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Entrenching Impunity

Government Responsibility for International Crimes in Darfur

I. Summary 1
II. Recommendations 3
To the Government of Sudan 3
To the SLA, JEM and other rebel factions 3
To the United Nations Security Council 4
To the African Union 4
To the African Union Mission in Sudan (AMIS) 5
To the International Criminal Court (ICC) 5
To the United States, European Union and Canada 5
III. Background 6
IV. Ground Forces of "Ethnic Cleansing": the "Janjaweed" Militias 9
A. Musa Hilal: Lynchpin of Militia Recruitment 10
B. Musa Hilal's Role in the Attacks in North Darfur 14
C. Government-Militia Coordination 19
V. Coordinating the Crimes: The Role of Regional Officials 22
A. Khartoum's Representatives: The Civilian Administrators 22
B. Wadi Saleh: Perpetrators of the March 2004 Executions 26
The crimes in Wadi Saleh 27
VI. The Sudanese Military: Implementing the Policy of Attacks on Civilians 34
A. South Darfur, December 2004: Anatomy of a Government Offensive against Civilians 36
Involving the militias 36
The South Darfur offensive as an example of the military-militia relationship 38
B. From Adwah to Hamada 39
Adwah: November 30, 2004 40
Marla, Ishma and Um Zaifa: December 8–10, 2004 45
Marla: December 15–16, 2004 48
Labado: December 17, 2004 51
Hamada: January 13–14, 2005 55
C. Knowledge of and Complicity in the Attacks by the Military 56

VII. The Role of President Omar El Bashir and National Officials in Darfur Policy 58
A. Key National Policymakers 61
Vice-President Ali Osman Taha 61
Maj. Gen. Abduraheem Mohammed Hussein 62
B. The Security Services 62
VIII. Entrenching Impunity 64
A. No Disarmament of the Janjaweed 65
B. Individual Impunity from Prosecution 67
C. No Justice: The National Tribunal for Crimes in Darfur 68
Inaction on rape and sexual violence 70
D. Destroying Evidence? 72
IX. Culpability of Individuals under International Law 73
A. Violations of International Humanitarian Law 75
B. Crimes against Humanity 77
C. Individual Criminal Responsibility 79
D. Command Responsibility 80
Superior-subordinate relationship 80
The superior's knowledge 81
Superior duty to take necessary and reasonable measures to prevent the crime or to punish the perpetrator 82
E. State Responsibility for Crimes Committed by Militia Members 83
X. The Response of the International Community 84
Acknowledgements 86
Annex 1: Partial list of individuals who should be investigated by the ICC 87

I. Summary

Since July 2003, Sudanese government forces and militia forces, known as "Janjaweed", have committed crimes against humanity and war crimes on a massive scale during counterinsurgency operations in Darfur, Sudan's western region bordering Chad. Civilians have suffered direct attack from land and air, summary execution, rape, torture, and the pillaging of their property.

Military services participating in the attacks on the civilian population in Darfur include the air force, army, security and intelligence services, and the paramilitary Popular Defense Forces (PDF) under the command and supervision of the army. These forces have conducted military operations in close cooperation with the Janjaweed militia, which the government recruited through informal networks of ruling party insiders, former military personnel, and leaders of nomadic tribes.

The Sudanese government at the highest levels is responsible for widespread and systematic abuses in Darfur. Based on eyewitness accounts, on-the-ground investigations in Darfur, government documents, and secondary sources, Human Rights Watch believes that President Omar El Bashir and other senior government officials, the regional administrative officials in Darfur, military commanders, and militia leaders should be investigated for crimes against humanity and war crimes, either as a matter of individual criminal responsibility or command responsibility.

The Sudanese government has failed to prosecute serious crimes committed in Darfur. Instead of pursuing accountability for war crimes and crimes against humanity committed by government officials and Janjaweed members, it has made no genuine effort to investigate—much less discipline or prosecute—any of the individuals responsible. Instead, it has created a facade of accountability through sham prosecutions and created ad hoc government committees that produce nothing.

Human Rights Watch calls upon the International Criminal Court to investigate current and former state governors of Darfur such as Adam Hamid Musa, provincial commissioners such as Abdallah Ali Torshain, military commanders such as Brig. Gen. Ahmed Al Hajir Mohammed, and militia leaders such as Musa Hilal. The impunity of senior civilian and military officials, and militia leaders has fueled continuing abuses against the civilian population.

The unwillingness of the Sudanese government to prosecute serious abuses reflects a broader failing to reverse "ethnic cleansing" in Darfur. Instead of disarming the militias, Khartoum has incorporated them into security, police and military forces. Instead of acknowledging state responsibility for the scale and gravity of the crimes committed in Darfur, senior Sudanese officials continue to obfuscate, deny, and evade responsibility for the atrocities and scorched earth campaign against civilians in Darfur. While it appears to have suspended offensive military operations for the moment, the Sudanese leadership continues to implement policies that permit continuing attacks on civilians, and perpetuate a climate of fear and intimidation through structural and institutional abuse.

As of December 2005, more than half of Darfur's six million people—Arabs and non-Arabs, pastoralists and farmers—now suffer the effects of a collapsed economy, little or no freedom of movement, and the loss of livelihoods from looted and destroyed property. More than two million displaced victims of "ethnic cleansing" in Darfur remain confined in camps, some for more than two years, where they are almost entirely dependent on foreign assistance and remain vulnerable to violence. Most displaced persons are unable to return to their rural homes due to the insecurity created by government forces and Janjaweed. Where individuals have attempted to return, they face continuing harassment and deadly attacks from growing numbers of armed groups, including the rebel movements, in some cases at the hands of the same persons who forcibly displaced them.

African Union (A.U.) forces have an important role to play in improving security and increasing freedom of movement for the civilians of Darfur. But this unacceptable situation will prevail indefinitely, or worse, will spiral out of control unless the Sudan government takes serious action to reverse the results of its policies. The proliferation and impunity of armed groups on all sides has contributed not only to the deterioration of security in Darfur but also has important regional implications, including for neighboring Chad, where stability is increasingly precarious.

Yet the Sudanese leadership has shown no sign that it is prepared to fundamentally change its policies. If the ongoing abuses in Darfur are to be stopped, and if ethnic cleansing is to be reversed then the United Nations (U.N.) Security Council, regional bodies, and other governments must sharply increase their sanctions on the Sudanese government for human rights crimes.

II. Recommendations

To the Government of Sudan

- Suspend from official duty, investigate, and fully prosecute all civilian and military personnel -- including government officials, military and militia commanders, soldiers, police officers, and PDF members -- implicated for individual or command responsibility for serious violations of international human rights and humanitarian law in Darfur.
- Fully cooperate with and facilitate the International Criminal Court's investigation in Darfur, and permit investigators full and unimpeded access throughout Sudan which should include access to all potential and actual witnesses and material.
- Establish an internationally monitored compensation fund for victims of human rights violations and war crimes in Darfur.
- Remove all obstacles to the deployment of the A.U. Mission in Sudan (AMIS) including by: expediting clearance and full movement and access throughout Darfur of armored personnel carriers and other equipment, supplies and, personnel requested by AMIS; supporting enhanced protection of civilians including proactive patrolling; and, cease obstructing AMIS protection efforts.
- Include in any peace agreement with the rebel groups provisions reiterating the obligation of all parties to the conflict to respect human rights and abide by international humanitarian law; ensure that there is no amnesty from prosecution for persons implicated in serious violations of international human rights and humanitarian law.

To the SLA, JEM and other rebel factions

- Take all appropriate action to prevent and punish human rights abuses, and violations of international humanitarian law by rebel commanders and combatants, including:
    - abduction of and other attacks on civilians, aid workers, and AMIS non-combatants;
    - interference with humanitarian convoys and other distribution of humanitarian assistance;
    - recruitment and use of child soldiers; and
    - obstruction of civilian freedom of movement.
- Include in any peace agreement with the Sudanese government provisions reiterating the obligation of all parties to the conflict to respect human rights and

abide by international humanitarian law; ensure that there is no amnesty from prosecution for persons implicated in serious violations of international human rights and humanitarian law.

To the United Nations Security Council

- Pass a resolution calling on the Sudanese government to: suspend from duty, investigate, and prosecute government officials, military and militia commanders, soldiers, PDF members, and police officers responsible for serious violations of international human rights and humanitarian law; establish an internationally monitored compensation fund for victims of human rights violations and war crimes; fully cooperate with the ICC; stop obstructing AMIS operations; and support proactive patrolling and other AMIS measures to protect civilians.
- Renew the mandate of the Sanctions Committee Panel of Experts and ensure that its recommendations are promptly implemented by the Sanctions Committee of the Security Council, and that a list of individuals eligible for sanctions is promptly compiled and penalties immediately placed on those individuals identified as in violation of resolution 1591.
- Instruct the Department of Peacekeeping Operations to work closely with the A.U. to intensify a review of long-term protection needs in Darfur and how improved protection can be achieved through closer collaboration.

To the African Union

- Cancel plans to convene an extraordinary summit of the A.U. scheduled for January 2006, in Khartoum, and ensure that Sudanese President Omar El Bashir is not elected to the presidency of the A.U.
- Immediately strengthen the deployment of military troops and civilian police in AMIS, and clarify the rules of engagement to ensure the use of deadly force by AMIS troops to protect against threats to and attacks on civilians.
- Work closely with the United Nations to intensify a review of long-term protection needs in Darfur and how improved protection can be achieved through closer collaboration.
- Call on the Sudanese government to: suspend from duty, investigate and prosecute government officials, military and militia commanders, soldiers, PDF members, and police officers responsible for serious violations of international human rights and humanitarian law; establish an internationally monitored compensation fund for victims of crimes; fully cooperate with the ICC; cease

obstructing AMIS operations, and support pro-active patrolling and the use of deadly force by AMIS troops to protect civilians.

- Ensure that any peace agreement between the Sudanese government and rebel groups reiterates the obligation of all parties to the conflict to respect human rights and abide by international humanitarian law; ensure that there is no amnesty from prosecution for persons implicated in serious violations of international human rights and humanitarian law.

To the African Union Mission in Sudan (AMIS)

- Proactively and aggressively enforce the existing mandate to protect civilians. Proactively patrol and, where necessary, use deadly force to protect against threats to and attacks on civilians.
- Sign a cooperation agreement and fully cooperate with the International Criminal Court including by protecting mass graves and other forensic evidence in Darfur.

To the International Criminal Court (ICC)

- Investigate and prosecute senior civilian officials at all levels of government, including President Omar El Bashir, as well as state governors, provincial commissioners, and individuals in the formal military chain of command, who were responsible for war crimes and crimes against humanity in Darfur.

To the United States, European Union and Canada

- Exert maximum political pressure on the Sudanese government to: suspend from duty, investigate and prosecute government officials, military and militia commanders, soldiers, police officers, and PDF members responsible for serious violations of international human rights and humanitarian law; establish an internationally monitored compensation fund for victims of crimes; fully cooperate with the ICC; cease obstructing AMIS operations and support pro-active patrolling and the use of deadly force by AMIS troops to protect civilians.
- Provide increased financial and technical resources to AMIS to strengthen its capacity to protect civilians.
- Cooperate fully with the ICC in its criminal investigations.
- Restore the $50 million dollars in funding for AMIS that was removed in October 2005 from the 2006 Foreign Operations Appropriations bill.

III. Background

When the problems with the rebels started in Darfur, we in the government of Sudan had a number of options. We chose the wrong one. We chose the very worst one.

—Former Governor of North Darfur Lt. Gen. Ibrahim Suleiman[1]

Increasing tensions in Sudan's western region of Darfur escalated into armed conflict in early 2003. In April 2003, the Sudanese government initiated a multi-pronged strategy in response to an insurgency led by two rebel movements, the Sudan Liberation Army/Movement (SLA/M) and the Justice and Equality Movement (JEM). The government's response drew upon tactics used in the civil wars in southern Sudan and the Nuba Mountains: aerial bombardment, the recruitment of ethnic militias as proxy ground forces, forced displacement—on an ethnic basis—of rural civilians on a massive scale, and persecution of real or perceived political opposition.

The Sudanese government's recruitment and deployment of militia forces, and its strategy of targeting civilians from specific ethnic groups to combat the rebel insurgency resulted in crimes against humanity and war crimes. International law defines crimes against humanity as criminal acts committed as part of a widespread or systematic attack on a civilian population, whether during peacetime or war. War crimes are serious violations of international humanitarian law (the laws of war) that incur individual criminal responsibility. States have an obligation under international law to prosecute those implicated in crimes against humanity and war crimes.

Crimes against humanity and war crimes committed by Sudanese military and militia forces have included the targeted killing, summary execution, assault and rape of thousands of civilians, the destruction of hundreds of villages, the theft of millions of livestock, and the forced displacement of more than two million people.[2] Overwhelmingly targeted were communities sharing the ethnicity of or geographic

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[1] Scott Anderson, "How Did Darfur Happen?" *The New York Times Magazine*, October 17, 2004.

[2] See "Darfur in Flames: Atrocities in Western Sudan," *A Human Rights Watch Report*, vol. 16, no.5(A), April 2004; "Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan," *A Human Rights Watch Report*, vol. 16, no. 6(A), May 2004; "Darfur Documents Confirm Government Policy of Militia Support," *A Human Rights Watch Briefing Paper*, July 20, 2004; "Empty Promises: Continuing Abuses in Darfur, Sudan," A *Human Rights Watch Briefing Paper*, August 11, 2004; "If We Return We Will Be Killed," A Human Rights Watch Briefing Paper, November 15, 2004; "Targeting the Fur: Mass Killings in Darfur," *A Human Rights Watch Briefing Paper*, January 24, 2005; "Sexual Violence and its Consequences among Displaced Persons in Darfur and Chad," *A Human Rights Watch Briefing Paper*, April 12, 2005. All are available at http://www.hrw.org/doc/?t=africa&c=sudan.

proximity to the two main rebel movements.[3] These ethnic groups initially included the Masalit, Fur, and Zaghawa, and later expanded to include communities of Dajo, Tunjur, Meidob, Jebel, Berti, and other non-Arab tribes.

In many cases documented by Human Rights Watch, there was little to no rebel or armed presence in the targeted villages at the time of the attacks, and the attacks were clearly aimed at the civilian population. Even in cases where there was a rebel presence, the Sudanese government's attacks made no attempt to discriminate between combatants and civilians, or disproportionately harmed civilians beyond the expected military advantage of the attack, in violation of international humanitarian law.

The rebel groups in Darfur are also responsible for serious abuses, including killings, rape and abductions of civilians, attacks on humanitarian convoys, and theft of livestock, that are war crimes.[4]

In April 2004, the Sudanese government and the two rebel movements signed a humanitarian ceasefire agreement mediated by the Chadian government with support from the African Union (A.U.). To monitor the agreement, the parties agreed to an A.U. observer mission (AMIS). AMIS established a military observer presence in July 2004, which included some three hundred soldiers to protect the observers. As of October 2005, AMIS had increased its forces to approximately seven thousand personnel including 686 military observers, 4,890 troops and 1,176 civilian police. Its mandate was expanded beyond ceasefire monitoring to include contributing "to a secure environment for the delivery of humanitarian relief and, beyond that, the return of IDPs and refugees to their homes," as well as protection of civilians under "imminent threat."[5]

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[3] As of July 2005, the U.N. estimated that there were 1.88 million internally displaced persons in Darfur, more than two hundred thousand refugees in Chad, and a total population of 3.2 million "affected" people—meaning that in addition to the displaced population there are 1.32 million people who were not displaced by the conflict but who also have humanitarian needs as a result of the conflict. United Nations, "Darfur Humanitarian Profile No. 16, Situation as of July 1, 2005."

[4] While these are serious crimes that require further investigation, accountability, and restitution for the victims, and may amount to war crimes, these crimes are not the focus of this report. Human Rights Watch has documented abuses by the rebel movements, specifically the use of child soldiers, abductions, looting, an attack on a hospital, and incidents of indiscriminate killing of civilians—see Human Rights Watch: "If We Return We Will Be Killed," pp. 32-39, and "Darfur in Flames," p. 39. Human Rights Watch has been unable to fully document rebel abuses due to insufficient access to government-controlled areas of Darfur. Since the conflict in Darfur began, Human Rights Watch researchers have only received visas once, for a visit to the country in September-October 2004. Since November 2004, Human Rights Watch's requests to the Sudanese government for visas have not been granted, however Human Rights Watch visited areas in Darfur under rebel control in 2004 and 2005.

[5] The full text of this provision in the AMIS mandate is:

Protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the GoS

The ceasefire agreement has been repeatedly violated by all parties: Sudanese government and Janjaweed forces continue military operations against rebel forces, including attacks against the civilian population. Rebel forces continue to attack and loot government facilities, including military and police bases.

The pervasive pattern of government-militia coordinated attacks on villages has declined in 2005 in comparison with previous years, but this is largely because most of the targeted population has already been displaced from the most fertile, desirable rural areas. Two million displaced civilians survive in a climate of fear, intimidation, and violence, unable to return to their homes and restricted to displaced persons camps due to continuing arbitrary arrest or rape, assault, and murder when they leave the relative security of the camps. More than one million additional conflict-affected civilians require food and other assistance to survive. The continuing violence, and the pervasive climate of fear within the traumatized displaced communities, means that the security required for voluntary and safe return of the displaced persons—an important condition for the reversal of ethnic cleansing—does not exist.

Beginning in August 2005, and continuing in the lead-up to the seventh round of the A.U.-mediated peace talks being held in Abuja, Nigeria, in December 2005, violence in Darfur escalated. It now includes at least four different patterns of violence: 1) military operations by government forces and rebel groups; 2) ethnic clashes linked to traditional tensions over resources such as land and water; 3) banditry and opportunistic crime; and 4) cross-border tensions linked to Chadian internal politics. Sometimes the parties to the conflict are involved in all of these patterns. Escalating attacks on international and Sudanese aid workers and A.U. personnel demonstrate that these groups are increasingly viewed by the warring parties as legitimate targets, a situation that jeopardizes the delivery of essential humanitarian assistance to more than three million people, or half of Darfur's population.

The Sudanese government's failure to protect civilians in Darfur, its unwillingness to disarm the militias it created and has supported, and its policy of permitting militia leaders, military commanders, and government officials to enjoy impunity from prosecution constitute a fundamental obstacle to any improvement in Darfur. In particular, the policy of impunity from prosecution sends a clear message: as long as these individuals remain in positions of authority the people of Darfur will remain at

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For the complete text of the AMIS mandate, see the African Union Peace and Security Council communiqué of October 20, 2004 at http://www.africa-union.org/News_Events/Communiqués/Communiqué%20_Eng%2020%20oct%202004.pdf

great risk. The conditions needed for the reversal of ethnic cleansing—security, accountability, and an end to intimidation and coercion—will not be met.

IV. Ground Forces of "Ethnic Cleansing"[6]: the "Janjaweed" Militias

> *[In Darfur] there are scattered tribes battling over meager resources. There is no organization, except for the rebels…. [The militias] have no hierarchy. The leadership of the tribe can be disputed and people are acting on their own at times, without the knowledge of the tribe.*
>
> --Dr. Abdul-Moniem Osman Mohammed Taha, head of the Sudan Human Rights Advisory Council[7]

Despite persistent Sudanese government characterization of the Darfur conflict as a "tribal conflict," and repeated denials of state coordination of abusive militia groups, there is irrefutable evidence of a Sudanese government policy of systematic support for, coordination of, and impunity from prosecution granted to the "Janjaweed militias," a policy that continues to this day.

The logic behind this policy is clear. Distrusting the armed forces, many of whom were originally from Darfur, the Sudanese government recruited the "Janjaweed" militias as the main ground forces for the government's counterinsurgency campaign in Darfur.[8]

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[6] Although "ethnic cleansing" is not formally defined under international law, a U.N. Commission of Experts has defined the term as a "purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. . . . This purpose appears to be the occupation of territory to the exclusion of the purged group or groups." Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), May 27, 1994, section III.B at http://www.his.com/~twarrick/commxyu4.htm#par129.

The Commission of Experts elucidated the meaning of "ethnic cleansing" as it occurred in the former Yugoslavia:

> The coercive means used to remove the civilian population from the above-mentioned strategic areas include: mass murder, torture, rape and other forms of sexual assault; severe physical injury to civilians; mistreatment of civilian prisoners and prisoners of war; use of civilians as human shields; destruction of personal, public and cultural property; looting, theft and robbery of personal property; forced expropriation of real property; forceful displacement of civilian population. . . . Ibid.

The United Nations has repeatedly characterized the practice of ethnic cleansing as a violation of international humanitarian law, and has demanded that perpetrators of ethnic cleansing be brought to justice. See Security Council resolutions 771 (1992), 780 (1992), 808 (1993), 820 (1993), and 941 (1994), and U.N. General Assembly resolutions 46/242 and 47/80.

[7] Human Rights Watch interview with Dr. Abdul-Moniem Osman Mohammed Taha, head of the Human Rights Advisory Council, Khartoum October 11, 2004.

