.

9. My visit should also be seen in the context of the recent visit by the team dispatched by the Acting High Commissioner for Human Rights, whose report (E/CN.4/2005/3) was released on 7 May 2004. Prior to my mission I had met with some of the members of that team and had also familiarized myself with the findings and recommendations of the report. At the same time it should be stressed that my own mission and the findings and recommendations I present in this report are based on an independent assessment, and that I have in no way been guided by the findings or recommendations of the report of the Acting High Commissioner.

10. I wish to express my gratitude to the Government of the Sudan for extending an invitation to me and for facilitating my mission. I was given free access to as many sites and individuals as I desired. In particular, I am grateful to Dr. Abdulmonem Osman Mohammed Taha, Rapporteur of the Advisory Council for Human Rights, for his support throughout the mission. I also wish to thank the United Nations agencies for their assistance in facilitating the field visits. I wish to thank in particular Dr. Homayoun Alizadeh, Senior Human Rights Adviser to the Office of the United Nations High Commissioner for Human Rights based in Khartoum, as well as the numerous United Nations staff in Darfur and Malakal who provided invaluable support. I am also particularly grateful to all the individuals I spoke with during the mission who had witnessed extrajudicial executions and were willing to meet with me and talk about it. I would also note that, according to normal procedures, a draft version of this report was sent to the Permanent Mission of the Sudan to the United Nations Office at Geneva on 23 July 2003, requesting the Government to provide factual comments, if any, to the report before 6 August 2004. No comments were received form the Government within this timeframe, and I submitted the report for public release.

II. GENERAL INFORMATION

A. International human rights instruments to which the Sudan is a party

11. The Sudan is a party to several core human rights treaties, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights. In the context of my mandate it should be noted that the right to life, as protected by Article 6 of the International Covenant on Civil and Political Rights, remains a non-derogable right in all situations, and the Government has the responsibility to protect all persons under its jurisdiction from violation of this right.

B. Context – a brief background

12. The Sudan is a vast country covering more than 2.3 million km^2. It is divided into 26 administrative regions (states), with poor infrastructure and communications. The country is ranked 138 in Human Development Index and in 2000, the per capita gross domestic product (GDP) was estimated at US$ 340. Many Sudanese live on less than US$ 1 a day with the rural population depending on subsistence farming and livestock raising. Thirty-two per cent of the population is urban, 68 per cent is rural and 7 per cent are nomads. The United Nations Development Programme (UNDP) reports that most persistent economic and chronic poverty situations are enhanced and compounded by a governance crisis.

13. The Sudan gained independence on 1 January 1956, but after two years the democratic process was disrupted by a coup d'état carried out by General Ibrahim Abdud. A Supreme Council of the Armed Forces took control, ostensibly to implement an agenda of economic reforms. At the same time the friction between Khartoum and the South started as the regime filled all the important administrative posts with people from the North. In 1962 Christian missionaries were asked to leave the Sudan, further alienating the Christian population of the South. By 1963 an uprising in the South of the Sudan started. There were clashes with Government forces which eventually led to the resignation of General Abdud and the holding of general elections in 1965. A coalition Government headed by Muhammad Muhjub came to power but was overthrown by yet another coup in 1969 by a group of officers led by Gafar Mohammad an-Nimeiri. In 1972, Nimeiri and the militant leader of Southern Sudan, Joseph Lagu, concluded a peace agreement at Addis Abeba. The agreement secured autonomy for the Southern provinces, united three Southern provinces into a single unit and provided for including persons from across the country in the army and the police. A period of relative peace prevailed until an economic crisis hit the country in 1980 and by 1983 civil war between the South and the Federal Government had resumed. The rebellion in the South was led by Colonel John Garang – by then the leader of the SPLM/A. Both sides violated the peace agreement. In September 1983, Nimeiri introduced Shariah in the country and made it applicable to non-Muslims as well. In 1985 Nimeiri was overthrown in a bloodless coup by General Aburrahman Siwar and a year later general elections were held. Sadiq al-Mahdi was elected Prime Minister, only to be overthrown by another coup staged in June 1989 by Lieutenant General Omar al-Bashir.

