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# **SUDAN**

## **Amnesty International's recommendations on the deployment of a United Nations peace support operation**

After more than 50 years of conflict accompanied by widespread and systematic human rights violations, carried out particularly by the Sudan government and its militias, and including many abuses by armed opposition groups, the Comprehensive Peace Agreement signed on 9 January 2005 offers a chance to build a new future where the human rights of the people may be safeguarded. These recommendations to the United Nations Security Council on the United Nations Mission in Sudan (UNMISUD) to be deployed under the Comprehensive Peace Agreement have been drawn up in order that the UN mission should be as effective as possible in protecting and promoting human rights. The United Nations should work with civil society, the government of national unity and all parties in the Sudan towards ending the injustice and marginalisation which have caused so much devastation in the country and towards building a society in which the rule of law and human rights apply to all. The Security Council must endorse the recommendations of the Secretary-General's report on a United Nations peace mission in Sudan and the findings and recommendations of the International Commission of Inquiry on Darfur, established in resolution 1564 and whose report Kofi Annan, the UN Secretary-General, called "one of the most important documents in the recent history of the United Nations".

### ***Introduction***

With the signing of the Comprehensive Peace Agreement to end the civil war in southern Sudan, the Security Council is discussing the details of a UN operation to be deployed in support of the implementation of the Agreement. In accordance with Security Council resolutions 1547 (2004) and 1574 (2004), the Secretary-General presented to the Security Council a report (S/2005/57) in which he outlined his recommendations on the size, structure and mandate of a United Nations operation to support the agreement and to provide contingency planning for the Darfur region. The Secretary-General's report envisages the establishment of a multidimensional peace support operation, and recommends that this operation should be able to protect civilians under imminent threat of physical violence, have a strong human rights monitoring component and a mandate to assist in the strengthening of law enforcement authorities, including building an independent and impartial judiciary and a reformed police service in the Sudan.

Amnesty International has documented numerous crimes under international law committed on a large scale against the civilian population by all parties to the conflicts in Sudan: in the South, in the border areas of Abyei and the Nuba Mountains and in Darfur.

These have included, *inter alia*, murders, rapes and abductions, forcible recruitment into armed forces, recruitment and use of children in hostilities and forcible transfer of population.

Amnesty International has also documented many crimes under international law and other human rights violations committed on people in areas under control of the Sudanese government outside of conflict zones. These violations include torture, incommunicado detention, unfair trials, excessive use of force resulting in killings of people demonstrating and restrictions on freedoms of expression and association. These have been justified by the Sudanese government under the state of emergency, even though some of them contravene rights from which no derogation can be made under any circumstances, according to Sudan's obligations under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Such human rights violations have fuelled insurgencies against the government by armed groups who themselves have committed crimes under international law.

Effective steps need to be taken to prevent and punish crimes under international law and other human rights violations if a meaningful peace is to be built in the whole of Sudan. As the UN High Commissioner for Human Rights stated before the Security Council on 16 February 2005 in presenting the report of the Commission of Inquiry on Darfur: "The pursuit of justice is often said to clash with the pursuit of peace. Whatever the theoretical merit of that proposition, the findings of this Commission of Inquiry irrefutably demonstrate that there is no hope for sustainable peace in Darfur without immediate access to justice." Our organization has consistently called on the international community, including the United Nations, to place the protection of the human rights of all Sudanese at the heart of its efforts if the crisis in Sudan is to be resolved. Any United Nations peace support initiative for Sudan must contribute towards ending and preventing further abuses of international human rights and humanitarian law in Sudan. Our organization believes that a United Nations operation in the country should also contribute to the long term process of re-establishing the rule of law and the rebuilding of judicial institutions, to nation-wide disarmament and to fostering sustainable development to address Sudan's widespread poverty. To be effective, all long-term plans should be drawn up in a transparent manner in close consultation with the Sudanese people, including civil society organizations, with agreed objectives, work plans and benchmarks.