[8] The Sudanese government reportedly did not trust the army because at least half of its troops and some officers were from Darfur. This suspicion deepened in the first months of 2003, when there were significant

Although the government issued a general call to arms, recruitment was selective and based on ethnicity. Certain ethnic groups with historical grievances against those ethnic groups constituting the rebel movements or with strong interests in gaining access to land and other resources became the mainstay of the government's militia force.[9]

To successfully recruit these groups, the Sudanese government provided incentives in the form of payment and access to loot, as well as promises of access to land and administrative power. Sudanese officials also identified key tribal leaders from the northern Riziegat to coordinate the recruitment: Sheikh Musa Hilal, a leader of the Um Jalul clan of the Mahamid, became the lynchpin for recruitment of militias in northern Darfur. Since June 2003, he has become emblematic of the role of the militia forces in the attacks on civilians and the impunity conferred upon them by the Sudanese government.

A. Musa Hilal: Lynchpin of Militia Recruitment

> *The worst atrocities are committed by the Um Jalul of Musa Hilal because historically they have tensions with the Fur and Zaghawa. They're all camel herders, not cattle herders, and they have no respect for farmers, they have a superiority complex and they need their camels. When the war started, the Sudanese government asked Musa Hilal to be the leader of the Janjaweed.*
>
> --Neutral Arab nomadic leader from West Darfur[10]

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military losses for the government army, partly because local army troops and police defected to the rebellion. Transcript of an interview by A.U. personnel with former legal advisor to the militias in Kebkabiya, October 2004, on file with Human Rights Watch.

[9] Most of the larger Arab nomadic tribes including the Beni Hussein, Ta'aisha and southern Riziegat, who historically have their own dar or tribal territory and position within the local tribal administration, refused to join the militias on a tribal basis. The groups who have become "Janjaweed" are mainly drawn from the smaller Arab nomadic tribes known as the northern Riziegat and from Chadian Arab groups present on both sides of the border. The term "northern Riziegat" includes the Mahamid, Mahariya, and Ireqat sub-clans. Ideology, racial discrimination, and poverty all played a role in providing incentives to militia members to respond to the government's call to arms. Historical tensions between groups, mainly over access to land, grazing pasture, and water resources were also an essential factor in the brutality of the attacks. The traditional system of tribal administration and land tenure favors the larger tribes with administrative power, not only over their own members but also over smaller tribes without a territory of their own. Groups like the Awlad Rashid and Musa Hilal's Um Jalul tribe had clashed with the Zaghawa and Fur over access to land and water resources in North Darfur in the 1990s and sometimes even as far back as the 1960s. These historical tensions added to the appeal of the Sudanese government incentives in the form of payment and access to loot, as well as promises of access to land and administrative power. Human Rights Watch interviews with hundreds of representatives of Arab and non-Arab ethnic groups, community leaders, displaced individuals and Darfur officials, February 2004-July 2005. See also previous Human Rights Watch reports.

[10] Human Rights Watch interview, Zalingei, West Darfur, October 18, 2004.

Sheikh Musa Hilal has become internationally synonymous with the Janjaweed, the government-backed militias who have earned notoriety for their brutal attacks in Darfur over the past few years.[11] His role in the crimes committed in Darfur and his current freedom within Sudan—flying in Sudanese military transport between his homes and wives in Khartoum and his base in Misteriya, North Darfur—illustrate the broader role and impunity of the militias throughout Darfur.

The Sudanese government has repeatedly stated that it cannot pursue individuals responsible for crimes in Darfur if the victims and witnesses are unable or unwilling to name them. Dr. Abdul Moniem Osman Taha, head of the government's Advisory Council on Human Rights (and brother to Sudanese Vice-President Ali Osman Taha) told Human Rights Watch in October 2004, that "Even Pronk [Jan Pronk, Head of the U.N. Mission in Sudan] tells us it's important to try the leaders. If the name of the leaders is mentioned by defendants or witnesses, we could do that. Until now, no one mentioned any names."[12] This statement came months after six alleged militia leaders, including Musa Hilal, were named by the U.S. State Department in July 2004.[13] Scores of victims, witnesses of attacks, and even members of the Sudanese armed forces have named Hilal as the top commander for Janjaweed militias in North Darfur and elsewhere in Darfur. His Um Jalul tribesmen have played a prominent role among the attackers responsible for many atrocities across Darfur.[14] As of December 2005, Musa Hilal remains at liberty, free from any investigation or prosecution for his role in numerous attacks in Darfur.

Since 2003, Hilal has operated from his base in Misteriya, southwest of Kebkabiya in North Darfur, under the direction of the Sudanese army; his immediate superior is a Sudanese army officer named Lt. Col. Abdul Wahid Said Ali Said. Misteriya is now one of the largest militia training bases in the region, although initially it was merely a satellite settlement of the nomadic Um Jalul. Lieutenant Colonel Abdul Wahid functions as one of the main liaisons between the Janjaweed militias recruited and trained in Misteriya and the Sudanese army.[15] He is reported to be the commander of the militias known as the

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[11] See also the profile of Musa Hilal in Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War*, (London: Zed Books), pp. 36-65.

[12] Human Rights Watch interviews with Dr. Abdul-Moniem Osman Mohammed Taha, head of the Human Rights Advisory Council, and other government officials, October 10-11, 2004.

[13] Human Rights Watch also named militia leaders and government officials implicated in abuses in several 2004 reports. See "Darfur Destroyed," "Darfur Documents Confirm Government Policy of Militia Support," and "Targeting the Fur"at www.hrw.org.

[14] Mahamid (including Um Jalul) and Mahariya are two branches of the northern Rizeigat.

[15] Transcripts of A.U. interviews with Lt. Col. Abdul Wahid Said Ali Said and former legal advisor to the border intelligence brigade in Misteriya, October 2004, on file with Human Rights Watch. Also, Human Rights Watch interviews with UN officials, community leaders from Darfur and SLA members, July 2004 – July 2005.

"border intelligence brigade" in Misteriya and Musa Hilal is the second in command.[16] Some of the forces in Misteriya are known as *Al Motaharik Al Khafif, Al Saria, Al Morea* or the Mobile, Light, Quick and Horrible forces.[17] According to a former legal advisor to the brigade, Lt Col Abdul Wahid's orders for the brigade come directly from the Sudanese army headquarters in Fashir.[18]

In a Human Rights Watch interview with Musa Hilal, he denied that he commanded any "military group." He stated that his men are always under the command of the military and that he was merely a "coordinator." Hilal told Human Rights Watch, "The training, the uniforms, the guns, they are the responsibility of the government." Hilal said that he and his men were involved in what he called "joint patrols" in the area from Zalingei to Abata to Kutum (an area that extends from southwest of Jebel Marra north around Jebel Marra and includes much of central North Darfur), and that the Sudanese government had provided them with weapons for these patrols.[19] The responsible army officials confirm that all of Hilal's operations have been under the control of the army.[20]

Numerous community leaders from different parts of Darfur, interviewed independently by Human Rights Watch, said that Musa Hilal held a leadership role in the *Tajamu al Arabi* or Arab Gathering (or Coalition or Alliance) since the 1990s. He had close ties to Maj. Gen. Abdallah Safi el Nour, an Ireqat from Darfur and former air force pilot, who was the governor of North Darfur from 2000 to January 2002, and a federal minister in Khartoum in 2003-2004.[21] During Safi el Nour's tenure as governor of North Darfur,

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[16] Human Rights Watch interview with civilians, Kebkabiya, North Darfur, October 3, 2004. They estimate that there are four thousand Janjaweed at Misteriya, or more than ten thousand in the whole area. The Janjaweed roam as far as Tawila, Fato Borno, Disa, Kutum, Kurma, and Kornoi—all these locations have been "eaten."

[17] Transcript of A.U. interview with Lt. Col. Abdul Wahid Said Ali Said, October 2004, on file with Human Rights Watch.

[18] Transcript of A.U. interview with former legal advisor to the border intelligence brigade in Misteriya, October 2004, on file with Human Rights Watch. An August 2004 document obtained by Human Rights Watch, allegedly from Lt Col Abdul Wahid, is addressed to the commanders of the Western Military Area, Training and Operations Department, Intelligence and Security Department, and the directors of the Security, Military Intelligence and National Security and the Amn Ijabi [special security]. The document describes various directives to "Arab leaders" throughout Darfur, including to "implement the aims of the Arab Coalition in Darfur." Document on file with Human Rights Watch.

[19] Human Rights Watch interview with Musa Hilal, Khartoum, September 27, 2004.

[20] Human Rights Watch interview with Maj. Gen. Mohamed Fazey, Sudan army, Fashir, North Darfur, October 6, 2004.

[21] Safi el Nour is allegedly a high-level member of the Arab Gathering or Coalition and some community leaders accuse him of coordinating the movement of arms supplies to Arab militias in Darfur. Human Rights Watch interviews with community leaders in North Darfur, July 2004, and Kebkebiya, October 2004. An August 2004 directive obtained by Human Rights Watch, allegedly from Lt Col Abdul Wahid, commander of the Light and Frightful Forces, is addressed to the commanders of the Western Military Area, Training and Operations Department, Intelligence and Security Department, and the directors of the Security, Military Intelligence and National Security and the Amn al Ijabi [special security]. The document describes various directives to "Arab

tribal tensions increased dramatically due to perceptions that the Sudanese government was aligning itself with and arming the Arab militias.[22] "Wali Safi al Nour, an army officer, is the one who gave Arabs the authority to devastate the farms," a group of Fur and Tunjur community leaders from North Darfur told Human Rights Watch.[23]

The governor who followed Safi el Nour in North Darfur in 2002, Lt. Gen. Ibrahim Suleiman Hassan, an ethnic Berti from North Darfur and ruling party member, was concerned about the increasing tensions in Darfur. It was during Governor Ibrahim Suleiman's tenure as chair of the North Darfur state security committee that Hilal was detained and sent to prison in Port Sudan.[24] At the time, local community leaders named Hilal in many complaints of clashes and incitement, and he was said to have been levying excessive fines and imposing corporal punishment on members of his own tribe. On account of the complaints of his tribespeople, he was removed as *nazir* or tribal leader by Ibrahim Suleiman and another person was put in his place.[25] During Hilal's time in detention, attacks by Arab militias on other ethnic groups decreased. A Zaghawa tribal leader told Human Rights Watch, "While Musa Hilal was away from Darfur, the Janjaweed had fewer activities. They were still attacking, but not that much. When he returned, the burning of houses and villages started."[26]

Hilal was released from detention after the SLA's April 24, 2003 attack on Fashir; a few days after this attack, Governor Ibrahim Suleiman was removed from his post by President El Bashir. Upon returning to Darfur in June 2003, Hilal based himself in the Kebkabiya area and organized a meeting of the leaders of all the local Arab tribesmen, including the Awlad Rashid, Ireqat and Um Jalul.[27]

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leaders" throughout Darfur, including to "implement the aims of the Arab Coalition in Darfur" and ends with greetings to Musa Hilal, "Secretary, Arab Coalition Movement in Darfur" and thanks to Abdallah Safi el Nour. Human Rights Watch has not been able to verify the authenticity of this document, however.

[22] Human Rights Watch interviews with community leaders from the Zaghawa, Berti and Tunjur ethnic groups, North Darfur, July 2004.

[23] Human Rights Watch interviews, Kebkabiya, October 3, 2004.

[24] Anderson, "How Did Darfur Happen?"

[25] Human Rights Watch interviews, North Darfur, July 25-26, 2004, and Kebkabiya, North Darfur, October 4, 2004. According to a source in Kebkabiya, Musa Hilal was replaced as nazir of the Mahamid because his Um Jalul tribesmen complained about his harsh judgments as head of the Popular Court, and also because he was accused of inflaming tensions between Arabs and Fur.

[26] Human Rights Watch interview, Malik, July 25, 2004. For a more extensive profile of Musa Hilal, his Um Jalul tribe, and the years leading up to the recent conflict, see Flint and de Waal, Darfur: *A Short History of a Long War*, pp. 33-65.

[27] Human Rights Watch interview with Zaghawa leaders, North Darfur, July 25-26 and with Tunjur and Fur community leaders, Kebkabiya, October 3, 2004.

According to a person present at the Kebkabiya meeting, Musa Hilal ordered tribesmen to attack and burn non-Arab villages and loot livestock. He reportedly said, "The government is with us, so you have no accusations to fear."[28] Some of the tribes refused; even some of his own Um Jalul tribesmen apparently refused to obey the orders. A community leader from Kebkabiya who knew Hilal in previous years said, "Musa Hilal compelled every Arab tribe member to participate, even those who refused. He acts as king of the Arabs, the guide of all. How does he force them to fight? He beats those who refuse and takes their animals, killing some of them."[29]

The Kebkabiya meetings were a turning point in the government's involvement with Musa Hilal—and with the Janajweed militias. "Guns flowed to them after that" said one local community leader.[30]

B. Musa Hilal's Role in the Attacks in North Darfur

By July 2003, Musa Hilal's militia base in Misteriya was established. Misteriya was not an army base—that was located in Kebkabiya. With the first Janjaweed forces mobilized, the Sudanese government launched a major ground offensive in North Darfur in mid-2003. A former soldier in the army who participated in these attacks noted the close coordination between Musa Hilal, other tribal militia leaders and the military prior to and during the attacks:

> In Kebkabiya, at the Sudanese army camp, there were Janjaweed. It was actually a small group of thirteen leaders under the command of "Abu Ashreen."[31] The Janjaweed troops used to stay in the vicinity of Kebkabiya, in Misteriya. Misteriya is a training camp for Janjaweed. Musa Hilal came more than twenty times to our camp in Kebkabiya while I was there. I saw him myself, with my own eyes, more than ten times. He always came with two cars, one for him and one for his guards. He had meetings with officers. Three or four days after each of his visits, we were attacking a place.

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[28] Ibid.

[29] Ibid.

[30] Human Rights Watch interview, North Darfur, July 23, 2004.

[31] "Abu Ashreen" is the nickname of Abdullah Saleh Sabeel, a forty-eight-year-old Beni Hussein from Serif Omra west of Kebkabiya. A follower of Musa Hilal, he also occasionally uses the name Abdullah Dagash. E-mail communication to Human Rights Watch from international observer, June 2004.

> I don't know how they were organizing and coordinating the troops, by phone or not, but on the day of an attack, hundreds of Janjaweed were coming to our camp in Kebkabiya, on horses and camels. We were asked to prepare our stuff too, to get ready and at some point we were ordered to get into our vehicles. We were never told that we were about to attack a village. We were always told that there were groups of Zaghawa or Fur militiamen operating where we were going and that we had to "finish them." That is the expression that was used. [32]

Villages around Kebkabiya were among the first to be attacked by Musa Hilal's men and government troops in the government's first major campaign in July 2003. The same former soldier participated in the attacks. He said:

> We were asked to clear the way and the area [the Eid en Nabak area east of Kebkabiya] for the Janjaweed to attack, burn, and loot the village. It was on July 5, 2003. That day, too, Antonovs came during the attack and dropped three bombs on the mountains near the village. People were running away. I saw seven villagers being killed. I saw three old guys captured by the Janjaweed and handed over to the commander of our army. They were later taken to Kebkabiya and put in jail. Some soldiers burned huts and buildings in the village along with the Janjaweed. Three hundred fifty soldiers participated in this attack. Only five of us refused to shoot or shot in the air. Three of the five were later arrested, court-martialed and sentenced to three years in jail. In Eid En Nabak that day, there were no SLA, only civilians.[33]

After destroying their villages and displacing the population around Kebkabiya, the forces moved north, towards the Zaghawa areas that were home to the SLA. In July and August 2003, large swathes of North Darfur, including villages in the Abu Gamra area between Kebkabiya and Karnoi and the Beré area north of Kutum, were attacked and burned in what was to be the start of a two-year campaign of ethnic cleansing by the Sudanese army and the Janjaweed militia.

It is unclear whether Musa Hilal himself led the forces in the Abu Gamra attacks, but several local leaders interviewed independently, some of whom knew him personally,

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[32] Human Rights Watch interview with government soldier in SLA custody, North Darfur, July 14, 2005. Human Rights Watch interviewed all detained combatants in a private room, without any SLA captors present.

[33] Ibid.

named him as one of the overall leaders of the militia forces in the area, and he is known to have operated in the area in later attacks. Sudanese forces attacked the town of Abu Gamra and its fifteen surrounding villages repeatedly during 2003-2004. Human Rights Watch documented four major attacks on the area, and a number of smaller attacks. These major attacks took place in July-August 2003, December 2003 and January 2004, February-March 2004, and July-August 2004. More than three hundred people were killed in the attacks between May 2003 and August 2004.[34] Witnesses noted that each large attack involved Antonov aircraft, helicopters, Janjaweed militias on horses and camels, and the Sudanese military in vehicles.

Government of Sudan Antonov 26 at Nyala Airport, December 2004. © 2004 Private

[34] Human Rights Watch received a list with the names of 318 people killed in the Abu Gamra area between 2003 and 2005, on file with Human Rights Watch.

Government of Sudan Mi-24 Helicopter Gunship at Nyala Airport, December 2004. © 2004 Private

Some civilians living in Dar Zaghawa learned how to predict the bombing attacks and take refuge in caves or hand-dug shelters before the aircraft arrived. They listened to radio exchanges between the pilots on simple FM radios which picked up the radio frequencies used by the planes:

> We heard the names of the [government army] pilots and conversations.… That is how we know some of the pilots. One was Egyptian, because of the way he spoke in clear Egyptian Arabic. One officer is Gadal in the army, because we heard him on the radio organizing the attacks. They called him Janabo Gadal or Officer Gadal. Also, Afaf Segel, who is a woman pilot from Sudan. She said things like "*Nas Kornoi na dikim fatuur*" which means "I am going to give breakfast to the peasant from Karnoi," before Karnoi was bombed. Captain Khalid was another pilot. In their conversations on the radio they called us "Nuba, abid," and said things like, "I am going to give those slaves a lesson they will not forget."[35]

[35] Human Rights Watch interview, refugee camp, Chad, June 29, 2005. Abid is Arabic for slave. Nuba is often used as a derogatory term: it refers to people from the Nuba Mountains of central Sudan. They are of African origin and customarily employed in menial jobs in Khartoum.

On February 9, 2004, after a massive government offensive forced almost one million people from their homes, including one hundred thousand Sudanese citizens into neighboring Chad, President El Bashir announced that the government had won the war.[36] The next day the Sudanese government agreed, in theory, to allow international organizations to have access to Darfur.[37] In order to rebut the government announcement of its defeat, the SLA moved its forces to West and South Darfur to open a new front. The Sudanese government and Janjaweed militias moved into the areas of North Darfur that the SLA had partially vacated. According to government memoranda obtained by Human Rights Watch, this movement of government and Janjaweed forces into North Darfur appears to have been ordered to occupy the area and prevent an SLA return.[38] Another government document from the same period specifically names Musa Hilal, and orders all security units to "allow the activities of the mujaheedin and the volunteers under the command of Sheikh Musa Hilal to proceed.…"[39] Setting up several new Janjaweed militia camps in North Darfur was done to deter return of the rebel movements and also of civilians expelled from their homes by Janjaweed and government forces' attacks.

Musa Hilal was seen at various attacks in North Darfur in February and March 2004; he and his forces were apparently responsible for a large part of North Darfur. He himself was frequently transported by Sudanese government helicopters. Several witnesses identified him as a commander of the forces who attacked Tawila on February 27, 2004, and noted that he was brought there by helicopter. A man from Kebkabiya who overheard one of Hilal's conversations prior to the Tawila attack said, "I heard them on Thurayas [satellite phone] with someone in Khartoum, to arrange the point where the plane should land to bring the required ammunition."[40]

Another witness placed Musa Hilal at the scene of crimes in the Abu Leha area in March 2004.[41] Refugee women from villages near Furawiya, in the far north of North Darfur,

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[36] "Sudanese President Says Darfur Revolt Crushed, Rebels Deny Loss," Agence France Presse, February 9, 2004 at http://www.reliefweb.int/rw/RWB.NSF/db900SID/ACOS-64DE8F?OpenDocument&rc=1&emid=ACOS-635PJQ

[37] United Nations, "UN Welcomes Announcement of Increased Access to Darfur," UN OCHA Press release, February 10, 2004, at http://www.reliefweb.int/rw/RWB.NSF/db900SID/OCHA-64CPAD?OpenDocument&rc=1&cc=sdn

[38] This document is from the commissioner of Kutum and orders "those in charge of orientation and mobilization" to design "a plan for resettlement operations of nomads in places from which the outlaws withdrew." Government memorandum of February 12, 2004, on file with Human Rights Watch.

[39] Government memorandum of February 13, 2004, on file with Human Rights Watch.

[40] Human Rights Watch interview with trader, Kebkabiya, North Darfur, October 4, 2004.