14. According to some estimates, over 2 million people have died in the course of the ongoing conflict between the South and the Government of the Sudan. Approximately 700,000 refugees have fled the country and about 4 million are displaced within the Sudan. It is therefore no small achievement for all parties (including the international community) to have reached an understanding to engage in peaceful negotiations at this stage. The peace process has been interrupted a number of times and has progressed slowly. The most recent process started with the signing of the Machakos Protocol between the Government of the Sudan and the SPLM/A in July 2002. The talks were broken off by the Government after the SPLM/A captured the strategically important Southern town of Torit. In September 2003, the Naivasha agreement on the manner of integrating the two armed forces was signed by the Government and the SPLM/A. The peace talks have been advancing over the past several months, and it is hoped that a comprehensive agreement might be reached in the course of 2004. Some commentators have noted, however, that a final agreement it might be problematic and that the possibility that the armed conflict will continue cannot be excluded.

15. The current Government reintroduced Shariah, installed a military Cabinet, and in 1998 introduced a new Constitution, which proclaims racial and cultural harmony as well as religious tolerance. It recognizes that Islam is the religion of the majority of the population but that Christianity as well as traditional religions have a large following. The Constitution aspires to foster the spirit of reconciliation and to eliminate ethnic prejudices. Article 33 of the Constitution states that the death penalty may not be imposed except as "chastisement or punishment for the most serious crimes". The death sentence cannot be imposed upon children below the age of 18, expectant women or nursing mothers, or persons over the age of 70 except for "the crimes of qisas or hudud". (This question is discussed further below.) Though the 1998 Constitution remains in force, in 1999 President Omar al-Bashir declared a state of emergency suspending parts of the Constitution, which is still the case today.

16. The National Armed Forces are the main national defence forces. However the Government is empowered to establish a volunteer Popular Defence Force (PDF) to assist any regular forces (Article 124 of the Constitution). The PDF, which is under the formal command of the National Armed Forces, is composed of individuals without much military training and is used to support the regular forces when needed. The Constitution also states that "Defence of the motherland is an honour and Jihad is a duty" (art. 7).

17. In parallel to the conflict in the South, the situation in the western part of the country, the Darfur region, generally deteriorated in the course of the 1990s and finally erupted into civil conflict in February 2003. Approximately 6.5 million persons divided into a number of ethnic/tribal affiliations live in the mainly rural and underdeveloped region of Darfur. Conflict between the groups, mainly between nomads and sedentary groups, has existed for decades and has historically been resolved through traditional dispute-settlement mechanisms. The predominant religion in the region is Islam and tribes generally perceive themselves and others as being either of African or Arab ethnicity/race, although there is intermarriage and social contact between the various groups. In 1994 the current regime implemented an administrative reform and divided the region into three states (North, South and West Darfur). In February 2003, the SLA and the JEM initiated an armed rebellion against the Government, citing discrimination, neglect and underdevelopment as the reasons. In the ensuing months, a large part of the civilian population was displaced by the fighting. Talks were eventually held in the capital of Chad, N'Djamena, under the auspices of the President of Chad, Idriss Deby, which resulted in a ceasefire agreement in April 2004. A more comprehensive peace agreement has yet to be agreed upon by the parties.

18. The conflict between the Government and the South has a religious element, while the conflict in Darfur is based on multiple factors. Yet there are common grounds. In both rebellions economic grievances are a factor and similar tactics are often used by the Government in its response, notably sponsoring militias (apart from the defence forces) to fight the rebels and, more distressingly, to terrorize and kill civilians suspected of supporting the rebels.

19. This brief overview of the political, economic and legal background is intended to describe the context of the complex situation that has given rise to the conflicts in the Sudan. It is in no way an attempt to suggest that the complexity of the situation can be a justification for violations of human rights of concern to this mandate. On the contrary, I wish to draw attention to the

suffering of people because of economic and political mismanagement, compounded by periods of conflict and further exacerbated by the use of illegal violence by the Government resulting in large-scale extrajudicial, summary and arbitrary executions.

III. FINDINGS

A. Darfur

20. My mission came in the wake of the most vicious combat at a time when military activity in Darfur seemed to be reduced. All reports indicated that massive internal displacement had taken place in all three states and that thousands of persons had fled across the border to neighbouring Chad. While there was no official statistical information confirming the number of displaced inside the country, estimates indicated that more than 1 million persons had been displaced within the region and approximately 150,000 had fled to Chad. As noted, during the mission, my team and I interviewed a great number of internally displaced persons in camps and urban settlements in all three States of Darfur. The displaced were predominantly from the three major African tribes in the region: Masaalit, Zaghawa and Fur. The mission conducted both individual and group interviews. The main purpose of the interviews was to identify first-hand witnesses and family members of victims as well as to assess the scale of violations of the right to life. In addition, in Khartoum I also spoke to a number of Arab and African tribal leaders and representatives from the region. I inspected a burnt-out village in South Darfur. I also sought information from government sources in the region about the events in order to achieve a nuanced and comprehensive assessment of the situation.