We are, therefore, submitting to Security Council members the following recommendations which we hope will be considered in deciding on the mandate of the United Nations peace operation in the Sudan.

### **1. A strong human rights component**

The 31 January 2005 Report of the Secretary-General on the Sudan envisages that a main task of the United Nations Mission in the Sudan would include "To establish a strong human rights monitoring presence in Darfur and to monitor and report on the human rights situation throughout the Sudan and act on abuses of human rights in cooperation with national and local authorities, and to provide training and build capacity in the field of human rights so as

to improve the authorities' ability to ensure the human rights of citizens." (para.28, under Governance) Amnesty International welcomes this recommendation and calls on the Security Council to endorse it.

Amnesty International believes that United Nations operations should have strong and well resourced human rights monitoring, protection and promotion components, dealing with all human rights, civil and political rights as well as economic, social and cultural rights and rule of law institution building. The human rights component must ensure that human rights are effectively integrated in the overall work of the mission, must enjoy full political support and be provided with adequate resources. It should ensure that the rights of children and women are effectively protected. The human rights component should be able to document and publicly report on the human rights situation in all areas of the country, including by addressing both thematic issues pertaining to human rights, as well as individual cases of alleged human rights abuses and how they are being resolved. It should also contribute to the human rights training of all military and civilian personnel of the mission in a gender-sensitive manner.

Our organization also welcomes the recommendation that the human rights presence in Darfur, authorized in resolution 1564(2004), would be incorporated into the United Nations Mission and the understanding that, in that region, "international monitoring and investigation of human rights violations remains essential, together with the pursuit of effective remedies for victims." (para.61). The significant human rights presence in Darfur foreseen in the report, should be based on the existing monitors deployed by the United Nations Office of the High Commissioner for Human Rights, plus new and well equipped human rights monitors who should be swiftly deployed in adequate numbers. These monitors, as well as the human rights monitors deployed throughout the Sudan, should be transparently recruited, professionally capable, sufficiently trained before deployment, and able to intervene with national and local authorities to protect human rights including of vulnerable groups.

The mission will work best if responsibilities between the different components of the mission are clear and do not overlap. In particular, the division of work between the rule of law and human rights components must be clarified, with the latter being able to ensure effective coordination.

In terms of reporting lines, a dual reporting arrangement should be established, which would allow reports produced by the human rights component to reach both the Special Representative of the Secretary-General and the High Commissioner for Human Rights. In spite of having operational links with one of the Deputy Special Representatives as foreseen in the report, the human rights component should be able to report directly to the Special Representative, and through him, human rights reports should reach the Security Council and inform its debates. In accordance with the recommendation of the UN Commission of Inquiry, the High Commissioner for Human Rights should make public periodic reports on the human rights situation; these should be on the human rights situation in the whole of Sudan, not only in Darfur.

Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the Sudanese government is implementing international human rights guarantees effectively.

We hope that the Security Council adopts a resolution foreseeing a strong human rights component for UNMISUD.

## **2. Gender issues and the protection of women and children**

A senior adviser on gender issues and a senior child protection officer are already placed in the UN Advanced Mission in Sudan. Our organization also welcomes that the Secretary-General's report envisages that the United Nations Mission in Sudan would "foster the mainstreaming of gender issues into the work of the United Nations and its partners." (para.28 under Governance) The report also foresees that, "[i]n accordance with Security Council resolution 1325(2000), the mission would implement a plan of action to guide the process of gender mainstreaming in all aspects of its work. In particular, Amnesty International welcomes the recognition that a "key objective of the work of the mission's gender component would be to facilitate capacity-building support for both uninformed and civilian elements in the mission on gender mainstreaming strategies." We urge the Security Council to endorse these recommendations.