[41] Human Rights Watch interview, Bahai, Chad, February 25, 2004.

named Hilal as leader of the forces attacking their village, Omda Dabo, in early 2004.[42] A forty-two-year-old Zaghawa man who was arrested and then tortured by Janjaweed militia members after a joint army-Janjaweed attack on Abu Leha in March 2004, told Human Rights Watch:

> They hung me with hooks piercing my chest. They also burned me. I was arrested with thirty other men. They tied us together and interrogated us about animals. We said we did not know so they called us liars and shot and slaughtered some of [the men] in front of my eyes.… The biggest boss of the Janjaweed is Musa Hilal. I saw him before the events, but also when I was tortured. He came by helicopter with soldiers. He gives orders to both soldiers and Janjaweed.[43]

When Hilal was interviewed by Human Rights Watch in September 2004, he deferred responsibility for the attacks to the Sudanese armed forces, denying that he had any official military rank or responsibility beyond "mobilization" or recruitment of militias. He said, "I have not led military groups, I only asked our people to join. I am only a coordinator for the PDF, training, uniforms, guns are the responsibility of the military people."[44]

C. Government-Militia Coordination

The pattern of joint army-militia attacks supported by intensive aerial bombardment demonstrated in North Darfur became standard as the conflict spread to other areas of Darfur. In many cases, villages were first heavily bombed, then the Janjaweed and army ground forces moved in, again with aerial support, to ensure the "cleaning up" of any remaining civilian presence.

In contrast to the Sudanese government's depictions of the militia activity in Darfur as unorganized and lacking hierarchy, many of the tribal militias used in the government's campaign were highly structured. Many of the nomadic fighters were led by the *agid* or war leader. Agids and tribal leaders were in regular contact with military officials or civilian administrators at the local level, either provincial commissioners or state governors. In South Darfur, for example, the governor reportedly met with tribal leaders and *agids* on an almost daily or weekly basis. Witnesses and observers from different ethnic groups told Human Rights Watch that the *agid* traditionally plays an important

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[42] Human Rights Watch interview with refugee women, Bahai, July 22, 2004.

[43] Human Rights Watch interview, refugee camp, Chad, July 2, 2005.

[44] Human Rights Watch interview with Musa Hilal, Khartoum, September 27, 2004.

role in mobilizing and leading the fighters in battle, often carrying a red flag.[45] The *agid* and tribal leaders were also used for distribution of arms, and as liaisons between the militiamen and the government. A well-informed observer from a neutral Arab tribe told Human Rights Watch:

> Every Arab tribe has an *agid*. The government contacted the agid and other leaders…. They get salaries and ammunition from the PDF office near the market. The agid are the real power to mobilize the Arabs. The hakama [women singers] are one of the dangerous tools…but the word is with the agid, he can mobilize the men.[46]

As described by an A.U. monitor who investigated numerous attacks in Darfur and spoke to militia leaders, the militia attacks were highly organized, with "echelons" of militia attacking in waves. Militia members on horses were often the first to attack, because of their speed and the fact that they presented a smaller target. Militiamen on camels followed in a second echelon.[47]

Joint government-militia offensives were well-coordinated. In North Darfur, for instance, Musa Hilal and other militia leaders met, discussed and planned offensives together with the Sudanese military prior to implementing the offensives. In the South Darfur "road clearing" offensive of December 2004 (see Section VI below), the Sudanese armed forces coordinated with the militias not only in carrying out the attacks but in the systematic sealing off of villages and the methodical looting and destruction that followed.

The looting was not random; it was clearly organized and premeditated. In many cases, it appears to have been organized by the military commander and conducted in a methodical way. The troops and Janjaweed used in attacks south of and around Kutum were told that they could keep their looted goods if they "fight well."[48] Prior to attacking Anka, a town northeast of Kutum, the army commander ordered the militia men to enter the village first and burn everything, after taking "what you like." The army followed and "collected chairs and beds." Numerous witnesses, in North Darfur and

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[45] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

[46] Human Rights Watch interview, Zalingei, West Darfur, October 18, 2004.

[47] Human Rights Watch interview with former AU military observer, the Netherlands, September 15, 2005.

[48] Human Rights Watch interview, North Darfur, July 30, 2005.

other states, described seeing army troops and Janjaweed militiamen collecting furniture, other goods and livestock, and loading the items into trucks and on camels.[49]

A twenty-five-year-old former government soldier described the looting policy to Human Rights Watch, "You keep what you have taken. It applies to the officers too. One exception: the animals. The animals are given to Janjaweed nomads who keep them. Then they are sold."[50] After the government soldiers and Janjaweed militia conducted fighting and looting operations, large army trucks would transport the looted livestock back to the Janjaweed camp, according to this former government soldier who was stationed in Kutum, North Darfur. He told Human Rights Watch that after destroying villages around Enciro, North Darfur, in June 2003, the Sudanese government commander ordered the militia to take the looted cattle and cows to Damrat Sheikh Abdel Bagi, a Janjaweed camp located less than twenty kilometers northeast of Kutum, and from there some of the livestock were distributed onward in trucks: one interviewee told us, "Big lorries from Omdurman arrived.… They loaded up with sheep from the base and took them away. Three times these lorries came… and transported camels and cows."[51]

Several witnesses of attacks who hid in the vicinity also noted that in some cases, the army left after any initial fighting between the attackers and the SLA or self-defense groups was over, and the militia men were left to loot, plunder and then destroy the villages alone. In one such attack in South Darfur described to Human Rights Watch, the militia leaders "wore a red cloth over the left shoulder, no flag. Afterwards they showed a white flag and the fighting stopped.… After they showed the white flag and the army vehicles had left, the Janjaweed looted."[52]

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[49] Human Rights Watch interviews, Chad, July 2004, and North Darfur, August 1, 2004.

[50] Human Rights Watch interview with government soldier in SLA custody, North Darfur, July 14, 2005. Human Rights Watch interviewed all detained combatants in a private room, without any SLA captors present.

[51] Human Rights Watch interview, North Darfur, July 30, 2005. According to this same witness, initially the government tried to use military helicopters to transport some of the livestock. After some of the sheep died from falling off the helicopter in May 2004, trucks were used instead.

[52] Human Rights Watch interview, refugee camp, Chad, June 28, 2005.

V. Coordinating the Crimes: The Role of Regional Officials

There are no human rights violations or rape. Darfur is one hundred percent Muslim.
—Al Haj Attar Al Mannan Idris, governor of South Darfur[53]

Regional government officials have far-reaching authority for security in their areas. This includes providing logistical and other support, such as arms, training, food and lodging, for militia, police, and other security forces in their area. Over the past two years many regional government officials have been implicated in crimes against humanity and war crimes, either through direct participation in abuses or as a matter of command responsibility for the forces under their effective authority. As explored further below (Section VIII), none of these individuals have been investigated, disciplined or prosecuted for their role in the international crimes committed in Darfur.

A. Khartoum's Representatives: The Civilian Administrators

The *walis* (state governors) and *mutamad* (provincial commissioners) are the highest-ranking civilian representatives of the Sudanese government in the states and provinces of Darfur. They are not elected, but appointed by the national government. The walis are usually members of the ruling party, the National Congress (NC, formerly called the National Islamic Front, NIF).[54] They may not necessarily come from the region or have administrative skills.

As with much of the Sudanese bureaucracy, even where a clear hierarchy exists, power often lies in the hands of trusted individuals close to the political leadership of the NC. Darfur exemplifies this pattern. As of May 2003, a select group of persons in the military and civilian hierarchies were responsible for implementing the Sudanese government's Darfur policy, many of them from allied nomadic tribes in Darfur or ruling party insiders who had previous experience in the region. These individuals were placed in top posts in the region to coordinate the military/political policy of military defeat of the rebel groups through the security committees and army. They were the ones trusted to liaise with the tribal militias.

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[53] Human Rights Watch interview with Governor Al Haj Attar Al Mannan Idris, Nyala, South Darfur, October 9, 2004.

[54] The ruling party came to power through a military-Islamist coup in 1989 and, until the Comprehensive Peace Agreement (CPA) was signed on January 9, 2005, with the southern rebels, was the sole party in government. It purged secular members of the civil service and judiciary and banned unions and political parties, only lifting that ban years later, after it created its own parallel organizations in an attempt to control civil society. Security organizations proliferated, as did Islamist militias formed under party inspiration. The NC is now in control of 52 percent of the national assembly and the executive branch of the national government.

The walis and mutamad play an essential role in coordinating and implementing the security response in Darfur. The wali serves on the security committee of the state, with representatives of security, military intelligence, the police, and others. This committee decides how to enforce the emergency laws and regulations. They are usually responsible for arrests of higher-level persons accused of rebel collaboration and other political detainees.

The officials appointed to these positions were generally trusted insiders with ruling party credentials, military background, and either Darfur experience or affiliation. Many of these civilian officials are or were also former military officers directly appointed by the federal government in Khartoum, with strong links to the national military intelligence and security apparatus.

Putting trusted former military officers into the top civilian positions at state level has often been the policy of the current Sudanese government.[55] For instance when the conflict ignited in Darfur, the governors of all three Darfur states in 2003 were retired officers from the armed forces directly appointed by President El Bashir. The governors reportedly have direct reporting lines to the President.

The crucial role of the "civilian hierarchy"—the state governors, provincial commissioners, and locality directors—and their links to the Ministry of Interior were revealed in some detail in four government memoranda from 2003-2004, obtained by Human Rights Watch.[56] These memoranda indicate that these officials were not just bystanders to events, but were pivotal figures in a chain of command that reached from the highest-level Sudanese leaders in Khartoum to the locality or sub-provincial level within each state, via these civilian officials. There are indications that at least in some cases these civilian officials also had hierarchical authority over the military commanders during military operations.

In addition to their role leading the security committees, the state governors and provincial commissioners had an important role coordinating local tribal leaders to recruit and supply militia activities. A November 22, 2003 letter from South Darfur

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[55] The military has had a large role in Sudanese political life since independence in 1956. In 1958 General Aboud overthrew the elected president and ruled until he was overthrown by a civilian uprising in 1964. The next elected president was overthrown by Col. Ja'afar Nimeiri, who ruled until another civilian uprising in 1985. The next elected government was overthrown by the military-Islamist junta that is still in power.

[56] See "Darfur Documents Confirm Government Policy of Militia Support," *A Human Rights Watch Briefing Paper*, July 20, 2004. Human Rights Watch has not published the full text of the documents due to concerns for the security of those individuals who helped obtain them.

governor Adam Hamid Musa to the commissioner of Nyala, Said Adam Jamaa, and the then-commissioner of Kass, Ahmed Angabo Ahmed, is entitled "Qardud Visit," a reference to a known militia training center and camp northeast of Kass town. The document elaborates on the November 18, 2003 visit by state Minister of the Interior Ahmed Haroun and Governor Musa to Qardud, South Darfur, and the follow up required in terms of providing development initiatives to the residents of the area. In the letter, the two commissioners were also commended for their "exceptional efforts against the transgressors," and requested to "prepare for the recruitment of three hundred knights for Khartoum."[57]

Three other memoranda obtained by Human Rights Watch also highlight the role of these civilian administrators and the way in which Sudanese government policy functioned in Darfur. Two of the memoranda are from Kutum province, one of North Darfur's five provinces.[58] One is dated February 12, 2004, and is from the office of the commissioner of Kutum. It is marked "highly confidential" and addressed "To Those in Charge of Orientation and Mobilization Branch at Province Localities." It refers to President El Bashir's announcement three days earlier, on February 9, 2004, that the Sudanese government had won the war. President El Bashir had proclaimed that "military operations in Darfur have ended" and that humanitarian workers would receive "unfettered access to Darfur."[59] The memorandum outlines a series of steps that officials in the localities are to undertake to guarantee that the "outlaw forces" do not reoccupy the areas from which they had withdrawn. One of the steps is "increase in border operation, and support of allied tribes, and providing them with enough military equipment to secure the areas." Another is "designing a plan for resettlement operations of nomads in places from which the outlaws withdrew, based upon field trips and evaluation operations."

The second memorandum, dated February 13, 2004, is from the director of El Waha locality (a special locality created for nomads),[60] and appears to be a direct response to the February 12 memo from the Kutum commissioner's office.[61] This document is

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[57] Ibid.

[58] The five provinces are Kutum, Kebkabiya, El Fashir, Mellit and Um Keddada. Each province is subdivided into localities or mahaliyas. For instance, Kutum province has two localities.

[59] "Sudan: Rebels Dismiss President's Claim of Victory in Darfur," *IRIN*, February 10, 2004, and "UN Hails Sudan's Agreement to Let Aid Workers in Troubled Darfur Region," UN News Centre, February 10, 2004 at http://www.cpmtsudan.org/news_archive/2004_archive/February/10Feb.htm

[60] Al Waha locality apparently includes areas in both North and South Darfur. Human Rights Watch interviews, April 2005.

[61] An April 7, 2005 report from the United Nations noted "The local radio station in El Fasher announced that in a meeting with tribal leaders on 4 Apr., the Commissioner of El-Waha locality in El Fasher (a locality of nomadic tribes in North and part of South Darfur) rejected Security Council Resolution 1593, and proclaimed that El-

addressed to "all security units in the locality," and it refers to the "directives of the Governor of the State and the Commissioner of the Province dealing with the effects of the rebellion and combating its elements among civilians." It specifically orders the security units to "allow [or permit] the activities of the mujahedeen and the volunteers under the command of Sheikh Musa Hilal to proceed in the area of Um Syala, Misserya and al Waha."

Another memorandum, this one from the office of then South Darfur Governor Adam Hamid Musa to the commissioner of Nyala, dated March 2, 2004, orders that a new security committee be established "with the objective of increasing the level of mobilization to ensure that the activities of the outlaws are not brought into the state and to safeguard stability and security." At the end, this document adds, "We also recommend you to swiftly deliver provisions and ammunition to the new camps to secure the southwestern part of the state."

Taken together, these memoranda demonstrate the deep involvement of senior government officials in the organization and activities of militia units: first, the essential role of the Khartoum-appointed civilian administrators played in decision making on security; second, the state apparatus used to convey policy decisions from central level in Khartoum to the lowest-level administrators in the localities; and third, the way in which liaison, recruitment, and arming of militias was coordinated by the state governors and provincial commissioners. Such activities could only have been carried out with the cooperation of the Sudanese armed forces.

The government policy of arming militias continued well after clear evidence existed that they were responsible for massive abuses against civilians. Civilian administrators in Darfur such as the *walis* and the commissioners were fully knowledgeable about the atrocities taking place. In South Darfur, for instance, the top-ranking civilian administrative officials visited the sites of attacks and then took no action to prevent further abuses or punish the crimes that had been committed.[62] Both former governor Adam Hamid Musa, and the current commissioner of Nyala, Said Adam Jamaa, visited the sites of villages that had been attacked by the militias, and Adam Hamid Musa

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Waha will be the Falluja of Sudan if any of its people are taken to the ICC." United Nations Sudan Situation Report, April 7, 2005, at http://www.humanitarianinfo.org/darfur/uploads/situation/unsitreps/2005/april/02.%20Sit%20Rep%20for%2007%20Apr%2005.doc

[62] Human Rights Watch interviews with displaced people in Kalma and other camps in South Darfur, October 2004 and interviews in displaced camps in July 2005.

promised village leaders to provide military protection to the area (which never arrived).[63]

B. Wadi Saleh: Perpetrators of the March 2004 Executions

One of the worst single atrocities documented in West Darfur was the mass executions of several hundred men over a few days in early March 2004, in Wadi Saleh. High-level government officials were present in Wadi Saleh at the time, including the commissioners of Mukjar and Garsila, the administrative capitals of the Mukjar and Wadi Saleh provinces in West Darfur, respectively. They are El Tayib Abdallah Torshain, then commissioner of Mukjar, and Ja'afar Abdul el Hakh, commissioner of Garsila at the time. The responsibility for security decisions and policies lies directly with the governor and, in Wadi Saleh, with the commissioners, who collaborated in a triangular network with the military and the Janjaweed.

Numerous eyewitnesses who knew him before he became a militia leader and identified him as leader of the attacks, described Janjaweed militia leader "Ali Kosheib" as the principal coordinator of the Janajweed militias in the Wadi Saleh area. "Ali Kosheib" is apparently the nom de guerre of Ali Mohammed Ali, an ex-army soldier based in Garsila, where he liaised with the commissioner, Ja'afar Abdul el Hakh, and with military and police personnel, in conducting the joint government-militia "ethnic cleansing" operations and the mass executions of March 2004. The government gave Ali Kosheib a Thuraya satellite phone and a vehicle, with which he led the campaign throughout Wadi Saleh from August 2003 through March 2004.[64]

Ali Kosheib, with government support through the Popular Defense Force commander of Garsila**,** Hassa Balla [possibly a pseudonym], and the collusion of local officials, is alleged to be responsible for the execution of scores of men around Mukjar, Garsila, and Deleig in February and March 2004. Most of the victims were first detained in police or military custody, then transferred to trucks and military cars and transported out of the towns by the militias and government soldiers.[65] According to several individuals who survived, the men were lined up and systematically shot by the militia men and soldiers then buried in mass graves in the area. Some of these mass graves have been identified in 2005.

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[63] Human Rights Watch interview, Mershing, South Darfur, July 2005

[64] Human Rights Watch interviews Mukjar and Garsila, October 2004 and refugee camps, Chad, July 2005.

[65] See Targeting the Fur: Mass Killings in Darfur," *A Human Rights Watch Briefing Paper*, January 24, 2005.

At the time of the February-March 2004 attacks and executions, the army in Mukjar was reportedly commanded by Gen. Abdallah Hamadan, a Misseriya commander from South Kordofan.[66] The army fully supported the militia operations, as did the highest ranking government officials in the region. According to a source who saw the documents, memoranda from the army documented the transfer of weapons and other supplies from the military to the militias in Wadi Saleh.[67]

The crimes in Wadi Saleh

In mid-2003, the SLA had established a presence in the Sindu Hills on the eastern edge of Wadi Saleh, adjacent to South Darfur and south of Jebel Marra.[68] The SLA was also present in some of the small villages to the west of Garsila.[69] In August 2003, following attacks by the SLA on police stations in Mukjar and Bindisi, high-level government officials from Khartoum visited Wadi Saleh. Residents say that these officials held meetings with the commissioners and other local regional officials and military commanders in both Mukjar and Garsila.[70] Recruitment of militia members is believed to have started in this period.

The first systematic government-militia offensive in the Wadi Saleh area began with attacks on villages around Mukjar and Bindisi in August 2003. Ahmed Haroun, the state minister of the interior from Khartoum, exhorted the Janjaweed and army in a speech to "kill the Fur" according to a resident of Mukjar who heard the speech. The resident told Human Rights Watch that State Minister Haroun "came to Mukjar by plane on August 20, 2003, to discuss and to give a speech to the Janjaweed and the army. He asked them to kill the Fur because the Fur had joined the rebellion. Therefore the Janjaweed and the army had to kill the Fur and loot their property. He gave the speech in front of a big gathering, talking through loudspeakers, so we all could hear it."[71]

The government military offensive in Darfur escalated in January 2004, following President El Bashir's announcement of a renewed effort to "annihilate" the rebels. According to local residents in Garsila, the Sudanese minister of defense, Bakri Hassan Salih, visited the town on January 1, 2004. People from Garsila interviewed by a

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[66] Human Rights Watch interview, refugee camp, Chad, June 27, 2005. The Misseriya are Arab cattle herders living in Kordofan, with some members also in South Darfur.

[67] E-mail communication to Human Rights Watch from an international observer, June 8, 2005.

[68] For background on the events in Wadi Saleh, see "Targeting the Fur," Human Rights Watch, January 2005.

[69] Civilians in the town of Zalingei reported that there were rebels in Dereissa, for instance. Human Rights Watch interview, Zalingei, West Darfur, October 18, 2004.

[70] Human Rights Watch interviews, Garsila and Mukjar, October 2004, and in refugee camps, Chad, July 2005.

[71] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

journalist recounted how the minister had a meeting in the barracks with Arab militias, during which he distributed arms and matches to burn down the African villages.[72]

In January and February 2004, Sudanese government forces and militias launched sweeping attacks on civilians in West Darfur simultaneously with their attacks on SLA-vacated areas of North Darfur. Some of the areas were hit again and again, such as the Masalit villages around Geneina. In February joint government and militia forces attacked the SLA in the Sindu Hills, on the way attacking and burning dozens of Fur villages around Mukjar and east and west of Garsila.

In a simultaneous offensive on the western side of the state, on February 6, 2004, government forces and Janjaweed began attacking villages around Mornei town (including Sildi, Nouri, Tunfouka, and Dereissa). A resident of Mornei at the time of the attacks described this methodical onslaught on the civilian victims:

> On February 6, the bombing started around Mornei. With the arrival of the Janjaweed the burning started. By February 12, there were forty-five thousand displaced and by February 25, there were sixty thousand displaced [in Mornei]. At least one hundred wounded, mainly from bullet wounds, and mainly women and children of varied age, arrived in Mornei. The Sudanese government and Janjaweed militias started in the north.… During one ten-day period there was bombing every night. We could see the columns of smoke rising outside Mornei. There were special army and police forces in Mornei, from Khartoum. They would go out on mission every day and come back. Helicopters came and took the wounded Janjaweed away from Mornei.[73]

During the attacks in the Wadi Saleh and Mornei areas many civilians found in the villages were tortured and others were killed. A seventy-five-year old trader from Arwalla told Human Rights Watch that he stayed in his village after everyone else was gone. "Fleeing is shameful and I am a Muslim who has been in Mecca," he said. When the Janjaweed militia arrived, they were screaming "Nuba, abid" he said. The Janjaweed mutilated him and left him for dead.