21. Time and again I was reminded by non-official interlocutors that the people from Darfur had been calling for help for a number of years. Many petitions had been made to the Government in Khartoum describing a deteriorating law and order situation and urging the Government to take action. The former United Nations Special Rapporteur on the situation of human rights in the Sudan had been reporting on this aspect some time. In 1997 he warned of serious intertribal clashes and fighting in West Darfur between the Rizeighat, Missirya and other Arab nomadic tribes, on the one hand, and the Zaghawa and Masaalit tribes on the other (see E/CN.4/1997/58).

22. It is obvious that the root causes of this conflict and the humanitarian disaster are complex and numerous. All of them will have to be addressed in a comprehensive fashion in order to find a lasting solution. Ecological and demographic transformations of the region have been an underlying cause of the conflict. Severe droughts in the 1970s and 1980s intensified the fight over scarce resources and access to land, exacerbating existing tensions between (predominantly Arab) nomadic pastoralists and (predominantly African) sedentary agriculturalists. In addition, the drought also led to an influx across the porous western border of the Sudan of foreign nomadic and other tribes in search of new livelihoods. Most reports indicate that conflicts between Arab nomads and agriculturalists are endemic to the social structure of Darfur. They reportedly only flared up to attain their present magnitude after the Government of the Sudan became involved, carrying out military operations against civilians through its armed forces, including the Popular Defence Forces, and sponsoring militias, including from some ethnically Arab tribes.

23. These conflicts were often settled temporarily through local and traditional mechanisms. The Government of the Sudan also intervened. In June 1999, a Government-sponsored conference was held to put an end to the intertribal conflicts. A comprehensive agreement was reached but, "there have been continuing reports of extensive violence and human rights abuses against Masaalit civilians on the part of Arab militias allegedly supported by the Government, driving more than 30,000 people into exile in Chad and Egypt and reportedly displacing some 350,000 in areas within West Darfur State itself" (A/54/467/ para. 37). During interviews I often heard it claimed that the Government demonstrated aggressive favouritism towards the tribes of Arab ethnicity.

24. A large number of people whom I met had a strong perception that the Government of the Sudan was pursuing a policy of "Arabization" of the Sudan, and in particular the Darfur region. Allegedly, those of Arab descent seek to portray themselves as "pure" Muslims as opposed to Muslims of African ethnicity. It was also alleged that the Government of the Sudan gave obvious preference to people of Arab descent, including in making appointments to senior positions in the Government and the administration.

25. In the context of the ongoing tribal frictions and feuds, the Government of the Sudan began to arm some tribes in Darfur. I met representatives of both Arab and African tribes of Darfur in an open meeting in Khartoum to discuss these issues. The Arab tribes openly admitted that they had received arms from the Government, but alleged that the Masaalit were receiving arms from the Government as well. The leaders of the Masaalit confirmed they had received arms, but far less than the Arab tribes – a situation which they regretted. It appeared that the distribution of arms to these tribes and the amounts distributed was common knowledge.

26. Another aggravating factor is the manner in which fighters are recruited to the PDF. High-ranking army officers confirmed that the Government recruited people to the PDF without proper screening. According to one senior officer in El-Fashir, some 1,500 people, with arms, were placed under his command for training. They were trained for 45 to 60 days and called in to assist in "military operations", and were often used as "cover" for military movements. He admitted having used aircraft to attack a few locations in the context of military operations against the rebels. The officer assured me that it would not be difficult to disarm the PDF as the Government kept records of the arms distributed and was formally in command of the PDF.

27. It is beyond doubt that the Government of the Sudan has been responsible for the violation of the right to life of a large number of people in the Darfur region over the last several months. While the armed revolt was started in February 2003 by the two Darfur-based rebel movements, which led to the fighting between the rebels and government forces as well as Government-backed forces, it is evident that the latter had targeted civilians. I received numerous accounts of extrajudicial and summary executions carried out by Government-backed militias and by the armed forces themselves.