Amnesty International calls on the Security Council to make sure when creating the United Nations Mission in Sudan that a gender perspective and the protection of children are a prime concern and are fully integrated in all aspects of the mission. The Security Council should acknowledge that rape and other forms of sexual violence have been committed on a large-scale by government forces, rebel groups and militias in the context of conflicts in southern Sudan and Darfur, condemn violence against women and girls as a tool of warfare and call on UNMISUD to actively address the issue.

Also important are the report's provisions relating to the prevention of sexual exploitation and abuse by peacekeepers. The Secretary-General's report acknowledges the increased number of allegations of sexual exploitation and abuse against United Nations peacekeeping personnel in other UN Missions, and that it is of the highest priority to send a clear message regarding the policy of zero tolerance for acts of sexual exploitation and abuse committed by United Nations or affiliated personnel (para.92). Amnesty International supports the attention given to this issue, and hopes that the personal conduct unit envisaged to support the Secretary-General Special Representative in these matters is swiftly established, and will be able to develop strategies and mechanisms to effectively prevent, identify and respond to any forms of misconduct, including sexual exploitation and abuse. This unit should include senior personnel with sufficient expertise in gender issues and the protection of women and children from violence.

### **3. Addressing impunity**

The Secretary-General's report affirms that an important part of the new Mission's mandate would be to "*promote national reconciliation throughout the country.*" As the Secretary-General has stated on numerous occasions, ending impunity is an essential foundation for reconciliation. It is not possible to achieve national reconciliation if those suspected of the commission of genocide, crimes against humanity, war crimes and other crimes under international law are not brought to justice, and if impunity is not ended. The Security Council should provide that the United Nations Mission in Sudan has a strong mandate to help ending impunity, by ensuring that those responsible for such crimes are brought to justice, by promoting standards of individual accountability and by ensuring that full reparation is awarded to the victims and their families.

The International Commission of Inquiry on Darfur established under Security Council resolution 1564/2004 documented crimes against humanity and war crimes committed in Darfur by Government authorities and Janjaweed forces, as well as war crimes committed by rebel groups and "foreign army officers acting in their personal capacity". The large-scale crimes perpetrated in Darfur have so far gone unpunished. However, as Amnesty International's reports, including its most recent report *Sudan: Who will answer for the crimes* (AI Index: AFR 54/006/2005, January 2005), have documented, war crimes and crimes against humanity, including murders, rapes, abductions, indiscriminate aerial bombings, the destruction of villages and the looting of property have occurred in other areas as well, in particular the conflict-affected South and the marginalised border areas between North and South.

The report of the International Commission of Inquiry on Darfur makes two important recommendations to the Security Council: the referral of the situation in Darfur to the Prosecutor of the International Criminal Court, and the establishment of a Compensation Commission to provide reparations to victims. Amnesty International fully supports both recommendations as a first step towards ending impunity and urges the Security Council to act on them swiftly. However, atrocities and impunity are not exclusively confined to Darfur and we therefore urge the Security Council to refer to the Prosecutor of the International Criminal Court the situation of the whole of the Sudan, and not just in Darfur.

The International Commission of Inquiry carefully analyzed all other options, and concluded that the Sudanese justice system is unable and unwilling to address the situation in Darfur, that there appeared to be no political will to establish an ad hoc international criminal tribunal, that it would be very expensive and counter-productive to add the Sudan situation to the mandates of either the International Criminal Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda, and that mixed courts would not necessarily be acceptable to the government, would not provide swift justice or attract the required funds. The Commission concluded that "the ICC, the only truly international criminal institution, is the single best mechanism to allow justice to be made for the crimes committed in Darfur". Twelve out of fifteen member states of the Security Council support the recommendation of the Commission of Inquiry. To ignore the crucial role of the International Criminal Court

would mean that the United States, China and Algeria believe that the fight against impunity which they publicly profess is a mere secondary consideration when it comes to protect their own interests. The Sudanese people deserve justice and redress, and this must not be denied just because it does not sit comfortably with these states' political agenda.