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[72] Koert Lindijer, "Inschakeling Strafhof geeft hoop aan ontheemden in Darfur," [ICC gives displaced people hope in Darfur] *NRC Handelsblad*, The Netherlands, April 9, 2005.

[73] Human Rights Watch interview, Bahai, Chad, June 4, 2004.

> The Janjaweed came to my house and asked me why I was not gone like the others. I said I had been in Mecca and I could not flee from a person. Then they shot me on my back. I fell. Then they cut my skin on the top of my head and my ears. Then they picked me up and threw me into the fire. They looted everything, the market, everything. They were very numerous, as numerous as ants.[74]

People displaced from the destroyed rural villages around Sindu tried to escape these attacks and flee to the towns, hoping for some refuge in urban areas where they might find safety in numbers and access to services. However, many of the displaced fleeing the February attacks were refused entry to Garsila and were unable to reach other towns because of the presence of groups of Janjaweed on the roads.[75] Groups of armed militia men stationed on the outskirts threatened those who tried to enter the town and forced them to move in other directions.[76] It appears that many of the displaced people were specifically moved to Deleig, where the men were then rounded up and later executed.[77]

A thirty-year-old woman from Zarey described the organized manner in which the villages were attacked and the men were separated from the women in preparation for the men's execution. The militia members told the women that the men would be transferred to Deleig. In Deleig, the women found dead bodies.

The Janjaweed and government [soldiers] divided in three groups, and each group had a different task. The first group took every man between the age of eighteen and forty. They put them on trucks. Another group was looting the huts and the last group took the cattle. The women were able to run away. The Janjaweed told the women that they would bring the men to Deleig. When the women arrived in Deleig [twelve days later], there were dead bodies lying on the ground in the streets. Some men had been taken in the mountains and murdered in groups. Some others disappeared.[78]

Once the villages were emptied, the regional commissioners tried to control the movement of the displaced civilians by posting groups of militia along the main roads. While he was commissioner of Garsila, Ja'afar el Hakh refused to allow displaced people

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[74] Human Rights Watch interview, refugee camp, Chad, June 27, 2005. The scars were visible on this man's body and head.

[75] Interviews with internally displaced women from Wadi Saleh, June 2004.

[76] Ibid.

[77] Human Rights Watch, "Targeting the Fur."

[78] Interviews with internally displaced women from Wadi Saleh, June 2004.

to move and seek refuge in certain towns, apparently as part of a policy of controlling the concentrations of displaced persons in select locations and under certain conditions. For instance, when displaced people fled Garsila and Deleig after the March executions and then tried to proceed to Nyala by truck, they were refused entry to Nyala: apparently on the orders of Ja'afar el Hakh; most of these displaced people returned to Zalingei.[79] The rationale for this may have been that the authorities did not want witnesses of the atrocities in and around Nyala, where there was a larger international presence and therefore more foreign observers, journalists, and aid workers who might hear about the abuses.

A policy of forcing displaced persons to remain in specific locations was also followed in South Darfur in the same period. The then-commissioner of Kass, Ahmed Angabo Ahmed, also allegedly issued orders for displaced persons in Kailek to be confined to that area and not permitted to travel to Nyala. For weeks he also refused to permit humanitarian agencies to enter Kailek, despite the mounting humanitarian crisis there.[80] International humanitarian law requires that in cases of displacement, states must take all possible measures to ensure that displaced persons receive satisfactory conditions of shelter, hygiene, health, safety, and nutrition and that members of the same family are not separated[81] Parties to a conflict must also allow and facilitate rapid and unimpeded passage of impartial humanitarian relief for civilians in need.[82]

A twenty-seven-year-old Fur man from Arwalla was among the scores of displaced men who were arrested in the first days of March 2004, and identified Ali Kosheib, who attended the transfer of these jailed men to Garsila:

> There were many in jail. I saw many people being taken out and we knew for sure they were going to be executed. My uncle was killed, brother of my father. One Friday they took all the prisoners in Deleig east of the market. They forced us to lie down and started walking over our bodies…. I was taken to Garsila…. Ali Kosheib was with me during the trip. They beat us and insulted us, "You slaves, this is not your country."[83]

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[79] Interviews with internally displaced women from Wadi Saleh, April 2004.

[80] "United Nations Inter-Agency Fact Finding and Rapid Assessment Mission: Kailek town, South Darfur," April 25, 2004, p.4.

[81] See ICRC, *Customary International Humanitarian Law*, rule 131, citing Protocol II, articles 17(1) & 4(3)(b).

[82] Ibid., rule 55, citing Protocol II, article 18(2).

[83] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

Another eyewitness who identified Ali Kosheib during the August 15, 2003 attack on Bindisi said, "During the attack he was screaming 'Nuba, Nuba, you are *monarada* [opposition], you are all slaves."[84] Yet another eyewitness who was in Arwalla when it was attacked identified Ali Kosheib as a leader of the attack: "Ali Kosheib was there, I saw him. [He] has animals in Garsila, I know him from before.… He was in a vehicle and gave orders."[85] Witnesses from Tanako, a large village west of Deleig, also described Ali Kosheib as present during the March 2004 attack on Tanako.[86]

In Mukjar, a similar scenario unfolded as in Deleig. "The Janjaweed and government were attacking [in Sindu] during three days," said one displaced witness who was living in Mukjar in February 2004. "Then they returned and hell began."[87] According to a thirty-eight-year-old Fur man, 154 people were arrested in the last days of February in Mukjar alone. Many were arrested by the police and told they were being taken to Garsila, according to several witnesses. Dozens were loaded into trucks and then taken a few kilometers away from Mukjar, where they were executed. "They forced them to lie down and [they were] shot. I know he [Ali Kosheib] killed almost all of them because I saw the five victims who arrived wounded in Mukjar; three died two days later."[88]

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[84] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

[85] Human Rights Watch interview, refugee camp, Chad, June 27, 2005

[86] Human Rights Watch interview, refugee camp, Chad, June 28, 2005.

[87] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

[88] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

Mass grave possibly containing victims of the March 2004 executions around Mukjar. © 2004 Private

As of early 2005, Ali Kosheib was still based in Garsila, but his current location is unknown (as is the current location of Hassa Balla).

Ja'afar Abdul El Hakh was the provincial commissioner of Garsila from 2003 through March 2004, and as such had overall responsibility in Garsila (and Wadi Saleh province) as the highest-ranking local official during the March 2004 mass executions in Deleig and Garsila. He appears to have had a direct role planning and coordinating the operation, and was identified as participating in at least one attack. A thirty-six-year-old Fur civilian from Tanako described El Hakh's role in arming the militias (Tanako, which was believed to have an SLA presence, was repeatedly attacked, including in early March 2004). He identified El Hakh as the man who gave a speech in Garsila, blaming the Zaghawa, Fur and Masalit as "rebels" and threatening to execute anyone who joined the rebellion. He told Human Rights Watch:

> [El Hakh] is the one who distributed the weapons. He gave a big speech in Garsila and organized a party in Garsila in September 2003. He said, "Zaghawa, Fur and Masalit have become rebels. We will burn everything down and only leave behind the trees. They can destroy all Darfur and

> even if there is only one soldier left, he will fight against America. This is now jihad." He called everybody by speakers on a vehicle to gather in order to listen to his speech. Since that day the situation changed completely. He said, "If you join the rebellion we will execute you." That very day he gave weapons to four thousand. Then the *coupeurs de route* [literally road-cutters, meaning bandits] and pillage started. Even in town there were murders. The weapons came to Nyala by plane and then by military vehicles: Kalashnikovs [AK-47 assault rifles] . . . machine guns for vehicles, Mengistus [M-14 rifles], G-3s etc.[89]

Commissioner El Hakh also may have directly participated in some of the attacks on villages around Garsila. A resident of Arwalla told Human Rights Watch, "In Arwalla the [man] responsible was Ja'afar Abdul el Hakh. I know it because he said in front of everybody that we [the Fur] had to leave that year. He said it was because we are against the government. He is Fur but he was involved [with the government]. I saw him during the attack on Arwalla. He was ahead of the forces. Hamdi and Ali Kosheib gave him orders.[90]

In late March 2004, El Hakh was transferred to Geneina as the minister for health for West Darfur state. In October 2005, he was promoted to be the governor of West Darfur state.

El Tayib Abdallah Torshain, then provincial commissioner of Mukjar, is a former army officer. He is also believed to have played a pivotal role in supervising and coordinating the government's policies on both security and specifically on recruitment, arming, and use of the militia forces. He may also have played a more direct role: a man who was detained in Mukjar but managed to eventually flee the area, told Human Rights Watch that he met Torshain in prison, where he was personally threatened by the commissioner.[91]

El Tayib Abdallah Torshain certainly knew about the executions and did nothing to prevent the crimes or punish the perpetrators. The brother of a man who was executed, along with twenty-eight other men, just outside Mukjar in March, told Human Rights Watch that after he learned that his brother's body was lying near the airstrip, he met with the commissioner and the head of police in Mukjar and asked for permission to go

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[89] Human Rights Watch interview, refugee camp, Chad, June 28, 2005.

[90] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

[91] Human Rights Watch interview, refugee camp, Chad, June 27, 2005.

and retrieve his brother's body. He said, "the commissioner of Mukjar was present but he said nothing. The police said…they would get back to me but until now there is nothing. Aside from the police, there is no other option—no court—even the commissioner is with them [those who executed his brother.]"[92]

According to residents of Mukjar, El Tayib Abdallah Torshain left Mukjar for Khartoum in January 2005, after the report of the International Commission of Inquiry was published, perhaps fearing his name would be among those on the sealed list of fifty-one individuals identified as bearing responsibility for the crimes. In March 2005, he apparently returned to Mukjar, where he remained commissioner until October 2005, when the entire administration of West Darfur was replaced.

VI. The Sudanese Military: Implementing the Policy of Attacks on Civilians

In collaboration with the militias and regional civilian officials, the Sudanese military constitute the vital third link in the triangular network of actors responsible for planning, coordinating, and implementing the massive campaign of international crimes in Darfur. The record of the Sudanese military in Darfur demonstrates that the crimes against civilians were part of a policy that can only have been created by the Sudanese political and military leadership in Khartoum.

The Sudanese military structure in Darfur has a fairly straightforward chain of command: the Western Military Command is responsible for the operations of the Sudanese army in Darfur, with the overall commander reporting to Armed Forces Chief of Staff Abbas Arabi. Chief of Staff Arabi reports to Minister of Defence Maj. Gen. Bakri Hassan Salih, who reports to President El Bashir, a Lieutenant General and Commander-in-Chief of the Sudanese Armed Forces.

The Western Military Command of the Sudanese armed forces is headquartered in Fashir, North Darfur, where the 1st Infantry Division is based. Maj. Gen. Mohamed Fazey, 6th Division commander based in Fashir since January 2004, told Human Rights Watch that Fashir was the command and control center for all army operations in the three states of Darfur.[93] Nyala, in South Darfur, is the headquarters for the 16th Infantry Division which operates in South Darfur, but the force commander in Nyala apparently

[92] Human Rights Watch interview, Mukjar, West Darfur, October 17, 2004.

[93] Human Rights Watch interview with Maj. Gen. Mohamed Fazey, Sudan army, Fashir, North Darfur, October 6, 2004.

reports to and receives orders from the headquarters in Fashir.[94] Brigades are located in the major towns of each state, from where they deploy and coordinate battalions based in smaller towns—not necessarily in accordance with state boundaries. For instance, in northwest North Darfur, the brigade stationed in Tine supervises three battalions: one each in Tine itself, Girgira and Karnoi. In the southern part of North Darfur, the 7th Infantry Brigade is based in Kebkabiya, and its area of operations includes the Kebkabiya area itself and south to the northern slopes of Jebel Mara. The 96th Infantry Brigade is based in Zalingei and covers the remainder of the area on the southern slopes of Jebel Marra, administratively part of West Darfur, in conjunction with brigades based in Nyertite and other locations.

To date, Human Rights Watch has not been able to identify all of the senior military commanders from the Sudanese armed forces who led or participated in the attacks in Darfur, but it is believed that most army troops and commanders operating in North Darfur were from the 1st and 6th Infantry Divisions, under the command of army headquarters in Fashir. In South Darfur, the 16th Infantry Division was responsible for most of the army operations around Nyala (see below).

The air force is apparently directed from a command and control center in Khartoum. Air crews of helicopter gunships are rotated from state to state.[95] Aerial movements and support are closely coordinated with the army forces on the ground during attacks; according to Major General Fazey, only he and the force commander of the entire operation in Darfur can order or authorize the deployment of helicopters.[96]

Various commanders of companies, battalions, brigades, and divisions operating in Darfur may be responsible for war crimes and crimes against humanity. The analysis below focuses on one major offensive in South Darfur in late 2004, and illustrates the high degree of planning and coordination of the crimes by the Sudanese military, but the role of the Sudanese army in this offensive is far from unique. Although Human Rights Watch has not been able to identify all the key military personnel involved in the military operations throughout Darfur, a few individuals are named below (and in Annex 1). Ultimately, the responsibility for the crimes committed by the Sudanese military lies with President El Bashir as the commander-in-chief, Chief of Staff Abbas Arabi, former Minister of Defence Maj Gen Bakre Hassan Salih, and other key military staff.

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[94] Transcript of an interview by A.U. personnel with legal advisor to the militias in Kebkabiya, October 2004.

[95] Human Rights Watch interview with former A.U. military observer, Netherlands, September 15, 2005.

[96] Human Rights Watch interview with Maj. Gen. Mohamed Fazey, Sudan army, Fashir, North Darfur, October 6, 2004.

A. South Darfur, December 2004: Anatomy of a Government Offensive against Civilians

> *Gunships were everywhere. In every attack there were gunships. And of course the Antonovs doing the [reconnaissance], directing the fire.*
>
> —Former AMIS military observer[97]

Involving the militias

By late February 2004, it was clear that the SLA was mobilizing a new front in South Darfur.[98] South Darfur is the state with the largest population of Arab nomadic groups, mostly located in the southeast and southwest parts of the state as well as in Nyala, the state capital.[99] The SLA had established itself in the area in early 2004 by attacking police stations and other government targets, causing the Sudanese government to withdraw the police and PDF from the villages. It may have believed that these security forces might defect to the SLA, which in some cases they did.[100] By late April 2004, the SLA controlled large areas of rural South Darfur, such as most of the rural area of Shariya province, northeast of Nyala.

The Sudanese government's reaction to the increasing SLA presence was swift. In a March 3, 2004 directive the then-governor of South Darfur, Adam Hamid Musa, ordered Nyala Commissioner Said Adam Jamaa to take specific steps to defend the state.

These steps included the formation of a new security committee. Eight men are listed as members: Jadeen Jood-Allah Dagash (South Darfur minister for culture and social affairs), Mohammed Yacoub Al Umda, Mustaba Abu Nooba, Mahmood Adam Salkyo, Hussein Kabeer Abdallah, Muhammed Abdelrasool Hussein, Mahdi Marji, and Ibrahim Muhammed Abdallah.[101] It was no coincidence that these men were selected: most of them are leaders of small Arab tribes that migrated to Darfur from Chad in the past few

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[97] Human Rights Watch interview, the Netherlands, September 15, 2005.

[98] "Sudan Rebels in Offensive "To Prove" They Still Hold Darfur," Agence France Presse, February 12, 2004 at http://www.reliefweb.int/rw/RWB.NSF/db900SID/ACOS-64D878?OpenDocument&rc=1&emid=ACOS-635PJQ

[99] This demography is also reflected politically. Of the three Darfur states, South Darfur has the largest number of Arab members of parliament in the National Assembly: fifteen of twenty-eight state MPs are from Arab groups as compared with one Arab representative out of sixteen in North Darfur and one out of eighteen from West Darfur. See Young et al, *Darfur: Livelihoods under Siege*, Table 3: Tribal affiliation of Darfur MPs in the National Assembly, p.31.

[100] "Investigation Report on the attack of People's Defense Force camp at Duma, north of Nyala on 25 Sept 2004," unpublished AMIS report, on file with Human Rights Watch.

[101] Government memorandum of March 3, 2004, office of the governor of South Darfur, on file with Human Rights Watch.

decades and have been involved in local clashes with Fur and other groups over access to land in the past decade. [102]

The function of the new security committee in South Darfur, as described in the memorandum, was to increase "the level of mobilization to ensure that the activities of the outlaws are not brought into the state and to safeguard stability and security." In other words, the new committee was tasked with recruitment of new militia forces, typically referred to as "mobilization" by the Sudanese government. Mohammed Yacoub al Omda is the *omda* (leader) of the Tarjam tribe; Mahmoud Adam Salkyo and Hussein Kabeer Abdallah are Saada. Human Rights Watch was told by local community leaders that Yacoub al Omda and Mahmoud Salkyo are key figures in militia recruitment and training, and that Mustapha Abu Nouba is a leader of a Riziegat sub-clan that has been implicated in attacks against villages around Nyala in 2004. These tribal leaders mobilized their tribes to join the government's campaign.

The memo orders Nyala Provincial Commissioner Said Adam Jamaa "to swiftly deliver provisions and ammunition to the new camps to secure the southwestern part of the state." This illustrates the pivotal role of not only the state governor in ordering recruitment and supply of arms to the militias, but of the Nyala commissioner, who apparently had the power to distribute these supplies, although whether the supplies came directly via the army or through the Popular Defense Forces commanders, remains unclear.

What followed was a brutal repetition of the events in North and West Darfur.

Military attacks on rebel positions in villages, even if there are villagers present, does not in itself violate international humanitarian law. However, during military operations an armed force must take constant care to spare the civilian population and civilian objects. All feasible precautions must be taken to avoid or minimalize incidental loss of civilian life and injury.[103] Attackers must distinguish between combatants and civilians, attack only military targets, and not carry out attacks that do not discriminate between

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[102] In addition to land, there was another incentive for some Arab nomadic tribes in South Darfur to join the militias. For those Arab nomadic groups based north and south of Nyala, the SLA's foothold in these rural areas had serious consequences for nomads' use of seasonal migration routes (moving their herds north and south in the rainy season). The rebels had attacked some nomadic communities, looting livestock and kidnapping people, sometimes for ransom. As one nomadic leader told Human Rights Watch, "Since the conflict began, the armed movement crosses all the routes we used to take. We can't go via Duma or Menawashe because of rebel presence, so we lost a lot of animals." Human Rights Watch interview, Nyala, South Darfur, October 4, 2004.

[103] ICRC, *Customary International Humanitarian Law*, rule 15,citing Protocol II, article 13(1).

combatants and civilians, or which cause disproportionate harm compared to the expected military gain.[104]

The South Darfur offensive as an example of the military-militia relationship

Two features of the skimpy infrastructure of South Darfur were pivotal for the government's military response to the rebel presence in South Darfur: the main roads from Nyala north, west and south to Fashir, Kass and Buram, and the railway from Nyala to Ed Daein heading northeast to El Obeid and Khartoum. The roads and the railway were both important logistical supply lines for Darfur. Despite signing the ceasefire agreement in April 2004, the Sudanese government conducted a massive, step-by-step offensive against civilians living in the vicinity of the roads and railway in the second half of 2004. The only difference between this and previous government offensives in other parts of Darfur was that this time, the A.U. mission in Sudan (AMIS) was on the ground, monitoring a ceasefire that was soon shown to be entirely illusory in South Darfur.

The offensive was later publicly justified by the Sudanese government as necessary to fulfill its commitment to improving security pursuant to an ill-conceived "action plan" signed by the Sudanese government and the U.N. in early August 2004.[105]

The first part of the offensive consisted of the systematic displacement of civilians from villages in areas south of the railroad, initially using government-backed militia. The communities living south of and along the Ed Daein-Nyala railroad were among the first to suffer attacks. The SLA had attacked the police station and several government offices including the *zakat* (alms) office in Yassin,[106] south of that railroad, in January 2004, and looted weapons, cash and other supplies in its typical modus operandi.[107] According to residents of Yasssin, after the SLA attack, "the government withdrew all the army and police and left the citizens without any protection."[108] Yassin residents said

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[104] Ibid. rules 17 & 18.

[105] "Darfur: UN 'safe areas' offer no real security," Human Rights Watch press release, September 1, 2004. See also "Sudan to Start Disarming Arab Militias in Darfur: UN," Agence France-Presse, August 5, 2004, at http://www.reliefweb.int/rw/RWB.NSF/db900SID/EVIU-63L9KD?OpenDocument&rc=1&emid=ACOS-635PJQ

[106] Yassin is a town with a police station and also the name of the area of villages south of the Nyala-Ed Daein railroad, between Sani Afando and Suleia.

[107] Human Rights Watch interview with Yassin IDPs, Kalma camp, South Darfur, October 4, 2004.

[108] Human Rights Watch interview with Yassin IDPs, Kalma camp, South Darfur, October 4, 2004. The government's removal of security forces from Yassin following the SLA's January 2004 attack is also mentioned in the unpublished A.U. report "Investigation report on alleged attack on Yassin village by Janjaweed militia and GoS forces on July 17, 2004," on file with Human Rights Watch.

that they expected the government would send reinforcements, but when none were forthcoming a delegation of community leaders went to Nyala to ask the government to send troops. "The government said the area was in peace and we didn't need them," a displaced person from Yassin told Human Rights Watch.[109]

In July and August 2004, dozens of villages in the Ma'aliya, Sani Afando, and Yassin areas were attacked by government-backed militias drawn largely from the Shattiya sub-tribe of the Southern Riziegat based around Ed Daien. The attacks, in which civilians were killed and their property systematically looted or destroyed, displaced thousands of villagers north, across the railway into SLA-controlled areas, and west, into Kalma camp and the Nyala environs.