28. According to credible information, members of the armed forces, the PDF and various groups of Government-sponsored militias had in recent months attacked villages and summarily executed civilians, looted homes and forcibly displaced the inhabitants. The location of graves and mass graves was reported to me, but I was not in a position to verify them as visits to those sites were not possible owing to security concerns or distance.

29. Many eyewitnesses recounted how armed men in uniform attacked villages and killed unarmed people, burnt the villages and forced the population to leave. Often the displaced could not distinguish between army, the PDF, or other militia and in many instances referred to the attackers as “Arabs”, “Janjaweed” (a local popularized term for armed outlaws on horseback) or “Peshmerga” (a term for Arab tribesmen). Many also reported attacks on villages from the air by either helicopters or aeroplanes. Villages had been attacked by armed forces and militia, their property looted and their houses burnt.

30. The most often heard report was of villages being surrounded by military vehicles accompanied by Arab militia riding horses. The local population was plundered, looted, tortured, raped and often shot at in a random manner; however, adult men seemed often to be specifically targeted. Before leaving, the Arab militia would burn down the villages. In some cases, helicopters or Antonov aeroplanes were used to bomb or attack the villages or to provide cover for ground operations, including operations carried out by Arab militia.

31. I also heard the testimonies of two very young displaced children in Nertete who had witnessed their parents being beaten and shot dead before their eyes. The traumatized children were in a camp for displaced persons and were without any adult assistance. According to rough estimates, members of one out of every four households in the camps I visited had members who had witnessed the killing of other family members. There were reports that the Arab militia had visited local hospitals and shot dead the injured. In some places, when villagers fled they left behind the disabled and the very old, who apparently died of starvation.

32. Witnesses from Korma described how Arab militias attacked the village. They whipped one of the witnesses and broke the leg of another. The witnesses alleged that two village girls aged 25 and 15 were abducted by the attackers. The next day the villagers were attacked again, they thought by joint forces of the military or the PDF (the villagers could not distinguish between the two) and Arab militias. Thirteen villagers were killed. The bodies were left when the survivors fled the village

33. A witness who had fled from Kutum reported that villagers saw Arab militia return to the army barracks in the evening. The witness said that early one morning his village was attacked by Arab militias riding horses and persons in uniform riding in military vehicles. Shops were ransacked and property was looted. Before leaving the attackers opened fire indiscriminately, killing a number of people. When I asked how many had been killed, the witness replied that he was in no position to count the bodies but he thought there were at least a dozen.

34. Some witnesses from Jadara said that at around 7 a.m. some months previously they heard the sound of an aeroplane, which began firing on the village. People began to panic and were preparing to run away when 20 cars full of uniformed men arrived along with Arab militias on camels and horses. They first set fire to the village and then began killing randomly. The witnesses were in a state of absolute shock and despair. They said that about 20 people had been killed.

35. I also met with witnesses who had escaped to the neighbouring village of Korma after their village at Jabal See was bombarded. However, Korma also came under attack. The witnesses

alleged that about 50 people were killed in the attack in Jabal See and approximately 75 were killed in Korma.

36. Another witness, from Taweela, recounted more or less the same pattern of attack by uniformed men riding in cars and Arab militias on camels or horses. The witness saw five members of his family killed before his eyes. Those who could escape ran to the mountains but the others were held captive by the Arab militias and terrorized for five days. Several people were killed.

37. There were reports of people being arrested by the police and summarily executed by Arab militias without the police intervening. In some places it was alleged that the relatives were not allowed to bury the dead, even when they had the opportunity to do so. Displaced persons from village to village gave harrowing reports of brutal forms of summary executions by uniformed men and Arab militias.

38. There were consistent reports of police inaction. I was told of incidents where the local population was allegedly told in advance about an attack. In one incident the members of the PDF and Arab militia had set up camp in the evening near a cluster of villages. The villagers suspected they would be attacked the following day and reportedly informed the police, who said that they would be unable to protect them.

39. Almost every witness whom my mission team met or interviewed believed that the Government bore direct responsibility for the trauma they had suffered. Perhaps fit is for this reason that very few accounts of abuses by the SLA or JEM were reported. Nevertheless, government officials in El-Fashir provided me with a list of ceasefire violations committed by the SLA and JEM. They also claimed that the rebel groups had disguised themselves in military uniform and carried out indiscriminate killings.