In addition, and as part of the mandate to help ending impunity, the new United Nations Mission in Sudan should work with civil society to develop a comprehensive long-term action plan to end impunity that would go beyond the handful of cases that would be investigated and prosecuted by the International Criminal Court. This requires giving priority to strengthening a professional police service that is "representative of and responsive and accountable to the community as a whole"<sup>1</sup> and to building an independent judiciary and judicial institutions, including prisons, that operate consistently with United Nations standards. These efforts must be well integrated as past experience shows that international organizations and states have lacked an integrated and coordinated approach in crucial areas, notably in helping develop policing accountability and police training, as well as judicial reform, in accordance with United Nations standards. This has led to confusion and lack of efficiency. Effective cooperative relationships between the various participants should be established at executive level and in the field.

UNMISUD civilian police monitors should monitor and train national police forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

#### **4. A strong and unambiguous mandate and sufficient means to protect civilians**

As the Secretary-General's report affirms, "[p]rotecting populations suffering from the effects of conflicts is a key element in stabilizing peace in the Sudan and in providing an increased measure of security of its people."(para.74) The United Nations Mission in Sudan should therefore be given a strong and unambiguous task of protecting the civilian population, with clear rules of engagement that are strictly consistent with UN guidelines for law enforcement operations and with international humanitarian law. The protection of those in detention should be part of its mandate.

It is envisaged that UNMISUD operates as a peace support mission under Chapter VI, with tasks related to the protection of civilians under a Chapter VII mandate. Amnesty International would like to underline to members of the Security Council the importance of not only providing sufficient resources to UNMISUD to allow it to implement its protection mandate but also to ensure that UNMISUD will have the necessary political support to act in situations where civilians are under imminent threat of physical violence. The rules of

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<sup>1</sup> United Nations Code of Conduct for Law Enforcement Officials (1979).

engagement of UNMISUD should clearly stipulate that UNMISUD must act, in all areas of its operations, in situations where civilians are under imminent threat of physical violence.

Amnesty International welcomes the provisions made in the Secretary-General's report (paragraphs 75 and 76), which foresee the development of a Sudan-wide protection strategy and work plan focussed on the protection of returning populations, host communities, those wishing to remain in situation of displacement, civilian victims of armed conflict, women, children (including the deployment of child protection advisers, in accordance with Security Council resolution 1539(2004) and previous resolutions) and vulnerable groups of persons. The United Nations Mission in Sudan should pay particular attention to protecting the civilian population from gender-based violence and trafficking.

In order to implement its protection mandate, the United Nations peacekeeping force should comprise sufficient numbers and have adequate logistical support to enable it to deploy swiftly throughout the country and implement the tasks entrusted to it efficiently. The Security Council should ensure that UNMISUD benefits not only from sufficient troops and logistics, but also from the political support to enable it to discharge its mandate. UNMISUD should also be able to support AMIS (the African Mission in Sudan) in fully implementing its mandate to protect civilians in Darfur. The presence and mandate of AMIS in Darfur has not yet had a positive impact with regards to the protection of civilians under attack.

As regards the protection of those in detention, Amnesty International has long raised concerns about long term incommunicado detention without charge or trial. Incommunicado detention has provided conditions where torture or other ill-treatment may and does take place, as shown in the International Commission of Inquiry's description of conditions amounting to cruel, inhuman or degrading punishment in a Military Intelligence detention centre. Amnesty International strongly supports the recommendation of the Commission of Inquiry that the International Committee of the Red Cross and United Nations human rights monitors should be granted full and unimpeded access to all those detained in Darfur, calls for this right to access to be extended to all those detained throughout the Sudan, and urges the Security Council to endorse the Commission's call.

The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them.