Once the civilian population had been driven out, the Sudanese military established new military camps—in violation of the April 2004 ceasefire—in key strategic positions near the railway and main roads in August and September 2004.[110]

B. From Adwah to Hamada

Once the military bases were established south of the railway and along the main roads, the main focus of new militia attacks shifted north, around the Nyala-Fashir road, where the SLA controlled most of the territory east and west of the road. Although the Sudanese government labeled the attacks "road clearing," in reality they were a thinly veiled strategy to remove the civilian population from the area, along with the SLA presence. Several elements were consistently present in the attacks, even where the individuals leading the militias and government forces differed:

- Aerial support from helicopter gunships and typically Antonovs, with targeted gunship attacks on civilians;
- Deployment of at least one brigade or company of troops from the 16th Infantry Division either in the attacked location or in the vicinity (for instance along the road to sweep in fleeing civilians and SLA) during each attack;

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[109] Human Rights Watch interview with Yassin IDPs, Kalma camp, South Darfur, October 4, 2004.

[110] See "Routine Patrol Report: Flying from Nyala, Buram and Donkey Dereasa," August 28, 2004; "Investigation on Alleged Establishment of a New Camp for Police and Janjaweed in Galdi Area on August 19, 2004," September 2004; and "Investigation on Alleged Movement of GoS Forces to Abgragil—SE of Nyala," September 2, 2004, all unpublished AMIS reports on file with Human Rights Watch. See also "CFC Ceasefire Violation Report No. 79/04: Alleged Establishment of New GoS Military Camp at Suleia," AMIS, November 20, 2004, at http://www.africa-union.org/DARFUR/homedar.htm#

- Summary executions and other killings of civilians, rape, and other abuses of civilians;
- Widespread looting of household goods and livestock by militias and government troops.

The offensive was extremely well planned and systematic in its approach. First the SLA-held town of Adwah (one of the SLA's larger bases on the west side of the Nyala-Fashir road) was attacked. Then the government forces attacked Marla, a SLA-held town south of the railway, and finally the Ishma-Labado-Muhajariya corridor was attacked, in the heart of SLA-controlled territory. The methodical way in which these strategic locations were attacked illustrates the overall coordination role of the Sudanese government; the offensive was apparently directed from Khartoum.[111]

Adwah: November 30, 2004

In preparation for the attack on Adwah, the Sudanese government sent several convoys of troops to Duma in the days preceding the attack. The attack began at approximately 6:00 a.m. on November 30, 2004. The village was surrounded and attacked from all directions, surprising both the villagers and the SLA troops who were present in the village. The attack consisted of militia forces on camels and horseback and Sudanese army troops in vehicles. According to several witnesses there were at least fifteen Land Cruisers armed with machine guns, RPGs, and other weapons. Two helicopter gunships and an Antonov were involved in the attack, for reconnaissance. According to one witness, one of the helicopter gunships landed between 6:00 and 7:00 a.m. to provide two boxes of ammunition to the attackers.[112]

Residents of Adwah spoke of civilians, mainly men, being summarily executed and many women being raped by both government soldiers and militia.[113] The exact death toll from the Adwah attack is unknown but was likely in the dozens. Between November 30 and December 2, when an AMIS team entered Adwah, those women and girls who had not managed to escape were reportedly held in the town and repeatedly raped. Wounded villagers were also detained in the town without medical care.

The AMIS team sent to investigate on November 30 was stopped on the side road leading to Adwah by a Sudanese government commander, Maj. AbdulRahman

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[111] Human Rights Watch interview with former A.U. military observer, the Netherlands, September 15, 2005.

[112] AMIS, "CFC Ceasefire Violation Report No. 88/04: Alleged GoS/Janjaweed Attack on Adwah Village on 30 Nov 04," December 31, 2004.

[113] Ibid.

Mohammed Ibrahim, and his company of soldiers. Major AbdulRahman told the AMIS team that they could not proceed to Adwah because there was "tribal fighting" there. He also told AMIS that the presence of his troops on the road "was not there because of the attack on Adwah" but to "secure the road."[114] The AMIS team tried another access road to Adwah and there too they encountered a Sudanese army blockade. They noted (and photographed) the fact that government troops were fanned out in position across the road and were stationed as either reinforcements for the troops in Adwah or to intercept SLA or villagers fleeing to Jurrouf, the nearest SLA base, east of Adwah across the main road.[115] The AMIS team flew over Adwah the following day and photographed a large number of government vehicles and militia in Adwah.

When the AMIS team eventually gained access to Adwah, the Janjaweed militia and government forces' looting of the town was still in progress. Photographs from Adwah on that day attest to the looting and killings.

[114] Ibid.

[115] Ibid.

The attack on Adwah, South Darfur, November 30, 2004. © 2004 Private

The attack on Adwah, South Darfur, November 30, 2004. © 2004 Private

The AMIS team interviewed the leader of one of the Rizeigat militias involved in the attack, Mohammed Hamdan, who was still in the village. He said that he was the *agid* (war leader) of the Rizeigat militia. He confirmed that the attack had been planned for several months, and that an Antonov plane and two helicopter gunships were involved in the attack.[116] The AMIS team helped to evacuate many of the wounded villagers, women, and children.

Janjaweed militia on the move through Adwah, December 1, 2004. © 2004 Private

[116] Ibid.

Janjaweed militia collecting their loot outside Adwah, December 1, 2004. © 2004 Private

Marla, Ishma and Um Zaifa: December 8–10, 2004

Ishma and Um Zaifa (north of the railway), and Marla (south of the railway), all SLA-controlled villages east of Nyala, were some of the largest villages attacked in the next stage of the offensive, which took place over several days and was conducted by several coordinated groups of attackers.

The first attack began on December 8, in Marla. The 16th Infantry Division entered the village, forcing the rebel forces out. Part of the village was apparently burned down in the attack, but it is unclear whether there were civilian casualties in this attack. Fighting continued in the area for several days and Marla was attacked again on December 16.

The SLA-held Um Zaifa area was the next in line for attack. The SLA had held this area, which in addition to Um Zaifa village included the larger villages of Ishma, Labado and Muhajariya, and many smaller hamlets since early 2004. Some of the larger villages like

Labado had small forces of thirty or so SLA combatants stationed in compounds in the villages; larger SLA bases were located outside the villages.[117]

Government forces and Janjaweed militia began their attack on Ishma and Um Zaifa on December 10, and quickly forced the population from the villages. An aid worker who treated some of the displaced said, "Every displaced person has a horror story."[118] AMIS attempted to investigate the attacks on December 11, and met with the Sudanese commander in Ishma, Brig. Gen. Ahmed Al Hajir Mohammed. Brig. Gen. Mohammed, who had by then moved into a new government base in Ishma, told the AMIS team investigating the attacks on Ishma and Um Zaifa that the offensive was "a routine activity to secure the road from Nyala to Khartoum," and that "the order for this action had come straight from higher authorities in Khartoum."[119] He also acknowledged that his forces "had entered and pulled out of Marla on December 8. His forces had attacked Marla also to clear the road/railway to Ad-Dyaen [Ed Daein]."[120]

In the following days the AMIS observers conducted aerial patrols along the Ishma-Um Zaifa-Labado corridor. They photographed a large concentration of militia and looted goods in nearby Konkono. Konkono had also been attacked and became a congregation point for the militiamen, who looted the village in the presence of the army troops.[121] The AMIS observers also witnessed Janjaweed militia "looting and setting houses on fire" in Um Zaifa. The destruction was systematic: over a three-day period, the AMIS patrols photographed the progressive devastation of Um Zaifa. The Sudanese government forces quickly dug trenches around their bases in Um Zaifa and established camps in the new areas they had captured.[122]

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[117] Human Rights Watch telephone interview, Canada, June 3, 2005.

[118] E-mail communication to Human Rights Watch from someone who interviewed people from Ishma and Um Zaifa, December 2004.

[119] AMIS, "CFC Ceasefire Violation Report No. 89/04: Alleged GoS/Janjaweed Attack on Rebel-held Areas of Ishma, Um Zaifa and Muhajeriya in December 2004," December 2004.

[120] Ibid.

[121] Ibid.

[122] Human Rights Watch telephone interview, Canada, June 3, 2005.

Militia members roam through Um Zaifa after the attack, December 12, 2004. © 2004 Private

The burning of Um Zaifa begins, December 12, 2004. © 2004 Private

Most of the village is burned by December 13, 2004. © 2004 Private

Marla: December 15–16, 2004

Marla was attacked again on the morning of December 15. According to residents of Marla, the attack started with two helicopter gunships and an Antonov circling above the town, possibly to determine whether there was any SLA presence. Government soldiers in several trucks arrived from different directions, and began shooting indiscriminately and setting fire to houses.[123] The troops established a base on the western side of the village and began looting and burning the shops in the marketplace. They prevented Marla residents from getting water from the main well in the town.

[123] Interviews with Marla displaced persons, January 2005, on file with Human Rights Watch.

Government forces burning sacks of grain stored in Marla, December 17, 2004. © 2004 Private

While the majority of the attackers were government troops, some militia members were also involved in the attack and the looting that followed. The looting was still continuing when AMIS observers finally gained access to Marla on December 17, and photographed the looting.

Government soldiers and militia members looting in Marla, December 17, 2004. © 2004 Private

An elderly Zaghawa woman who lived in Marla told Human Rights Watch that most of the Janjaweed attackers covered their faces during the attack and the looting that followed:

> Some of us tried to collect little items and put the children on donkeys but were not allowed. Janjaweed hit them and took their donkeys. Many people and children were killed during that attack and in front of us, but we had to leave their bodies unburied and run.[124]

The number of civilians killed there, by targeted or indiscriminate shooting, is unclear. According to one source, one man was summarily executed by soldiers and another killed in the indiscriminate shooting. Several women were wounded reportedly by rockets fired by the helicopter gunships.[125]

Labado: December 17, 2004

Government forces and militia had attacked at least five villages north of Labado in early November.[126] By mid-December 2004, thousands of displaced persons from these nearby areas had fled to Labado, making it one of the larger displaced persons sites under SLA control in Shariya province, South Darfur. Labado and many other villages in the area are populated mainly by the Bergid, although there has been migration of others such as the Zaghawa over the past few decades. The commissioner of Shariya town, Sadiq Ali Nabi,[127] is a Bergid from Labado. Apparently many Labado villagers believed that his position as a government official would protect them from government attack. As a result, despite the fact that government forces had attacked villages surrounding Labado, many Labado residents remained in the town instead of fleeing.[128]

The events of December 17 proved that Commissioner Nabi's connection to Labado was no protection for the town.

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[124] Human Rights Watch interview with internally displaced person from Marla, February 2005.

[125] Interviews with Marla displaced persons, January 2005, on file with Human Rights Watch.

[126] AMIS, "Investigation report on attack on villages north of Labado on 3 November by Janjaweed militia," November 2004. Unpublished report on file with Human Rights Watch.

[127] Sadiq Ali Nabi later gained international notoriety for clashing with U.S. Deputy Secretary of State Robert Zoellick after Nabi refused to let the U.S. official speak privately with AMIS monitors. "US's Zoellick, Darfur Official Clash in Darfur Visit," Associated Press, November 10, 2005 at http://www.sudantribune.com/article.php3?id_article=12502

[128] Human Rights Watch telephone interview, Canada, June 3, 2005.

By December 16, the brigade of the 16th Infantry Division under the command of Brig. Gen. Ahmed Al Hajir Mohamed (the same commander who led the attacks on Marla and Ishma the previous week) had advanced to within eight kilometers of Labado.[129] According to credible sources, the December 17 attack began in a village west of Labado in the early morning. At midday, an Antonov began circling Labado and bombed south of the town, then dropped four bombs east and then north. The bombing all around the town confused the residents, who were uncertain which way to run. Then the Antonov bombed the central marketplace. The government also reportedly used helicopter gunships. [130] According to an international observer who interviewed displaced residents of Labado, there was a small contingent of SLA troops living in Labado, in one specific compound, but the SLA troops fled as soon as the attack began.[131]

Displaced people from Labado said that hundreds of Janjaweed militiamen then attacked the town and killed, burned, and looted at will. Government troops followed the militias, also killing civilians and destroying parts of the town. Some families were reportedly locked in their huts and burned to death. A large number of people were gathered in the school and apparently executed there. At least sixty civilians were reported to have been killed. [132] Days after the attack, an aid worker who treated some of the displaced people from Labado wrote: "there are many children still missing, old people seen in mobile clinic with spear wounds, several people with shrapnel wounds, and a whole population with the mask of traumatization on their faces."[133]

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[129] "Report of the Chairperson of the Commission on the Situation in the Darfur region of Sudan, African Union Peace and Security Council," January 10, 2004, p. 6.

[130] Interviews with displaced people from Labado, on file with Human Rights Watch, December 22, 2004.

[131] The fact that the SLA fled immediately and did not defend Labado apparently provoked considerable bitterness among the civilian residents. Human Rights Watch telephone interview, Canada, June 3, 2005.

[132] Confidential communication to Human Rights Watch, December 24, 2004; and Human Rights Watch telephone interview, Canada, June 3, 2005.

[133] E-mail communication from aid worker to Human Rights Watch, December 2004.

Labado destroyed, December 18, 2004, 2004. © 2004 Private

Government forces promptly dug new brigade positions outside of Labado. Once the town was secured, Sudanese army troops and Janjaweed militias systematically looted and burned the town. Over the next two days, 80 percent of the town was completely destroyed or damaged, including the market, stores, and the hospital.

After destroying Labado, Sudanese government forces dig trenches and establish a new camp outside Labado, December 26, 2004. © 2004 Private

AMIS military observers investigating the attack were prevented from entering Labado on December 17, by Brig Gen Mohamed. The AMIS observers noted the presence of approximately five hundred "armed Arab nomads (Janjaweed militia) on their horses and camel… occupying the northern defensive area of the GoS forces." When asked about these forces, the Brigadier General lied, saying they were "IDPs escaping…for protection."[134] On a later visit the Janjaweed militia leaders in Labado even threatened the AMIS team, who found two bullet holes in their Mi-8 helicopter when they returned to Nyala.[135]

Hamada: January 13–14, 2005

The pattern of the attack on Hamada appears to have been very similar to the previous attacks. Janjaweed militias from Niteiga and Malam were identified among the attackers, who conducted the assault in a coordinated fashion with Sudanese government forces. For two days, the residents of Hamada were detained in the village, not allowed to flee. Men and women were separated into groups: some of the men and boys were executed; others were kept alive to guard their own livestock, looted by the Janjaweed. Women and children were killed, some while fleeing the school; other women and girls were raped, some repeatedly.[136] Wounded people were executed.

According to survivors who fled the area, the attackers repeatedly stated their intention of "cleaning the whole area."[137] One witness was more precise, noting they said they were "cleaning the land from Shariya to El Fashir through Shangil Tobaya and Thabit."[138]

In February 2005, at a summit in N'djamena, Chad, President El Bashir committed to stop using Antonovs and helicopter gunships in "hostile military overflights." The commitment came somewhat late. By that time, the Sudanese government had essentially achieved many of its aims in its offensive in South Darfur.

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[134] AMIS, "CFC Ceasefire Violation Report No. 129/04: Alleged GoS 2nd attack on the village of Labado on 17 December 2004," January 31, 2004.

[135] AMIS, "CFC Ceasefire Violation Report No. 132/04: Shooting Incident of AU CFC Mi-8 helicopter in Labado on December 19, 2004" at http://www.africa-union.org/DARFUR/reports%20of%20the%20cfc/132%2004%20Shooting%20incident%20of%20AU-CFC%20mi-8%20helicopter%20in%20labado.pdf

[136] Interviews with displaced people from Hamada, January 2005, on file with Human Rights Watch.

[137] Ibid.

[138] Ibid.

C. Knowledge of and Complicity in the Attacks by the Military

Lower-level troops sent to Darfur were initially told by their commanders that they were going to deal with the region's notorious thieves and "coupeurs de routes"— bandits who robbed travelers on the roads. This was not unexpected: as one former soldier from Zalingei told Human Rights Watch, "Before the war, we were mainly used to go after the livestock thieves operating in the mountains." Even after the conflict escalated, the Sudanese leadership continued to tell the troops, and the public, that they were fighting "robbers," and insisted that the rebel forces were simply bandits.

After the government offensives began in 2003, however, it became increasingly clear to soldiers taking part that civilians, not rebels or even robbers, were the main targets. Within the Sudanese armed forces, including the air force, some members were from Darfur, and some of these individuals protested to their superiors, but were told to continue operations. A former soldier from a Fur village in Jebel Marra told Human Rights Watch:

> I participated in five attacks. Each time, some soldiers talked to the Janjaweed and asked them not to do that, not to kill civilians. It created tensions. The officers tried to stop these soldiers from talking to the Janjaweed. The officers told these soldiers to shut up and to follow the orders. They used to say, "It's not your business. We are attacking the SLA. These people are SLA." Some officers were from Khartoum, some from Nyala. I remember especially one officer from the Bergou [a non-Arab] tribe from Nyala, he had three stars on his shoulders [*naqib* or captain]. He was more direct. He used to say, "You have to attack the civilians."[139]

Army commanders directly commanded and coordinated attacks in full knowledge that they were attacking civilians. Sudanese government troops based in Kutum were reportedly led by a Sudanese army commander named Gaddal Fadlallah, a major with one eagle (known as *raid*). According to men who served under him in several attacks on villages in the Kutum area, he gave clear instructions to attack civilians. For instance, before an attack on Enciro (where the SLA was based in 2002 and early 2003), he said, "On your way, every house and village needs to be burned completely. I do not want to see any left after the battle." He added, "All men, even civilians that you see should be killed."[140]

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[139] Human Rights Watch interview with former army soldier, Darfur, July 14, 2005.

[140] Ibid.

A pilot who provided air support to army operations in Darfur stressed the close coordination of the army and the Janjaweed militias during these actions, and the fact that it was clear that the object of many attacks was civilians:

> We were ordered to cover operations of the military but sometimes they were attacking civilians. The Janjaweed were wearing military uniforms and were commanded by a military officer. When they were doing missions, they needed our support. My role was to support: transport ammunition, evacuate the wounded and take the commander to see the area. I refused to help operations to attack civilians.… I saw Janjaweed and military troops attack civilians. I told the commander what I saw. I told him I saw a village destroyed (I gave him the name) and the military and Janjaweed were killing a family. I have no morale for this work, I told them.[141]

Knowledge of the abuses was pervasive after the first attacks, since the pilots had a clear picture of just who was being targeted. Several pilots avoided flying in Darfur by asking for transfers after they realized that the targets of the attacks were civilians. One of these individuals told Human Rights Watch, "At first I did not know exactly what was happening. They ordered 'close support' and said that the enemy was inside the villages. But I found no enemy there, just tribes. I know if the enemy is there. We can see rebel cars—they do not go on foot."[142]

Another pilot assigned to Darfur noted that he had told his superior officers exactly what he had witnessed. He had flown over Tawila on or after a February 2004 attack and saw the villages burning. He found a way to transfer out of Darfur after witnessing the destruction in and around Tawila. This pilot, who was arrested shortly afterwards, spoke to the chief of staff of the armed forces, Abbas Arabi Abdalla, and State Minister of the Interior Col. Ahmed Mohammed Haroun, at military headquarters in Fashir about his observations. He told Human Rights Watch, "I talked about this. I said I did not like to work here because I am from this area. My family and village were destroyed." He was arrested several weeks after declining to fly in Darfur. [143]

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[141] Human Rights Watch interview, Khartoum, October 21, 2004.

[142] Human Rights Watch interview, Khartoum, October 21, 2004.

[143] Human Rights Watch interview, Khartoum, October 21, 2004.

VII. The Role of President Omar El Bashir and National Officials in Darfur Policy

The Sudanese government policy of "ethnic cleansing" was strategic and well-planned. Since early 2003, the leadership in Khartoum has relied on civilian administration, the Sudanese military and Janjaweed militias to implement a counterinsurgency policy that deliberately and systematically targeted civilians in violation of international law. Ultimate responsibility for the creation and coordination of the policy lies in Khartoum, with the highest levels of the Sudanese leadership, including President Omar El Bashir, Vice-President Ali Osman Taha, and key national ministers and security chiefs.

The Sudanese government is extremely hierarchical in many respects, and functions through a tight network of ruling party insiders.[144] Although further investigation to establish the details of the involvement of key national officials is necessary, the role of top Sudanese officials in coordinating the "ethnic cleansing" campaign is evident when the major offensives are analyzed. Even clearer is the pivotal role of President El Bashir himself, whose public statements were precursors to the call to arms and peaks in the violence, and no doubt echoed the private directives given to the civilian administration, military, and security services.