40. According to the information I collected, many of the armed Arab militias have by now been integrated into the regular armed or the Popular Defence Forces. There is no doubt that there is a link between some of the militia groups and government forces, as some of the militia leaders have been integrated into the Sudanese armed forces and given official military ranks. According to the information I received, a large proportion of the regular soldiers in the Sudanese armed forces are originally from the Darfur region, while the officer corps is predominantly of Arab origin. This, apparently, made it more difficult to use the regular soldiers in the fight against the Darfur rebels. As a consequence the Government resorted to a build up of the Popular Defence Forces. A military commander in El-Fashir told me that the army was not recruiting additional forces and therefore depended on the PDF in emergencies.

41. It was my impression that in responding to the rebellion, the Government had sought, in addition to the actual fighting with the rebels, to undermine what was perceived to be the support base of the rebels, namely the civilian population, in particular the three African tribes. While the Government of the Sudan has a legitimate right to defend the integrity of its territory against attacks, the problem in this context was the disproportionate character of the response and the indiscriminate attacks on the civilian population. It also appeared that some attacks had been more violent than others. I received accounts from witness who had seen destroyed villages where the remaining structures bore clear marks of bullet and shrapnel holes. I spoke to another

witness who had personally seen an empty rocket shell recovered following an alleged attack by armed forces helicopter gunships against a market in the town of Tabit, south of El Fashir, on 28 May 2004. In other instances, it appeared that the attacks were mainly aimed at displacing the civilians as one of the destroyed villages I inspected bore clear marks of burning and destruction of property but not of fighting or armed attack, as no bullet holes were apparent.

42. At the same time, I am also aware that some loss of life occurred as a result of the actions of armed criminal or renegade gangs who have taken advantage of the conflict. There were few reports indicating that the two rebel groups had executed civilians. The testimonies I heard appeared to be spontaneous. So far no one from the government side has conducted or even initiated an investigation or inquiry into the events reported by the displaced, nor conducted detailed interviews of eyewitnesses. The stories corroborated each other, lending further credibility to the accounts narrated.

43. Representatives of the Government of the Sudan generally noted that the situation in Darfur, in addition to the Government's conflict with the rebels, was a result of tribes fighting over land. The Government maintained that it had no link to any militias and that no attacks against civilians had been carried out by Government-controlled forces. However, it readily admitted that it had recently recruited a substantial number of persons into the Popular and National Defence Forces and that most of the recruits were from Arab tribes. It said that it had no connection to the so-called Janjaweed, who were seen as local outlaws. According to the Government, the displacement had been caused mainly by the fighting with the rebels. Following the mission of the team sent by the Acting High Commissioner for Human Rights, the Government established a National Commission of Inquiry to look into the situation in Darfur. The Commission, regrettably, does not have a mandate to investigate allegations against government actors, which seriously undermines its credibility.

44. However, even in the light of these explanations, the Government appeared oblivious to the dramatic and disastrous proportions and the magnitude of the current humanitarian and human rights crisis. The manner in which the Government had conducted its operations, resulting in massive internal displacement, was clearly disproportionate to the military objectives. In addition, the persistent denial of the current humanitarian disaster in Darfur by most government officials was shocking.

45. Furthermore, as noted by the SLA and JEM rebel movements, the relative underdevelopment of the region as a whole and its neglect by the Government had exacerbated perceptions of marginalization and discrimination among local groups in Darfur. As in the South, the perception that Africans were the subject of racial discrimination by Arabs certainly played a key role in fomenting the revolt of the main three African tribes in Darfur. This was an issue raised by many of my interlocutors. Some observers even noted that the main southern rebel group, the SPLM/A, had provided support to the African tribes despite their religious differences. There was no doubt that Darfur was less developed in terms of its economy as well as its infrastructure. Others also noted that foreign influence on the Government of the Sudan, especially from the Middle East, had further exacerbated the perception of a racial divide between Arabs and Africans.

46. I was deeply concerned at the situation I witnessed of the large numbers of internally displaced persons and other civilians in Darfur. They were and continue to be in desperate need

of humanitarian assistance and protection. Most of the camps I visited received no regular humanitarian assistance or protection, and there appeared to be practically no national protection actors present. The right to life of all these people continued to be seriously threatened even following their displacement. Some reports indicate that the displaced are still being harassed by Government-controlled groups. Even after my mission I received reports that extrajudicial executions were still taking place. It is very likely that the humanitarian situation will deteriorate significantly with the coming rainy season and that more people will die.