## **5. Refugees and internally displaced people**

The United Nations Mission's mandate as envisaged by the Secretary-General in his report foresees that the peacekeeping mission would "support the safe and sustainable return of Sudanese displaced persons and refugees" and "the provision of assistance and protection in the Sudan for refugees from other countries." (para.28 under *Humanitarian assistance and development*). At the same time, the Secretary-General's report provides for the support to

“Sudanese authorities and civil society in the development of a comprehensive, community-based recovery and reintegration programme in conflict-affected areas.”

The peacekeeping mission should aim to establish a secure environment to which refugees can return in safely and with dignity and should undertake recovery, return and reintegration tasks in a coordinated manner.

As the Secretary-General points out, “[t]he return of internally displaced persons and refugees to southern Sudan presents a formidable challenge to the authorities and the resident communities [...] The pace and magnitude of assistance that is currently being provided must be stepped up to keep pace with an increasing number of returnees. The safe and dignified return of these displaced populations and their subsequent reintegration into often fragile host communities are key elements contributing to a sustainable peace and reconciliation process. The challenge is to manage the return and reintegration process in an integrated manner so that it contributes to sustainable peace and reconciliation rather than increasing tensions and the potential for new conflict.” (para.77)

Amnesty International believes that an important task of the United Nations peacekeeping presence in the country should be to establish a secure environment in which refugees and internally displaced persons can return home in safety and with dignity. The United Nations Mission in Sudan should undertake its recovery, return and reintegration tasks in a coordinated manner, in which the Office of the United Nations High Commissioner for Refugees should continue to play, in cooperation with other agencies, funds and programs, a central role in facilitating and monitoring the voluntary return movements of refugees and internally displaced persons.

All governments and international organizations concerned have the responsibility to ensure that, in accordance with the internationally-recognized principle of *non-refoulement*, repatriations of refugees to Sudan take place on a strictly voluntary basis. The principle of voluntariness implies the absence of physical, psychological, or material pressure and that refugees receive comprehensive, accurate and balanced information about conditions of return in their home areas before making a decision.

Amnesty International believes, given the human rights situation in Sudan, that the time is not ripe for states to contemplate the forced return of rejected Sudanese asylum-seekers from their territories. It also urges against the use of the internal relocation alternative as a basis for returning Sudanese asylum-seekers to Sudan. The situation in Sudan remains fragile and refugees now in safe countries should not be forced to return. With simmering armed struggle in the western, eastern and parts of northern Sudan, arrests of some easterners and westerners in Khartoum and continuing insecurity in the southern Sudan, refugees should not at the moment be returned on the basis of internal relocation options. States should be guided by UNHCR in considering the timing of forced return of rejected asylum seekers. If return of rejected asylum seekers cannot be affected in safety and dignity and with full respect for their human rights, it should be delayed in a manner consistent with basic human rights principles.

Amnesty International is concerned that current conditions in Sudan are not conducive for the promotion of voluntary return. It considers that voluntary return for Sudanese refugees should only be promoted or encouraged when the human rights and security situation in the country allows for refugees to return under conditions of legal safety and physical and material security. Special arrangements to ensure the physical safety and security of unaccompanied women and female-headed households in departure, transit or reception centers would also need to be in place.

Amnesty International recommends that a phased and coordinated approach to returns be adopted that takes into account the absorption capacity of returnees' host communities and the fragile security situation on the ground.

## **6. Arms control and collection**

Amnesty International has repeatedly appealed to the Security Council to strengthen the UN arms embargo on Sudan, to include the armed forces of Sudan. Our organization has also urged Member States to take concerted action to prevent arms transfers to Sudan until the high risk of grave abuse committed with such arms is clearly minimized through concrete measures that safeguard human rights.

In November 2004, just before the Security Council meeting in Nairobi, Amnesty International published a report ("*Sudan: arming the perpetrators of grave abuses in Darfur*", AFR 54/139/2004). This report documents the recent international supply of arms and other military assistance to the parties to the conflict in Darfur and the persistent gross misuse of such arms and other military assistance by the parties, including to the armed forces of the government of Sudan and government-backed militia. The report shows why the Security Council's existing arms embargo on Sudan is totally inadequate. As outlined in this report, Member States, and in particular the Security Council, have a specific obligation under international law to act urgently to prevent international crimes being committed in Darfur with such arms supplies and military assistance.