For instance, on December 30, 2003, President El Bashir announced that "Our top priority will be the annihilation of the rebellion and any outlaw who carries arms." [145] President El Bashir's public words predated, by a matter of days, the January 2004 offensive that used systematic force in violation of international humanitarian law to drive hundreds of thousands of people from rural areas. The Sudanese government's military campaign dramatically escalated in the first days of 2004: hundreds of villages across Darfur suffered initial or repeat attacks, some of extraordinary brutality. Witnesses allege that not just bombs but incendiary devices were also dropped during some of the attacks, although Human Rights Watch was not able to verify these claims.[146] The methodical use of aerial support to target civilians in the military campaign, despite protests from air force officers, also reflects the involvement of high-level officials in Khartoum.

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[144] For an explanation of how the ruling National Congress (NC) party came to and maintains power in Sudan, see footnote 53.

[145] "Sudanese President Vows to Annihilate Darfur Rebels: Report," Agence France-Presse, December 31, 2003.

[146] Human Rights Watch interviews, refugee camps, Chad, June 29, 2005 and July 2, 2005.

Senior Sudanese officials knew or should have known that recruiting abusive ethnic-based militias could have devastating consequences. Ethnic clashes over land and other resources had been taking place for years in the region at much lower levels. Individuals like Musa Hilal had contributed to the strained ethnic relations in some areas as a result of his attacks, and he had been detained by North Darfur governor Ibrahim Suleiman as a result. Ibrahim Suleiman, himself a ruling party insider but also from Darfur, told the *New York Times*: "When the problems with the rebels started in Darfur, we in the government of Sudan had a number of options. We chose the wrong one. We chose the very worst one."[147] Yet despite Hilal's record for, at a minimum, inciting ethnic tensions, he was released from prison, reportedly on Vice-President Taha's orders, and given unparalleled responsibility to recruit and command militia forces.

Senior government officials, including President El Bashir, received appeals to stop the attacks from various individuals ranging from members of the national assembly to lawyers representing victims from Darfur. Even before the current devastating phase of the conflict, in May 2002, eighteen members of the National Assembly from Darfur submitted a memorandum to President El Bashir describing attacks that took place between July 2000 and May 2002, and calling for government action.[148] Attorneys from Darfur who had documented dozens of attacks and unsuccessfully tried to pursue them through the justice system told Human Rights Watch they wrote to the Attorney General calling for investigations and prosecutions, received no response, and finally sent a memorandum to President El Bashir calling for a political solution to the rising conflict. The attorneys said the Sudanese president delegated presidential advisor Qutbi al Mahdi to meet with them in April 2003, but there was no follow up on their recommendations to the president.[149]

As noted above (Section VI.C), high-level insiders from the armed forces also complained about the attacks on civilians to their superiors by early 2004. Instead of taking action to prevent or punish the abuses, the Sudanese government continued to implement the same strategy of "ethnic cleansing," with similar results, in South Darfur in the December 2004 offensive.

Even without these specific warnings about the volatile situation in Darfur, the Sudanese leadership had more than a dozen years of experience of the dangers of using ethnic militias. The government's strategy of using ethnic militias in offensive military

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[147] "How Did Darfur Happen?" *The New York Times Magazine*, October 17, 2004.

[148] Human Rights Watch interview with Darfur MP, Khartoum, September 27, 2004.

[149] Human Rights Watch interview with Darfur attorneys, Khartoum, September 26, 2004.

operations during the long war in southern Sudan provided ample evidence that such forces invariably targeted civilians and committed other war crimes. Numerous attacks on the civilian population in southern Sudan wrought massive death and destruction, including several man-made famines resulting in the deaths of hundreds of thousands of people, most recently in Bahr el Ghazal in 1998.[150]

Some observers may have believed that the Sudanese government would be reluctant to use such tactics against a northern—and similarly Muslim—population. The Darfur campaign proves that this was not the case. Sudanese leaders, including President El Bashir, the top military and security chiefs, and a ring of chosen insiders, deliberately implemented a strategy of "ethnic cleansing" led by government-backed militia forces. This strategy has torn Darfur apart.

Even once it was clear that massive abuses were taking place, the Sudanese government did nothing to prevent further crimes or punish the offenders and continued to deny the scale of the atrocities and the resulting humanitarian crisis. In the initial months of the conflict, prior to the atrocities making international headlines in mid-2004, thousands of displaced people flooded Darfur's towns, complaining of the attacks and in many cases, initially calling on local government officials to send troops to protect them until they realized that they were under deliberate attack from the government.[151] Dozens, if not hundreds of complaints were filed with police but prompted no investigation or arrests of the perpetrators of the abuses.

By mid-2004, Darfur's atrocities had been documented by numerous organizations, including the U.N. Office of the High Commissioner for Human Rights, and were making headlines around the globe, including in the Arabic press, despite Sudanese government efforts to maintain a media blackout on Darfur.[152] President El Bashir and other senior officials had knowledge of the abuses and did little or nothing to prevent them, judging from the record of crimes carried out by the Sudanese armed forces and

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[150] Human Rights Watch, *Famine in Sudan, 1998: The Human Rights Causes*, (New York: Human Rights Watch, 1999).

[151] Human Rights Watch interviewed dozens of displaced people from across Darfur who consistently described fleeing to Sudanese army or police posts, or sending delegations of leaders to regional authorities to plead for army protection from the attacks. As the conflict continued and people became convinced they were being deliberately targeted, these pleas declined. Human Rights Watch interviews, Sudan and Chad, February 2004 – July 2005.

[152] Al Jazeera's bureau chief in Khartoum, Islam Salih, was detained for several weeks and convicted of "disseminating false information" by a Sudanese court in April 2004 after broadcasting stories about the abuses in Darfur in defiance of the Sudanese government's clampdown. Reporters sans Frontieres, "Call for Release of Al Jazeera Bureau Chief and End to Blackout on Reporting in Darfur," Press Release, April 13, 2004 at http://www.rsf.org/article.php3?id_article=9757

allied militias for months after these reports were widely known. The December 2004 South Darfur offensive, for instance, which took place eight months after the April 2004 ceasefire agreement, and even after President El Bashir had established a national inquiry into the crimes, displayed all the same characteristics as the previous offensives, including military coordination of the Janjaweed, aerial bombardment, and mass forced displacement of civilians.

A. Key National Policymakers

In addition to President El Bashir's role as commander-in-chief of the Sudanese Armed Forces, other senior officials, including Vice-President Ali Osman Taha, may have played equally important roles in Darfur policy and should be investigated. Frequent allegations have been made that Vice-President Ali Osman Taha is the key government policymaker where Darfur is concerned—and that he was one of the primary instigators of the policy of militia recruitment and use.

Vice-President Ali Osman Taha

Allegations, but as yet little documentary evidence, about Taha's role demonstrate the need for further investigation. For instance, community leaders in Darfur and others with whom Human Rights Watch spoke asserted that Vice-President Taha has a personal link to Musa Hilal, and it was through his personal authority that Hilal was released from prison in 2003, and elevated to be the coordinator of the Janjaweed militias.

Many community leaders and Darfurian elite told Human Rights Watch that nomadic militia members say they will answer only to Musa Hilal or Vice-President Taha. A Zaghwa omda said, "After June 2003, the government help for Musa Hilal was very open, and through Ali Osman Taha. The Arabs say, 'We don't know anyone in Sudan [recognize any authority], except if it comes through Ali Osman or Musa Hilal.' They say there is a direct link between Musa Hilal and Ali Osman Taha – Tajamu al Arabia [the Arab Gathering]."[153] A Berti sheikh also mentioned the connection between the vice-president and local Arab leaders, stating "After the visit of Ali Osman Taha to Fashir in 2000, people felt that the situation was changing because Arabs stopped listening to the local government in Fashir. They acted as if they were directly backed by Khartoum."[154] A fifty-two-year old Tunjur man now working with the SLA claimed to have witnessed a 2003 visit by vice-president Taha to Um Siyala, a known militia camp east of Kutum in

[153] Human Rights Watch interview with Zaghawa omda, North Darfur, July 26, 2004.

[154] Human Rights Watch interview with Berti leaders and villagers, North Darfur, August 2, 2004.

North Darfur. According to this witness, the vice-president "gave weapons to the Janjaweed. [I] was there when he visited the area."[155]

Maj. Gen. Abduraheem Mohammed Hussein

The former minister of the interior and now minister of defense, Maj. Gen. Abduraheem Mohammed Hussein,[156] appointed as presidential representative for Darfur in 2004, is also a key figure. Abduraheem Mohammed Hussein appears to have played a central role coordinating with regional civilian officials such as state governors and provincial commissioners in the implementation of the Darfur strategy of "ethnic cleansing." He and his deputy, Col. Ahmed Mohammed Haroun, were regularly in Darfur holding meetings with governors, commissioners, other local government representatives, military commanders, and security officials. Both were named by numerous witnesses who noted that their visits to Darfur and meetings with local officials always preceded military offensives and militia attacks. Several well-placed military officers named Hussein and Haroun as important figures in the coordination and planning of the military operations in Darfur.[157]

B. The Security Services

Numerous state security agencies are involved in intelligence gathering and various security functions in Darfur. Little is known about such agencies. Gen. Salah Abdallah Ghosh, the general director of Security and Military Intelligence based in Khartoum, has overall responsibility and is considered by most Sudanese observers to have enormous authority over security matters, perhaps only after President El Bashir and Vice-President Osman Taha. High-level officials and army insiders have suggested that Salah Ghosh reported directly to Vice-President Osman Taha, but this has not been verified.[158] A high-level officer in the armed forces told Human Rights Watch, "Security controls this country. The power is in Salah Ghosh. He can overrule the army and military intelligence."[159]

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[155] Human Rights Watch interview with Tunjur leader, North Darfur, August 4, 2004.

[156] Just prior to being appointed minister of defence, Abdulraheem Mohammed Hussein resigned his position as minister of interior—not because of his role in implementing and coordinating a policy of "ethnic cleansing," but because of the collapse of a building in Khartoum. "Sudanese Minister of Interior Resigns Following Building Collapse," *Arabicnews.com* at http://www.arabicnews.com/ansub/Daily/Day/050617/2005061722.html

[157] Human Rights Watch interviews, Khartoum, October 2004.

[158] Human Rights Watch interviews, Khartoum, October 2004.

[159] Human Rights Watch interview, anonymous, North Khartoum, October 21, 2004.

Sudanese security officials have for many years been implicated in serious human rights abuses, including arbitrary detention and torture.[160] Selected security agents are believed to be liaisons with the Janjaweed leaders. According to a well-informed Zalingei resident, "Security has its own unit collecting information and working inside the Arab tribes to defend security."[161] This claim was echoed by other credible sources, including Sudanese journalists who investigated events in Darfur. Not unexpectedly, the security services have some direct responsibilities within each state, and are members of the state security committees. One local security chief in South Darfur told Human Rights Watch that he reported to the state governor, although there is no doubt also a direct reporting line to security chief Salah Ghosh in Khartoum.[162]

Military intelligence is also widely believed to have been an important contact and conduit for supplies for the Janjaweed. Human Rights Watch was told by a range of sources including UN officials, SLA members, and former members of the armed services that at least for Darfur operations, the main link between the Janjaweed and military intelligence was an armed forces officer from the Beni Hussein tribe, Gen. Al Hadi Adam Hamid, who reported to the deputy minister of the interior, Ahmed Mohammed Haroun.[163] A former high-ranking officer in the armed forces noted Gen. Hamid's contacts with the ministry of interior:

> The military intelligence department was led by Al Hadi Adam Hamid, based in Khartoum. He travels to Darfur. The military intelligence department is shadow Janjaweed. Some officers such as Lt. Col. Abdel Wahid Said Ali Said [the military chief in Misteriya], Shukortalla, and Dafalla are military intelligence army officers who work with the Janjaweed. The links are with Ahmed Haroun and they take orders from him.[164]

An international investigator also noted the role of General Hamid and military intelligence as arms conduits for the militias:

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[160] See numerous Amnesty International reports on Sudan at www.amnesty.org and also reports from the Sudan Organization Against Torture (SOAT) at http://www.soatsudan.org/

[161] Human Rights Watch interview, Zalingei, West Darfur, October 18, 2004.

[162] Human Rights Watch interview with Abdul Azim Abdallah, Director of Security for South Darfur, Nyala, South Darfur, October 3, 2004.

[163] Confidential communications to Human Rights Watch from international observers and interviews in Khartoum and other locations, June, July, and October 2004.

[164] Human Rights Watch interview, Khartoum, October 21, 2004.

> The Janjaweed are PDF and border guards under the military intelligence. Maybe in Nyala and Geneina there are more PDF but the border guards have a different uniform and identification papers, they are directly under Military Intelligence. Gen. Al Hadi Adam Hamid is the head of the border guards. He was formerly the conduit for support to the Janjaweed—he even acknowledged to a U.S. military intelligence officer that he was the conduit.[165]

VIII. Entrenching Impunity

There are immediate steps that the government of Sudan could take to bring some relief to the millions of displaced and conflict-affected civilians in Darfur, prevent future abuses, and begin the reversal of "ethnic cleansing." These steps would include the Sudanese government's: acknowledgement that Sudanese security forces and militias have committed atrocities; beginning the disarmament of the Janjaweed militias; suspending suspected war criminals from government positions pending investigation; dismissing police and security agents who have committed crimes; providing genuine security to civilians in Darfur, particularly along the roads and in the towns; and ending discriminatory practices towards targeted ethnic groups, including arbitrary arrest and detention.

To date the Sudanese government has shown no willingness to take any of these steps. Despite overwhelming information that the Sudanese government has planned, coordinated, and implemented a campaign of ethnic cleansing resulting in crimes against humanity and war crimes in Darfur, not a single mid- or high-ranking civilian official or military officer has been investigated, disciplined, or prosecuted.

The Sudanese government launched an internal investigation in mid-2004, created at least three different ad hoc committees to respond to the allegations, and established a new tribunal to investigate and try perpetrators of crimes in Darfur. The record so far amounts to little more than a superficial effort to show that something is being done in response to international demands. None of these initiatives have demonstrated any genuine will or effort to provide accountability or justice for the victims in Darfur.

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[165] Human Rights Watch interviews, Khartoum, September 15 and October 21, 2004.

A. No Disarmament of the Janjaweed

> *Two officers were sitting in chairs and were ordering eleven soldiers to give the weapons to the Janjaweed. They had lists of Janjaweed, by names. They were writing down the serial number of the weapon next to the name of the Janjaweed to whom the weapon was actually handed over. It took a very long time, from 7 a.m. to 8 p.m.*
>
> —Captured government soldier formerly based in Kebkabiya [166]

The Sudanese armed forces provided weapons, ammunition, uniforms, communications equipment, vehicles, and other support to the Janjaweed militias incorporated in the Popular Defense Forces, as well as to the ethnic militias in looser affiliation with the armed forces. The distribution of arms was not random; it was organized and weapons were registered. Individuals in the PDF and other militias received identification cards and numbers. Human Rights Watch has obtained copies of both weapons registration lists and individual identification cards issued to militiamen in the PDF.

Although the Sudanese government may no longer have full control over all the militia members it recruited, funded, armed, and coordinated, the fact remains that the Sudanese government has never tried to exercise such control. The "out of control" state of affairs provides the government with the deniability it believes it needs to counter international protests about the scale of killing, destruction, and displacement in Darfur; the same strategy it used in southern Sudan with the ethnic militias there. This "out of control" situation has been evolving for some time: instead of taking steps to reduce support to militia, since mid-2004—after it signed the humanitarian ceasefire agreement in N'djamena— the Sudanese government has widened the circle of militia groups to whom it gives full or partial support. While it was making various promises to disarm and rein in the militias, top Sudanese security officials in May and early June 2004, summoned several militia leaders to Khartoum and gave them allotments of supplies.[167]

In late May, the militia leader known as Abu Ashreen, a follower of Musa Hilal, allegedly spent several weeks in Khartoum and had close contacts with Maj. Gen. al Hadi Adam Hamid from Military Intelligence, who is close to General Director of Security, Gen. Salah Abdallah Ghosh. Abu Ashreen allegedly received weapons, medicines, uniforms,

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[166] Human Rights Watch interview with government soldier in SLA custody, North Darfur, July 14, 2005. Human Rights Watch interviewed all detained combatants in a private room, without any SLA captors present.

[167] Confidential communications to Human Rights Watch from an international observer in Khartoum, June 4, 2004.

and other supplies in Khartoum, and was flown back to Fashir by Antonov in the first week of June.[168] In June, another tribal leader from South Darfur reportedly received similar treatment.[169]

The Sudanese army regularly continued to supply militia camps in all three states with salaries, weapons, ammunition, and food. For instance, a former militia member who lived in the Misteriya camp noted that a helicopter came three times a week with letters, ammunition, and food.[170]

There have been no meaningful efforts by the Sudanese government to disarm the Janjaweed. Instead, the government has simply incorporated many Janjaweed into various units of the security forces. For instance, in Fashir, many Janjaweed militia members have been absorbed into the Central Reserve Police after training in Khartoum.[171] This has led to problems within the security forces as well as continuing violence against civilians, in some cases directly from members of the "new" police. Most of Musa Hilal's recruits in Misteriya base were also absorbed into various paramilitary groups by late 2004, after discussions between Hilal and Lieutenant Colonel Abdel Wahid about how best to distribute military identity cards to the recruits.[172]

The Sudanese government has conducted a few exercises where alleged Janjaweed were ostensibly disarmed. These efforts, which took place in Geneina and Kass in 2004, were little more than propaganda aimed at the international community. In one such exercise, for instance, AMIS military observers were invited to observe the collection of several hundred firearms from militia members. According to a former AMIS member interviewed by Human Rights Watch, the serial numbers of the collected arms were in sequence, indicating that they had just been brought out of stock for the show.[173]

Short of attempting to forcibly disarm the Janjaweed, which now could prove difficult, the government has other options to control and disarm them that it has yet to explore, such as providing payments or other incentives in exchange for weapons.[174]

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[168] Ibid.

[169] Ibid.

[170] Confidential e-mail communication to Human Rights Watch from someone who interviewed the former militia member, June 26, 2004.

[171] Interviews with Sudanese residents of Fashir, February 2005.

[172] Human Rights Watch interview, Kebkabiya, North Darfur, October 4, 2004.

[173] Human Rights Watch interview with former A.U. military observer, Netherlands, September 15, 2005.

[174] The potential for Janjaweed groups to challenge the government is suggested by recent reports that particularly in West Darfur the alliance between the Sudanese government and some of its ethnic militias is

B. Individual Impunity from Prosecution

The Sudanese government has failed to investigate, let alone prosecute, local, regional, and national officials who planned, coordinated, and implemented "ethnic cleansing" or were otherwise implicated in war crimes and crimes against humanity (see also Annex 1).

The recent appointments of ministers and state ministers and other high-ranking officials in the new Government of National Unity is little more than a reshuffling of the persecutors of Darfur. Many civilian officials who may have been responsible for serious international crimes remain in government. For instance, the former minister of the interior, Abdelraheem Mohammed Hussein, is now minister of defense. His deputy, Ahmed Haroun, has made a lateral shift to the Ministry of Humanitarian Affairs, where he remains a deputy minister. The former minister of defense, Bakri Hassan Salih, is now minister of the presidency.

In Darfur, the civil service remains unchanged. According to the information available to Human Rights Watch, only a few of those implicated in the atrocities are no longer in official positions, namely Ahmed Angabo Ahmed, ex-commissioner of Kass; El Tayeb Abdallah Torshain, commissioner of Mukjar, and Adam Hamid Musa, ex-governor of South Darfur. All three officials apparently left for reasons unrelated to their records; none of them was suspended from duty. Neither they nor any of the officials who remain in their positions have been investigated or prosecuted for crimes in Darfur.[175]

Other individuals who may have been responsible for crimes, including the provincial commissioners of Nyala, Kebkabiya and Nyertite, remain in their positions. The governor of North Darfur, Osman Mohammed Yusuf Kibir, and the governor of South Darfur, Alhaj Attar el-Mannan Idris (who replaced Adam Hamid Musa in mid-2004 and was present throughout the massive offensive of late 2004), remain in place and were recently re-nominated by President El Bashir to continue as governors. At least one individual, the former commissioner of Garsila, Ja'afar Abd el Hakh involved in the Wadi Saleh mass executions as described above, has been promoted: in October 2005, he was made governor of West Darfur state.

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fraying. See Marc Lacey, "Chaos grows in Darfur Conflict as Militias Turn on Government," *The New York Times*, October 18, 2005.

[175] Adam Hamid Musa currently heads a (reportedly government-backed) organization called the Darfur Peace and Development Forum, and attended the peace talks in Abuja, Nigeria, in October 2005. See "Darfur Forum Representatives Arrive for Talks in Abuja," *Xinhua*, October 9, 2005, at http://www.sudantribune.com/article.php3?id_article=11995. Ahmed Angabo Ahmed's whereabouts are currently unknown.