B. Southern Sudan – the Shilook Kingdom

47. As noted above, in addition to Darfur, I also conducted a two-day field trip to Upper Nile State, to the towns of Malakal and Fashoda. This visit was prompted by numerous reports indicating that extrajudicial executions had been carried out in the course of attacks by Government-backed militias. Tensions in the area between the Government and the Shilook tribe emerged when a former ally of Dr. John Garang, Dr. Lam Akol, had joined the SPLM/A after resigning his government ministerial post in October 2003. Dr. Akol was a Shilook and reportedly had influence within his tribe. The information that I gathered from a number of sources clearly indicated that following Dr. Akol's "defection", the Government had armed and financed local militias from the Nuer tribe to attack and destroy Shilook settlements and displace the population so as to ensure that the SPLM/A did not have control of the territory. Sources indicated that 30,000 people had been displaced and that at least 13 persons had been extrajudicially executed in March 2004.

48. The Government's link to the militia was clear as some of the militia leaders had been given high military ranks and government posts. This was the case of Gabriel Tanginya, who had been made a major-general in the army, and of James Othaw, who became Commissioner of Tonga, a town near Malakal**.** While it was quite apparent that the Government had issued instructions to the militias to displace the Shillook population, I received no information indicating that there had been clear orders to kill civilians. The killings that occurred appeared to be the acts of individual militia members. However, the Government did not conduct, or even initiate a single investigation into the killings.

49. There was very little official information available with regard to the current humanitarian situation of the displaced. I was informed that the majority of them were taken in by relatives in Malakal or accommodated in settlements on the outskirts of the town. I received no information that the displaced had been attacked or killed.

50. With regard to the ongoing peace process between the Government and the SPLM/A in Naivasha, I would briefly note that I met with mixed reactions to this process during my discussions with various interlocutors. Almost everyone welcomed it and expressed the hope that it would lead to fresh opportunities for sustainable peace in the entire country. At the same time, four major concerns were expressed. First, it was feared that the success of the peace pact would overshadow the situation in Darfur and indeed gloss over the need for accountability. Second, a number of leaderless or "floating" militias, particularly in the South, needed be disarmed. Third, the peace process should not be reduced to power-sharing between the Government and the SPLM/A but made comprehensive and inclusive. Finally, the displaced must remain a central concern of the Government and their protection assured.

C. Capital punishment and the special courts

51. As mentioned earlier, the Constitution stipulates that a sentence of death cannot be imposed for crimes committed by persons under 18 years of age, except for hudud or qisas crimes. The Penal Code of 1991, Part IV, chapter 1, article 21, paragraph 2, adopts this provision of the Constitution. This means that a child who has reached puberty (and is therefore an adult under Islamic law) can be sentenced to death for such crimes as murder, rape or adultery.

52. In Kober Prison in Khartoum I came across a number of individuals who received death sentences for crimes committed when they were under the age of 18. Several of them were arrested with a group of offenders and tried together with adults. Government officials assured me that the child prisoners would nevertheless not be executed.

53. Emergency or special courts were established in Darfur in May 2001. They dealt with the offences of armed robbery, crimes against the State, murder, as well as crimes relating to drugs and public nuisance. Lawyers were forbidden to appear before these courts, which were presided over by one civil and two military judges. According to reports I received at least 14 males were executed by hanging in El-Fashir prison after being convicted by the special courts. It was also reported that more than 30 persons are on death row after conviction at first instance by special courts. Appeals against convictions by the special courts could be made to the District Chief of Justice within seven days. I was pleased and encouraged that the special courts were abolished in March 2003.

54. In Nyala I met with members of the judiciary who were very candid about their opinion of the special courts. They told me that they were not consulted before the courts were set up and that they had always been uneasy about them. They said that the judiciary had communicated their views to the Government.

55. I was and remain deeply concerned that the special courts, which did not fulfil the criteria of independence and impartiality, reportedly imposed the death penalty on a number of individuals and that at least 14 persons have allegedly been executed. The Government was requested to furnish me with statistics on the number of persons on death row, indicating their ages and the offences for which they had been convicted. I also requested information on the carrying out of death sentences in the last two years. So far no such information has been made available.