Since then, however, the Security Council has failed to reach a decision on strengthening the arms embargo so as to make it effective even though, during this time, the parties to the conflict in Darfur, including government forces, have continued to perpetrate grave violations of human rights and crimes against humanity, and the flow of arms and military assistance from Member States has continued without any measures taken by the Council.

Decades of conflict and lawlessness, and unregulated international arms trafficking to Sudan and the surrounding region have left the country awash with small arms and light weapons in particular. As the price of weaponry has decreased, the value of life has been correspondingly diminished. Ambushes, armed robbery, rape and killings perpetrated with small arms have not only violated individuals' basic rights, but also perpetuated insecurity and severely diminished prospects for human and economic development in the country. Without curbing the prevalence of guns, grenades and other small arms and light weapons,

the crimes perpetrated with the aid of these arms will continue to undermine peace and diminish the population's confidence that institutions are capable of ensuring their safety.

It is clear that under present conditions the provision of arms and military assistance to armed groups that are not parties to the Comprehensive Peace Agreement, as well as the direct and indirect military support to any of the parties to this Agreement, will most likely perpetuate further grave human rights abuses and violations of international humanitarian law in the Sudan even if there is a lull in the fighting. Amnesty International believes that, in order to help minimize the risk of further grave abuses and to uphold the obligations of states under international law, the Security Council should immediately impose a comprehensive arms embargo on Sudan and the Council should state clearly that the purpose of the embargo is to deny supplies of arms and military assistance to the armed forces and groups in Sudan as long as there exists a reasonable suspicion that they will perpetrate grave human rights violations and violations of international humanitarian law using such arms. Member states should also be requested by the Council to take substantial steps to reduce the availability of small arms and light weapons in the surrounding region.

In order to implement the arms embargo, the Security Council should establish a specialized UN Panel or Monitoring Mechanism and provide a mandate and resources to that body, as well as to the United Nations peacekeeping force, to monitor arms transfers to the parties to the conflict so that the UN Panel can report to the Security Council on any violations of the arms embargo and recommend appropriate action. The Security Council should spell out the role that UNMISUD could play under a Chapter VII mandate in monitoring an arms embargo. UNMISUD should, in particular, have the possibility to inspect, as it deems it necessary and without notice, aircraft and transport vehicles using the ports, airports, airfields, military bases and border crossings in the country; to seize or collect, as appropriate, the arms and any related materiel whose presence in the territory of Sudan violates the arms embargo imposed by the Security Council; and to observe and report in a timely manner, on the position of armed movements and groups in key areas of volatility. The Council should reaffirm its request to all Member States to provide for criminal sanctions against anybody found to be in violation of a UN mandatory arms embargo.

In the context of the peace agreements and the imposition of such a strengthened mandatory arms embargo, the Security Council should ensure that United Nations assistance is also provided to bring the standards of conduct, accountability and training of the Sudanese armed forces into line with international law, particularly international humanitarian law and that the necessary resources are provided.

Moreover, in this context, the Security Council should ensure that the United Nations peacekeeping forces and UN specialised agencies can provide a robust programme of assistance for the collection and destruction of illegal and surplus small arms and light weapons, together with demobilization, rehabilitation and retraining projects so that small arms and light weapons are placed beyond misuse.

## ***Conclusion***

UNMISUD can play a crucial role in building a culture of human rights in Sudan, if it is given an adequate mandate and the political support by the Security Council. With the Comprehensive Peace Agreement, the United Nations have an opportunity to work closely with Sudanese civil society and the new government to end injustice and marginalisation and re-establish the rule of law and human rights for all in the country. Amnesty International hopes that its recommendations will be considered by the Security Council and reflected in a strong resolution on Sudan.