C. No Justice: The National Tribunal for Crimes in Darfur[176]

In late January 2005, the International Commission of Inquiry established by U.N. Security Council Resolution 1564 published the findings of its three-month investigation of crimes in Darfur. The Commission of Inquiry's report concluded that there was insufficient evidence to conclude that there was a state policy of genocide, but stated: "International offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide."[177] The report "strongly recommended" that the Security Council refer the situation in Darfur to the ICC, noting that "the Sudanese justice system is unable and unwilling to address the situation in Darfur."[178]

On March 31, 2005, the U.N. Security Council acted on the recommendation and referred the situation in Darfur to the ICC.[179] Under the Rome Statute of the International Criminal Court, the jurisdiction of the international court is complementary to that of national tribunals.[180] In other words, if national courts initiate good faith proceedings against possible perpetrators of war crimes, crimes against humanity, genocide, and other crimes within its jurisdiction, the ICC is barred from proceeding with the same cases. Although the Commission of Inquiry had already come to the conclusion that the Sudanese justice system was unable and unwilling to address the crimes in Darfur, the prosecutor of the ICC was obliged to make his own assessment prior to initiating an investigation.[181]

On June 6, 2005, ICC Prosecutor Luis Moreno Ocampo announced that the ICC would investigate the crimes in Darfur, focusing on "the individuals who bear the greatest

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[176] Human Rights Watch will analyze the new Sudanese tribunal on Darfur in greater detail in a forthcoming report.

[177] United Nations, "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General," at http://www.un.org/News/dh/sudan/com_inq_darfur.pdf

[178] Ibid., p. 5.

[179] S/1593/2005

[180] This "principle of complementarity" states that it is the primary responsibility and duty of the national government to prosecute the most serious international crimes, while allowing the ICC to step in only as a last resort if the state fails to implement its duty—that is, only if investigations and, if appropriate, prosecutions are not carried out in good faith. Bona fide state efforts to discover the truth and to hold accountable those responsible for any acts of genocide, crimes against humanity or war crimes will bar the ICC from proceeding, even against those "most responsible." For further information see the Rome Statute of the International Criminal Court and "Questions and Answers about the ICC," at http://www.hrw.org/campaigns/icc/qna.htm.

[181] The obligation of the ICC Prosecutor to assess the willingness and ability of a state's justice system to take action is ongoing. This ongoing obligation was cited by the ICC Prosecutor in "The Statement of the Prosecutor of the International Criminal Court Mr. Luis Moreno Ocampo to the Security Council on 29 June 2005 Pursuant to UNSCR 1593" (2005) p. 4.

criminal responsibility for crimes committed in Darfur."[182] The following day, June 7, the Sudanese government suddenly announced the establishment of the Special National Criminal Court for Darfur, a new tribunal to begin proceedings immediately in collaboration with state prosecutors in Darfur.[183] The timing and speed of the tribunal's establishment was another effort to defeat the ICC's jurisdiction over crimes in Darfur, as some Sudanese officials even acknowledged.[184] Ali Mohammed Osman Yassin, then Sudanese minister of justice, apparently told Sudanese press that the court was "considered a substitute to the International Criminal Court."[185]

The new court was based in Fashir, with the authority to hold hearings in other locations. By June 18, 2005, the court held its first hearings in Nyala. By August, six cases had been or were in the process of being tried. The cases ranged from the rape of a sixteen-year-old girl by PDF members during an attack on a bus (see below), to incidents of armed robbery and murder by soldiers, to a case of looting of eighty sheep. None involved war crimes or defendants of any stature in the government forces, civilian administration, or militias.

Yet official complaints had been filed in cases alleging war crimes. For instance, Human Rights Watch was told that tribal leaders from Hamada, South Darfur—which (as noted above in Section VI.B) suffered a brutal attack in January 2005, in which scores of civilians were killed—had filed complaints with the police in Nyala. The state prosecutor and other local officials were also well aware of the attacks on the civilian populations of Marla, Khor Abeche and other villages, but insisted that the cases could not be taken to court because the identity of the perpetrators remained unknown.[186] Knowledge of the identity of the perpetrators was hardly the real problem, however: Musa Hilal and other militia leaders had been publicly accused of crimes for months, and were even included on a U.S. State Department list of militia leaders. Other individuals, such as Brig. Gen. Ahmed Al Hajir Mohamed, who led the Sudanese armed forces in their South Darfur offensive in December 2004, were also named in publicly available

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[182] "The Prosecutor of the ICC Opens Investigation in Darfur," ICC, The Hague, June 6, 2005, at http://www.icc-cpi.int/press/pressreleases/107.html

[183] The Chief Justice signed decree no.702 establishing the Special National Criminal Court on Darfur on June 7,
2005 (the day after the OTP announced the start of the investigation), with immediate effect. On June 11, Justice Makmoud Mohammed Said Abkam, a member of the Sudanese Supreme Court, was named president of the new court.

[184] Press Release of Chief Justice Jalal el Din Mohammed Osman, June 7, 2005, at http://www.sudan-embassy.de/pages/special_court_for_crimes_in_darfurpag.html

[185] "Sudan: Judiciary challenges ICC over Darfur cases," *IRIN*, June 24, 2005, at http://www.irinnews.org/report.asp?ReportID=47802&SelectRegion=East_Africa&SelectCountry=SUDAN

[186] Confidential communication to Human Rights Watch from an international observer, August 16, 2005.

AMIS reports. The problem was the refusal of the police, military and security to seriously investigate any allegation where government officials engaged in counterinsurgency operations might be implicated.

In South Darfur, Governor Alhaj Attar el-Mannan Idris set up investigation committees to look into some of the worst attacks, including the well-publicized Khor Abeche attack of April 7, 2005, where Misseriya militias from Niteiga attacked and destroyed much of the town of Khor Abeche.[187] The U.N. and AMIS strongly denounced the attack and publicly called for the leader of the Misseriya miltias, Nazir Al Tijani Abdel Kadir, to be placed on the U.N. sanctions list.[188] No Sudanese judicial or investigatory action was taken on Khor Abeche or any other major case, however. According to a credible source, Governor Alhaj Attar el-Mannan tried to pressure the leaders from Hamada to withdraw their complaint.[189]

The Sudanese government has since made it even more difficult to prosecute soldiers implicated in war crimes or crimes against humanity. On August 4, 2005, President El Bashir signed an amendment to the People's Armed Forces Act, which conferred immunity from prosecution on any "officer, ranker or soldier" who committed crimes in the course of his duties, unless the prosecution was permitted by the "General Commander or whoever authorized by him."[190]

Inaction on rape and sexual violence

The Sudanese government's refusal to pursue the perpetrators of war crimes and crimes against humanity was highlighted by its attitude and legal antics regarding the crime of rape. Despite numerous, consistent, and credible reports documenting the existence of patterns of rape and sexual violence that may amount to war crimes or crimes against humanity,[191] the Sudanese government consistently refuses to acknowledge the scale and

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[187] Decree No. 26 h 1426, on file with Human Rights Watch.

[188] Edith Lederer, "Over 350 Militiamen Attack, Destroy Darfur Village-UN, AU," Associated Press, April 9, 2005, at http://www.sudantribune.com/article_impr.php3?id_article=8971

[189] Confidential communication to Human Rights Watch from an international observer, July 28, 2005.

[190] The decree reads:

Temporary Decree, People's Armed Forces Act 1986, Amendment 2005
Seeking Permission to Institute Criminal Procedures Against Any Officer, Ranker or Soldier

There shall not be taken any procedures against any officer, ranker or soldier who committed an act that may constitute a crime done during or for the reason of the execution of his duties or any lawful order made to him in this capacity and he shall not be tried except by the permission of the General Commander or whoever authorized by him.
Made under my signature August 4th 2005, Omer Hassan Ahmed Al Bashir

[191] See the report of the International Commission of Inquiry, and also Amnesty International, "Darfur: Rape as a Weapon of War," AFR 54/076/2004, July 19, 2004, at http://web.amnesty.org/library/index/engafr540762004

gravity of the crimes.[192] Instead of investigating and prosecuting the perpetrators, the Sudanese police and other authorities have repeatedly failed to act appropriately on those complaints they have received. In some cases police officers have actively threatened or even abused women and girls suspected of being victims of rape.[193] International humanitarian agencies providing medical care to rape victims have also been harassed for publicizing the scale of the problem and refusing to reveal the identity of their patients, which would be a violation of doctor-patient confidentiality.[194]

Although, as noted above, the new Special Court for Darfur has tried one case of rape, the circumstances of the trial provoked further concerns. The case involved a sixteen-year-old girl who had been raped when the bus she was traveling on was attacked by armed men in December 2004. According to credible reports received by Human Rights Watch, the girl and her lawyers were only informed that the court would hear the case the morning of the hearing. When the lawyers representing the victim protested at the lack of notice, the chief judge apparently said that given the court's special status, "even five minutes notice" was considered sufficient to notify any witness to give testimony.[195] In addition, although the victim's lawyers requested a closed session—so that the girl could give her evidence without the media and public present—the judge refused, apparently stating that the public was there already and that it was important for people to see the case.[196]

Human Rights Watch heard from one source that initially the eight men accused of raping the girl were convicted by the Special Court, but that judgment was later reversed by the appeals court on the grounds that the defendants were immune from prosecution due to the August 4 presidential decree. The Sudanese Armed Forces then agreed for the

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[192] Emily Wax, "Sudanese Rape Victims Find Justice Blind to Plight," *The Washington Post*, November 8, 2004. See also United Nations, "Access to Justice for Victims of Sexual Violence" United Nations High Commissioner for Human Rights, July 29, 2005, at http://www.ohchr.org/english/press/docs/20050729Darfurreport.pdf

[193] Katharine Houreld, "Gang-raped and Pregnant, These Women Thought Their Ordeal Was Over When They Went to the Police. They Were Wrong." *The Sunday Telegraph*, London, March 13, 2005, at http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/03/13/wsudan13.xml

[194] In May 2005, two staff members from Médecins sans Frontières (MSF) were arrested by the Sudanese government on charges of "crimes against the state" and publishing false reports. Two months earlier MSF had published a report, "The Crushing Burden of Rape: Sexual Violence in Darfur, Sudan," which starkly described the prevalence of rape and sexual violence in Darfur: MSF had treated almost five hundred women and girls who had been raped in less than five months. Charges against the two MSF staff were dropped after considerable public outcry and diplomatic pressure, but other agencies privately complained of similar threats to their staff and programs. See the MSF report at http://www.msf.org/msfinternational/invoke.cfm?component=report&objectid=99CD9F41-E018-0C72-09C703FCC9098A2B&method=full_html

[195] Communication from individual present at the trial to Human Rights Watch, July 6, 2005.

[196] Ibid.

defendants to be retried and the case returned to the Special Court, where the defendants were acquitted.[197]

In October 2005, the Chairman of the new Special Court, Mahmoud Abkam, signaled that none of the major cases of mass rape in Darfur would be considered by the Special Court. He said: "the rape cases which the court was looking into were individual cases.… The court had not found anything on the ground about the cases which Western media always speak about."[198] He reiterated the Sudanese government's dismissal of mass rape as a "Western fabrication," and formalized the government's position of not pursuing accountability for most of the rape cases. Also in October 2005, in a meeting with the U.N. special rapporteur on human rights in Sudan, the newly-appointed minister of justice, Mohammed Ali al-Maradi, repeated the Sudanese government's refusal to cooperate with the ICC investigation, noting that the Sudanese government was committed to prosecuting the suspects within the national legal system.[199]

D. Destroying Evidence?

Many civilians have claimed that government forces and Janjaweed have deliberately destroyed mass graves and other evidence. The SLA has also made this claim, and stated that it recaptured the Abu Gamra area in February 2005, partly because they wanted to preserve the mass graves and other forensic evidence.

When Human Rights Watch researchers visited Abu Gamra in July 2005, there were few civilians left. The residential neighborhoods of the village had been entirely destroyed. All that stood were the mud walls of burned huts. The market, school, and mosque had also been destroyed, probably by Antonovs, helicopters, or bulldozers. What was not destroyed was looted: for instance even the windows were ripped out of school walls.

Human Rights Watch visited the sites of two alleged mass graves, one from December 2003 and allegedly containing more than one hundred bodies, and the second apparently dug after the second attack in 2004, and reportedly also holding more than one hundred dead. Researchers saw a field strewn with skeletons, some still wearing clothes. They appeared to be where the victims had fallen and were still on the surface.

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[197] Human Rights Watch interview with Sudanese lawyer, November 2005.

[198] "Darfur Rape Cases are Individual," *Sudan Tribune*, October 24, 2005, at http://www.sudantribune.com/article.php3?id_article=12245

[199] "Sudan Reiterates Opposition to Try Darfur Suspects Before ICC," *Sudan Tribune*, October 17, 2005, at http://www.sudantribune.com/article.php3?id_article=12116

While Human Rights Watch cannot confirm the reports of government forces destroying mass graves and other forensic evidence of their abuses, the stories of such cleansing operations have now become numerous, not just from the Abu Gamra area, but also from other areas of Darfur such as Wadi Saleh. For instance, after the first visit by A.U. monitors to Garsila, West Darfur, in March 2005, Human Rights Watch heard credible reports that mass graves in and near the town containing the bodies of victims of the March 2004 executions were dug up and the remains burned.[200]

Human Rights Watch has also obtained copies of documents purportedly originating from Musa Hilal's command base in Misteriya that are addressed to security agencies and national officials. Human Rights Watch cannot confirm the authenticity of these documents, but if genuine, they are extremely damning. One of the documents, dated August 2004, orders that forces dispose of mass graves and other evidence.[201]

IX. Culpability of Individuals under International Law

International crimes committed in Sudan include war crimes and crimes against humanity. Since July 2003, Sudanese government forces and government-backed Janjaweed militias have committed numerous war crimes and crimes against humanity against civilians, civilian property, and civilian populations of the same ethnicity as rebel forces. Rebel forces may also be responsible for war crimes.

International humanitarian law (the laws of war) imposes upon states and armed groups, legal obligations during armed conflicts to reduce unnecessary suffering and to protect civilians and other non-combatants.[202] The conflict in Darfur is considered under international humanitarian law to be a non-international (or internal) armed conflict. The law applicable is article 3 common to the four Geneva Conventions of 1949 and customary international humanitarian law.[203] Although Sudan has not ratified the

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[200] Human Rights Watch interview, location withheld, April 2005.

[201] Document on file with Human Rights Watch.

[202] During armed conflicts, international human rights law remains in effect, though it may be superseded by more specific provisions of international humanitarian law (the principle of *lex specialis*). Human rights law may also be limited by so-called derogation clauses imposed under a state of emergency. Some rights can never be derogated from, including the right to life, the right not to be tortured or otherwise mistreated, the right not to be charged ex post facto, and the right to freedom of thought, conscience and religion. International humanitarian law has been increasingly interpreted to be consistent with the requirements of human rights law. Thus the fundamental guarantees provided to all persons in custody under common article 3 to the 1949 Geneva Conventions and customary international humanitarian law also can be found in international human rights law.

[203] An authoritative study of customary international humanitarian law is the two-volume ICRC *Customary International Humanitarian Law* (2005). Important sources of customary international humanitarian law are the

Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), most of its provisions, including those concerned with protecting the civilian population, are considered reflective of customary international law.[204] Violations of the laws of war for which there is individual criminal liability are considered war crimes.

Crimes against humanity are unlawful acts committed as part of a widespread or systematic attack against a civilian population. The acts that constitute crimes against humanity include murder, extermination, enslavement, deportation, arbitrary detention, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts.

The widespread and systematic abuses by government and Janjaweed forces against ethnic groups believed to be linked to the rebels amount to an attack on a civil population within the definition of crimes against humanity. The pattern of similar crimes against civilian populations in different areas of Darfur, as well as documentary and eyewitness evidence linking senior government officials with abusive military operations, point to a policy at the highest levels of the Sudanese government. Whether that policy amounted to genocide remains unclear. The International Commission of Inquiry into the crimes in Darfur concluded that there was no government policy of genocide, but that crimes may have been committed by individuals with genocidal intent and that this question should be resolved in a court of law.[205]

Determining whether there was genocidal intent requires access to government documents and to those in the leadership who planned and coordinated the campaign in Darfur. But the demonstration of intent needed for a finding of genocide is not needed to show crimes against humanity or war crimes. The question of genocide aside, the Sudanese government -- and the responsible civilian officials, members of the armed forces and militia members -- must be held accountable for crimes against humanity and war crimes in Darfur that resulted in thousands of civilian victims.

Many Sudanese government officials, military commanders and militia leaders were in positions of authority over the soldiers and militia members who committed the

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First and Second Additional Protocols of 1977 to the 1949 Geneva Conventions (respectively Protocol I and Protocol II).

[204] See, e.g. Theodore Meron, *Human Rights and Humanitarian Norms as Customary Law*, 1989, pp. 62-70, 74-78 (discussing the customary law character of certain aspects of Protocol I).

[205] United Nations, "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General," at http://www.un.org/News/dh/sudan/com_inq_darfur.pdf

atrocities. Some issued orders to attack civilians, destroy villages, and loot civilian property for which they are liable as a matter of individual criminal responsibility. Others may be found responsible under the doctrine of command responsibility: Military or civilian leaders are liable for serious abuses committed by persons under their command or authority if they knew or should have known of the abuses, and did not take measures to prevent them or punish the perpetrators. Attacks on civilian populations were organized at high levels of government, were continued for more than two years with the full knowledge that the targets were civilians, and resulted in no serious steps to punish those responsible for the crimes committed.

Presenting allegations of international crimes is only a first step; extensive criminal investigations are required. But gathering evidence for prosecutions of international crimes is extremely difficult in the current climate in Sudan. Witnesses must be able to come forward without fear of retribution, crime scenes must remain untampered with, and forensic and documentary evidence must be shown to be genuine. Given the absence of its own serious investigations, the Sudanese government must allow and ensure the safety of international investigators, prevent threats and violence against witnesses, and open up its governmental records for outside scrutiny.

A. Violations of International Humanitarian Law

All forces during an armed conflict must prevent unnecessary suffering, ensure humane treatment of persons in their control, and uphold the distinction between combatants and civilians. It is always forbidden to target civilians, and government armed forces and non-state armed groups must take all feasible precautions to minimize civilian harm. Violations of the laws of war that incur individual criminal responsibility are war crimes.

The principle of distinction between civilians and combatants is recognized as a fundamental principle of international humanitarian law in all armed conflicts. This principle provides that parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants and other military objectives, and not against civilians or civilian objects.[206] Attacks that are primarily designed to spread terror among the civilian population are prohibited.[207] Civilians are protected from attack unless, and for only such time as they take a direct part in

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[206] ICRC, *Customary International Humanitarian Law,* Rules 1 and 7, citing Protocol I, articles 48, 51(2), 52(2); Protocol II, article 13(2).

[207] ICRC, *Customary International Humanitarian Law,* Rule 2, citing Protocol I, art. 51(2); Protocol II, article 13(2).

hostilities. In case of doubt whether a person is a civilian, that person is considered a civilian.[208]

A legitimate military objective is an object or a target, selected by its nature, location, purpose, or use, that contributes effectively to the enemy's military capability, and whose destruction or neutralization offers a definite military advantage in the circumstances.[209] Legitimate military objectives include the enemy's forces, weapons, convoys, installations, and supplies. In addition, objects generally used for civilian purposes, such as houses, commercial buildings, or a civilian airfield, can become military objectives if their location or use meets the criteria for a military objective.[210]

The principle of distinction is also enshrined in common article 3 of the four Geneva Conventions, which imposes legal obligations on all parties to a conflict to ensure humane treatment of persons not, or no longer, taking an active role in hostilities. Common article 3 states:

> Persons taking no active part in the hostilities, including members of armed forces who had laid down their arms and those placed *hors de combat* [out of combat] by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

Common article 3 expressly binds "each Party to the conflict," that is, government forces and non-state armed groups, even though the latter do not have the legal capacity to sign the Geneva Conventions.

With regard to civilians and captured combatants, both government and rebel forces are prohibited from using violence to life and person, in particular murder, mutilation, cruel treatment, and torture. The taking of hostages is forbidden, as is humiliating and degrading treatment. No party to the conflict may pass sentences or carry out executions

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[208] Protocol I, Article 50(1). Some states have expressed reservations about the military implications of a strict interpretation of this rule. According to the ICRC, "when there is a situation of doubt, a careful assessment has to be made as to whether there are sufficient indications to warrant an attack. One cannot automatically attack anyone who might appear dubious." See ICRC, *Customary International Humanitarian Law*, pp. 23-24.

[209] ICRC, *Customary International Humanitarian Law,* rule 8, citing Protocol I, art. 52(2).

[210] Michael Bothe et al., *New Rules for Victims of Armed Conflicts*, (Hague: Martinus Hijhoff, 1982), pp. 306-07.

without previous judgment by a regularly constituted court that has afforded the defendant all judicial guarantees.[211]

Customary international humanitarian law provides additional protections for civilians in internal armed conflicts. While not an all-inclusive list, the following are prohibited by all sides: rape and other forms of sexual violence;[212] enforced disappearance;[213] arbitrary deprivation of liberty;[214] and, collective punishments.[215]

In addition, parties must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.[216] The freedom of movement of humanitarian relief workers must be ensured.[217]

B. Crimes against Humanity

Crimes against humanity were first codified in the charter of the Nuremberg Tribunal of 1945. The purpose was to prohibit crimes "which either by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied … endangered the international community or shocked the conscience of mankind."[218] Since then, the concept has been incorporated into a number of international treaties and the statutes of international criminal tribunals, including the Rome Statute of the ICC.[219]

The ICC Statute defines crimes against humanity as unlawful acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[220] Murder, extermination, enslavement, deportation, arbitrary

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[211] Common article 3 to the 1949 Geneva Conventions.