56. There appears to be some ambiguity in the Constitution and the laws relating to the death penalty. As mentioned above, the Constitution in article 33 says that "the death penalty *may* not be imposed except as chastisement* or punishment for the most serious crimes in accordance with law" (emphasis added). National legislation does, however, prescribe the death penalty for crimes which, according to international customary law, do not constitute "the most serious crimes". For example, I was told that children under the age of 18 could be sentenced to death

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*Some translations of the Arabic text, including that of the Ministry of External Relations of the Sudan (http://www.sudanca.com/press/constitution02.html), use the word "retribution".

for armed robbery. Adults can be sentenced to death for crimes against the State. During discussions on the death penalty with the public prosecutor in El Fashir I learned that a woman had been sentenced to the death penalty for singing songs inciting men to go to war. While I was still in the province, I was told that the appeal of the "singing woman" had been accepted and that it was expected that she would be released.

IV. CONCLUDING REMARKS AND RECOMMENDATIONS

A. Concluding remarks

57. Regrettably, I have to conclude that there is overwhelming evidence that extrajudicial killings of civilians in Darfur have been carried out, with some exceptions, in a coordinated manner by the armed forces of the Government and Government-backed militias. They appear to be carried out in a systematic manner and could be termed grave violations of human rights. There are strong indications that the scale of violations of the right to life in Darfur could constitute crimes against humanity for which the Government of the Sudan must bear responsibility. It is my distinct impression that extrajudicial killings of the Shilook people were carried out by Nuer militia who were armed and sponsored by the Government of the Sudan. The manner in which the death penalty is imposed and carried out in the Sudan does not conform to the safeguards and restrictions under international customary law.

58. I remain seriously concerned at the very slow and negligent reaction of the Government towards the situation unfolding in Darfur. Such a reaction despite the huge international outcry would appear to indicate either complete disrespect for the right to life of the population of Darfur, or, at worst, complicity in the events. It is absolutely crucial that the Government begin to send clear and unambiguous signals, accompanied by swift action, in order to ensure the protection of the right to life of these people. The trauma of Darfur has shaken society in the Sudan, which for a long time has wished for to end to the violence and for peace. This is an opportunity which the Government of the Sudan must seize. The impact of international support is evidenced by the positive developments in the peace process in the South. A similar effort should be made in Darfur. The Sudanese people expect the international community to act as a guarantor and to move this process forward.

B. Recommendations

59. The immediate priority is to ensure effective humanitarian assistance and human rights protection to the vulnerable populations in Darfur as well as in the South in order safeguard the right to life of the people of the Sudan. All attacks against the civilian population must stop. The Government must immediately ensure that all militias are disarmed, that the actions of the PDF remain under its firm control and that all members of the PDF are properly screened. The Government should also ensure, with international assistance if available, that appropriate training is given to the armed forces so that they act in accordance with international human rights law and international humanitarian law. The Government must ensure that immediate and complete access is provided to humanitarian actors as well as international human rights monitors, so that the

international community has every opportunity, in cooperation with the Government, to protect the lives of vulnerable persons in Darfur. The two rebel movements in Darfur should also guarantee safe humanitarian access. The international community should continuously be urged to provide generous humanitarian assistance to the affected people of the Sudan. The United Nations must continue to emphasize the need to protect the human rights of civilians. An international presence is of the utmost importance to guarantee consistency, impartiality and neutrality. At the same time, I must stress the importance of addressing the political and economic grievances of the people of Darfur. A comprehensive, just and transparent peace process that takes these grievances into account is therefore needed.

60. Accountability is crucial in any peace process, as many of the key causes of the conflict relate to perceptions of injustice and discrimination. The Government of the Sudan must make every effort to end the culture of impunity. In the context of Darfur, a positive development is the setting up of the National Commission of Inquiry, and I hope that the Commission will take into account violations of human rights allegedly committed by the security forces. However, the Commission of Inquiry can only partly address the issue of accountability. Ultimately, it is the obligation of the Government to ensure the delivery of justice and that witnesses and victims are protected. However, it is my impression that the accountability process in the Sudan will be seriously flawed unless the international community closely monitors it, and possibly even assists. In this regard, it is of the utmost importance that investigations be carried out to ascertain the details of the events in Darfur, including extrajudicial killings, and to bring the alleged perpetrators to justice. International actors are best suited to carry out these investigations in order to ensure that they are carried out in accordance with international legal standards and to send a public message that they will be impartial.

61. I recommend that the Government of the Sudan undertake a comprehensive revision of the national legislation concerning the death penalty with a view to ensuring that it conforms to international standards. A comprehensive review of the cases of all persons on death row should be undertaken to ensure that international minimum standards were met in the course of their trials.