[212] ICRC, *Customary International Humanitarian Law,* rule 93, citing 1949 Geneva Conventions, common article 3; Protocol I, art. 75(2); Protocol II, art. 4(2).

[213] ICRC, *Customary International Humanitarian Law,*rule 98

[214] ICRC, *Customary International Humanitarian Law,* rule 99. Arbitrary deprivation of liberty violates the right to humane treatment under common article 3 to the Geneva Conventions.

[215] ICRC, *Customary International Humanitarian Law,* rule 103, citing Hague Regulations, art. 50; Third Geneva Convention, art. 87; Fourth Geneva Convention, art. 33.

[216] ICRC, *Customary International Humanitarian Law,* rule 55, citing Fourth Geneva, article 23; Protocol I, art. 70(2).

[217] ICRC, *Customary International Humanitarian Law,* rule 56, citing Protocol I, article 71(3); Protocol II, article 18(2).

[218] History of the United Nations War Crimes Commission and the Development of the Laws of War (1943), p. 179, quoted in Rodney Dixon, "Crimes against humanity," in *Commentary on the Rome Statute of the International Criminal Court* (O. Triffterer, ed.) (1999), p. 123.

[219] Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, entered into force July 1, 2002.

[220] ICC Statute article 7.

detention, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts all fall within the range of acts that can qualify as crimes against humanity.[221] Unlike war crimes, crimes against humanity may be committed in times of peace or in periods of unrest that do not rise to the level of an armed conflict. Because crimes against humanity are considered crimes of universal jurisdiction, all states are responsible for bringing to justice those who commit crimes against humanity.

Crimes against humanity include those abuses that take place as part of an attack against a civilian population. So long as the targeted population is of a predominantly civilian nature, the presence of some combatants does not alter its classification as a "civilian population" as a matter of law.[222] Rather, it is necessary only that the civilian population be the primary object of the attack.[223] Thus abuses committed by Sudanese government forces and Janjaweed militias against civilians during the course of military operations against rebel forces will fall under the definition of crimes against humanity.

The attack against a civilian population underlying the commission of crimes against humanity must be widespread or systematic. It need not be both.[224] "Widespread" refers to the scale of the acts or number of victims.[225] A "systematic" attack indicates "a pattern or methodical plan."[226] International courts have considered to what extent a systemic attack requires a policy or plan, but such policy or plan need not be adopted formally as a policy of the state.[227]

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[221] ICC Statute, article 7(1).

[222] See, e.g., *Prosecutor v. Naletilic and Martinovic*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber (ICTY), March 31 2003, par. 235, "The population against whom the attack is directed is considered civilian if it is predominantly civilian"; *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda, Trial Chamber, September 2 1998, par. 582: "Where there are certain individuals within the civilian population who do not come within the definition of civilians, this does not deprive the population of its civilian character"; *Prosecutor v. Jelisic*, ICTY Trial Chamber, December 14 1999, par. 54, "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

[223] See Naletilic and Martinovic, para. 235.

[224] The attack need only be widespread or systematic, not both. *Prosecutor v. Tadic*, ICTY Trial Chamber, par. 646: "it is now well established that…the acts…can…occur on either a widespread basis or in a systematic manner. Either one of these is sufficient to exclude isolated or random acts."

[225] Akayesu defined widespread as "massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims", *Prosecutor v. Akayesu*, Judgment, September 2, 1998, para. 579; see also, Kordic and Cerkez, ICTY, trial chamber, February 26, 2001, para. 179; Kayishema and Ruzindana, ICTR Trial Chamber, May 21, 1999, para. 123.

[226] Tadic, para. 648. In Kunarac, Kovac and Vokovic, the Appeals Chamber stated that "patterns of crimes—that is the non-accidental repetition of similar criminal conduct on a regular basis—are a common expression of [a] systematic occurrence." Para. 94.

[227] Akayesu, para. 580.

Culpability for crimes against humanity requires that the perpetrator have the relevant knowledge of the underlying attack.[228] That is, perpetrators must be aware that their actions formed part of the widespread or systematic attack against the civilian population.[229] While perpetrators need not be identified with a policy or plan underlying crimes against humanity, they must at least have knowingly taken the risk of participating in the policy or plan.[230]

C. Individual Criminal Responsibility

All individuals, including government officials, military commanders, soldiers, militia members, and civilians, are subject to prosecution for war crimes, crimes against humanity, and applicable domestic crimes under international law.

Individual criminal responsibility for war crimes committed during internal armed conflicts has been explicitly provided in a number of international treaties since the early 1990s. These include the statutes for the international criminal tribunals for the former Yugoslavia and Rwanda, as well as the Rome Statute of the ICC.[231]

Individuals who commit war crimes may be held criminally liable. They may also be held criminally responsible for assisting in, facilitating, aiding, or abetting the commission of a war crime. They can also be prosecuted for planning or instigating the commission of a war crime. In addition, civilian officials, military commanders, and soldiers who order or commit crimes against humanity can be held individually liable.[232]

Crimes against humanity give rise to universal jurisdiction, do not have a statute of limitations, and do not admit the defense of following superior orders.

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[228] See *Prosecutor v. Kupreskic et al.,* ICTY Judgment, January 14, 2000, para. 556.

[229] See *Kupreskic et al.,* ICTY Trial Chamber, January 14, 2000, para. 556: "[T]he requisite mens rea for crimes against humanity appears to be comprised by (1) the intent to commit the underlying offence, combined with (2) knowledge of the broader context in which that offence occurs." See also Tadic, ICTY Appeals Chamber, para. 271; *Kayishema and Ruzindana*, ICTR Trial Chamber, May 21, 1999, paras. 133-34.

[230] See Blaskic, ICTY Trial Chamber, March 3,2000, para. 257. Blaskic (paras. 258-59) listed factors from which could be inferred knowledge of the context:

[a] the historical and political circumstances in which the acts of violence occurred; [b] the functions of the accused when the crimes were committed; [c] his responsibilities within the political or military hierarchy; [d] the direct and indirect relationship between the political and military hierarchy; [e] the scope and gravity of the acts perpetrated; [f] the nature of the crimes committed and the degree to which they are common knowledge.

[231] Article 25, Rome Statute of the International Criminal Court.

[232] Article 7, Rome Statute of the International Criminal Court.

In Darfur, individuals such as militia leaders, soldiers, and pilots involved in bombing campaigns, military commanders, and government officials who directly participated in, planned, ordered, or were otherwise complicit in the commission of war crimes and crimes against humanity can be found criminally liable for these activities in international courts, regardless of the presence of Sudanese amnesty or immunity laws. Some of these individuals including those named in this report—both civilian and military—may also be liable for war crimes or crimes against humanity under the theory of command responsibility.

D. Command Responsibility

Under the doctrine of command responsibility, commanders, or other superiors may be culpable for failing to prevent or punish crimes committed by their subordinates. In Darfur, individual commanders and civilian officials could be liable for failing to take any action to end abuses by their troops or staff. Command responsibility is an established principle of customary international law[233] and has been incorporated into the statutes of international criminal courts, including the Rome Statute of the ICC.[234] Although the concept originated in military law, it now also embraces the responsibility of civilian authorities for the abuses committed by persons under their effective authority. The principle of command responsibility is applicable in internal armed conflicts as well as international armed conflicts.[235]

Under the doctrine of command responsibility there are three elements for establishing liability of a commander or other superior for criminal acts by their subordinates:

1. There must be a superior-subordinate relationship.
2. The superior must have known or had reason to know that the subordinate was about to commit a crime or had committed a crime.
3. The superior failed to take necessary and reasonable measures to prevent the crime or to punish the perpetrator.

Superior-subordinate relationship

A superior-subordinate relationship is clearest when there are formal rules, for example when legislation or a military chain of command specifies the existence of a relationship.

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[233] See, e.g., *Prosecutor v. Delalic et al. (Celebici Case)*, Case No. IT-96-21-A, ICTY AC, February 20, 2001, para. 195.

[234] Rome Statute of the International Criminal Court, article 28 (Responsibility of Commanders and Other Superiors).

[235] *Prosecutor v. Hadzihasanovic ("Central Bosnia"),* Case No. IT-01-47-AR72, July 16, 2003, para. 29–31.

However, even in the absence of formal rules or a formal structure, a superior can have actual and effective control.[236] Thus, civilian and political superiors, as well as those in military command, may be held liable under this doctrine.[237] Moreover, there is no requirement that the superior-subordinate relationship be direct or immediate.[238]

In establishing whether a superior-subordinate relationship exists, international case law has found the following questions useful: Does the superior have "effective control" over the subordinate?[239] What are the powers of influence of the alleged superior? What capacity does the superior have to issue orders? Does analysis of the distribution of tasks within any relationship demonstrate a superior-subordinate relationship?

The superior's knowledge

Commanders and other superiors may be held liable under the command responsibility doctrine where they knew or had reason to know that crimes were being committed by their subordinates.

A superior's actual knowledge of crimes committed or about to be committed by subordinates may be established from direct or circumstantial evidence.[240] But command responsibility also includes circumstances where the superior had constructive knowledge, variously described as "had reason to know" or "had information enabling [the superior] to conclude."[241] Even general information in the possession of the superior that would put him or her on notice of possible unlawful actions of

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[236] *Prosecutor v. Delalic et al. (Celebici Case),* Case No. IT-96-21-A, ICTY AC, February 20, 2001, para. 248-268.

[237] *Prosecutor v. Delalic et al. (Celebici Case*), Case No. IT-96-21-T, ICTY TC, November 16, 1998, affirmed on appeal IT-96-21-A, ICTY AC, February 20, 2001. See also Article 28 of the Rome Statute of the International Criminal Court:

"(b) With respect to superior and subordinate relationships not described in paragraph (a) [military chain of command], a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."

[238] *Prosecutor v. Halilovic*, Case No. IT-01-48-T, ICTY TC, November 16, 2005, citing Celebici, IT-96-21-A, ICTY AC, February 20, 2001, paras. 193 & 195.

[239] *Prosecutor v. Delalic et al. (Celebici Case),* Case No. IT-96-21-T, ICTY TC, November 16, 1998, para. 377-378.

[240] Ibid., para. 386.

[241] Ibid., para. 232.

subordinates would be sufficient.[242] That is, a superior would meet this standard if in possession of sufficient information to be on notice of the likelihood of illegal acts by subordinates that would justify further inquiry.[243]

According to A.P.V. Rogers, a leading authority on the laws of war:

> Actual knowledge may be difficult to prove, but can be inferred from the surrounding circumstances, especially if war crimes by those under command are so widespread as to be notorious, for example, when soldiers under command carry out sustained and frequent unlawful attacks…. Liability may also attach to a commander even if he did not actually know about the acts of subordinates but ought to have known about them and his failure in this respect constituted a dereliction of duty on his part, for example, if he is put on notice but fails to do anything about it.[244]

Superior duty to take necessary and reasonable measures to prevent the crime or to punish the perpetrator

Superiors have both a duty to prevent and a duty to punish the crimes of subordinates. These constitute distinct and independent legal obligations.

The duty to prevent renders superiors responsible where they failed to consider elements that point to the likelihood that such crimes would be committed. Superiors successfully discharge their duty to prevent subordinate crimes when they employ "all necessary and reasonable measures."[245]

There is a "duty to punish," but superiors cannot make up for failure to prevent crimes by punishing subordinates afterwards:

> A superior's "duty to punish" arises after the commission of an offense. It is predicated upon offenses by others which have already occurred,

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[242] Ibid., para. 238.

[243] *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, ICTY TC, February 26, 2001, para. 437.

[244] A.P.V. Rogers, "Command Responsibility under the Law of War," *Lauterpacht Centre for International Law*, (1999), available at http://lcil.law.cam.ac.uk/lectures/lecture_papers.php.

[245] *Prosecutor v. Halilovic,* Case No. IT-01-48-T, ICTY TC, November 16, 2005, para. 73.

> not future offenses. Punishment is, therefore, intended to deter the commission of future offenses.[246]

E. State Responsibility for Crimes Committed by Militia Members

Once the decision was made not to use the heavily Darfurian national armed forces as the main ground troops in the military campaign, the Sudanese government required additional ground forces: the militias. The links between the Sudanese government and the militias, known collectively as the Janjaweed, have been comprehensively documented and reported by numerous organizations, including Human Rights Watch, since early 2004.[247] Despite continuing denials by the Sudanese leadership of its responsibility for the acts of the militias, the Sudanese government is ultimately responsible for the war crimes and crimes against humanity committed by militias, as well as those committed by the Sudanese armed forces since 2003.

Under international law, the Sudanese government is responsible for international crimes committed by militia groups if it can be shown that the state retained "overall control" over the militias. This standard applies regardless of whether militia members are incorporated in or formally linked to the Popular Defense Forces, Border Intelligence Guards or other "official" paramilitary forces, or whether they remain more loosely linked tribal militias armed and coordinated by the government but operating under the direct authority of tribal *agids* (war leaders).

In the *Tadic* decision, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) responded to the question of the degree of state control required to show "overall control" as follows:

> In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity. Only then can the State be held internationally accountable for any misconduct of the group. However, it is not necessary that, in addition, the State should also issue, either to the head or to members of the group, instructions for the commission of specific acts contrary to international law. (para. 131)

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[246] *Blaskic*, ICTY Trial Chamber, March 3, 2000, para. 336.

[247] See Human Rights Watch reports, and the Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General, at http://www.un.org/News/dh/sudan/com_inq_darfur.pdf

The court also noted:

> The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in *organizing, coordinating or planning the military actions* [emphasis in the original text] of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of de facto State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts. (para. 137) [248]

X. The Response of the International Community

In July 2004, a year after the first major Sudanese government offensives bombed and burned out tens of thousands of villagers from rural areas in North Darfur, the U.N. Security Council passed the first of four resolutions concerning Darfur.[249] Resolution 1556 called for the Sudanese government to "fulfill its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out international humanitarian law violations and other atrocities." The resolution continued by threatening further action, "including measures as provided for under Article 41 of the Charter of the United Nations…"[250]

The Sudanese government did nothing to implement the resolution, and the situation worsened. Despite two further resolutions, including one which established the international Commission of Inquiry into the crimes in Darfur, it took nine months for the Security Council to act again with any concrete penalties on the Sudanese government. Resolution 1593 of March 31, 2005, referred the situation in Darfur to the ICC.[251] This referral came as a serious shock to the Sudanese leadership, who expected that Security Council allies would veto the move. The referral to the ICC, following the report by the Commission of Inquiry, was perhaps the only significant effort by the U.N.

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[248] *The Prosecutor v. Tadic ("Prijedor"),* Case No. IT-94-1-A, ICTY AC, July 15, 1999, para. 131.

[249] The U.N. Security Council authorized six resolutions dealing with Sudan between July 2004, and March 2005. Two of the resolutions primarily concerned the north-south peace negotiations and the peacekeeping force for that agreement (Resolutions 1574 (November 2004) and 1590 (March 2005)) and mentioned Darfur only in passing. The resolutions dealing specifically with Darfur were: 1556 (July 2004), 1564 (September 2004), 1591 and 1593 (March 2005).

[250] S/RES/1556 (2004).

[251] S/RES/1593 (2005).

Security Council to signal that the crimes committed in Darfur would not be ignored. To date, however, Sudan has not indicated its willingness to cooperate with the ICC, and there appears to have been little political pressure from other states to do so.

Resolution 1591 of March 29, 2005, was also worrying to the Sudanese government. It imposed individual travel sanctions and asset freezes on those identified who "impede the peace process, constitute a threat to stability in Darfur and the region, [and] commit violations of international humanitarian or human rights law or other atrocities." The sanctions were also aimed at individuals who violated the arms embargo or who were responsible for "offensive military overflights." The sanctions did not apply retroactively, however, only to actions following the passage of the resolution, and were therefore imposed as a threat of consequences for future misdeeds rather than as a penalty for past abuses.[252] However, the sanctions resolution also risks amounting to little more than a symbolic gesture given the divisions on the Security Council. The Sanctions Committee, which will approve the imposition of sanctions on individuals based on recommendations from the Panel of Experts, is so divided—with Sudan's allies China, Russia, and Algeria creating obstacles—that it is possible no individuals will ever be sanctioned.

As of December 2005, the situation in Darfur is critical and "ethnic cleansing" will certainly be consolidated unless substantial international pressure is put on the Sudanese government. The divided international community, and particularly the U.N. Security Council, must take further action and increase the pressure on the Sudanese government if Darfur—and the wider region—are to avoid continued widespread and serious violations of human rights.

Three elements are essential for civilian protection, security, and the eventual return of displaced people to their homes: establishing a realistic mechanism for disarmament of the government-backed militias and other armed groups responsible for rights violations; ending impunity and ensuring accountability for the abuses; and providing compensation or equitable redress to those whose rights have been violated. The Sudanese government is obligated to address these concerns, whether or not a peace agreement is concluded with rebel forces.

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[252] S/RES/1591 (2005).

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Annex 1: Partial list of individuals who should be investigated by the ICC

This list is not a comprehensive list of all individuals potentially liable for crimes in Darfur. It is presented as a summary of those individuals named in this report and recommended for investigation by the ICC, but additional individuals not named in this report should also be investigated and prosecuted for crimes in Darfur.

National Officials

- **President Omar El Bashir**
- **Second Vice-President Ali Osman Taha**: Former First Vice-President until late-2005.
- **Maj. Gen. Abduraheem M. Hussein**: Former minister of the interior and representative of the president for Darfur, 2003-2004, now minister of defense.
- **Maj. Gen. Bakri Hassan Salih**: Former minister of defense, now minister for presidential affairs.
- **Abbas Arabi**: Chief of Staff of the Sudanese armed forces.
- **Gen. Salah Abdallah Ghosh:** Director of Security and Military Intelligence.
- **Ahmed Haroun**: Former state minister of the interior, responsible for Darfur portfolio within the Ministry of the Interior, now state minister for humanitarian affairs.

Current or former regional officials

The individuals listed below are included because, as described in the text of the report, they are or were the senior government officials in their districts or states when crimes amounting to war crimes or crimes against humanity were committed by government forces.

- **Al Tayeb Abdullah Torshain:** Former commissioner of Mukjar, 2003-2005.
- **Al Haj Attar Al Mannan Idris:** Governor of South Darfur, mid-2004 to present.
- **Ja'afar Abdel el Hakh:** Commissioner of Garsila until April 2004, now governor of West Darfur.
- **Maj. Gen. Adam Hamid Musa:** Governor of South Darfur, 2003 to mid-2004.
- **Maj. Gen. Abdallah Safi el Nour:** Retired air force pilot and former governor of North Darfur, 2000-2001, and national minister in Khartoum 2003-2004.

Allegedly involved in directing air operations and in the supply of arms to the militias.

Military commanders

- **Brig.-Gen. Ahmed Al Hajir Mohammed**: Commander of the 16th Infantry Division forces used in the attacks on the villages of Marla, Ishma, and Labado in December 2004.
- **Maj. Gen. Al Hadi Adam Hamid**: Chief of "border guards"; key liaison to Janjaweed militias.
- **Lt. Col. Abdul Wahid Said Ali Said**: Commander of the 2nd Border Intelligence Brigade based in Misteriya, which supports military operations in and around Kebkabiya.
- **Maj. Gaddal Fadlallah**: Commander in Kutum whose forces are responsible for numerous attacks on civilians, destruction of villages, and looting of civilian property.

Militia leaders

- "**Abu Ashreen":** This is the nickname or nom de guerre of Abdullah Saleh Sabeel, a forty-eight-year-old Beni Hussein from Sareef, in the Kebkabiya area. He also occasionally uses the name Abdullah Dagash. He is related to Nazir El Ghadi Adam Hamid, the brother of Maj. Gen. Al Hadi Adam Hamid. He has the rank of either corporal (*arif*) or sergeant (*raqib*), and leads a militia based in Kebkabiya.

- **Sheikh Musa Hilal**: Numerous eyewitnesses place Hilal at the scene of different attacks in North Darfur in which serious crimes, including rape, murder and torture, were committed. Numerous eyewitnesses, including former members of the Sudanese armed forces, also identify Hilal as a key militia recruiter and coordinator.

- "**Ali Kosheib":** This is the nickname or nom de guerre of Ali Mohammed Ali. He was one of the key leaders of the attacks on villages around Mukjar, Bindisi, and Garsila in 2003-2004. Several eyewitnesses recognized him as one of the commanders of the operations in March 2004 in which several hundred men were executed around Deleig, Garsila, and Mukjar.

- **Mustapha Abu Nuba:** Tribal leader of a Riziegat sub-clan in South Darfur. Allegedly responsible for numerous attacks on villages in South Darfur, including the attack on and looting of Kaila.

- **Nazir Al Tijani Abdel Kadir**. Tribal leader of the Misseriya militia based in Niteiga, South Darfur. Allegedly responsible for the attack on the village of Khor Abeche on April 7, 2005, and other attacks in the area.

- **Mohammed Hamdan**. Riziegat militia leader involved in Adwah attack and looting in November 2004.