



Memorandum from Human Rights Watch to Oslo Donors' Conference on Sudan

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Introduction

Human Rights Watch calls on international donors meeting in Oslo on April 11 and 12¹ to ensure that human rights protection and the rule of law are accorded a central place in post-conflict reconstruction in Sudan. Implementation of the Comprehensive Peace Agreement (CPA) signed on January 9, 2005 between the government of Sudan and the Sudan People's Liberation Movement (SPLM) provides a critical opportunity for injecting human rights protections into Sudan's political, legal and societal structures, particularly those of the regional government in southern Sudan, which has yet to be formed.

Human Rights Watch urges donors to provide sufficient and specific funding for human rights and rule of law programming including the human rights components of the

¹ At the conference, the United Nations will present its 2005 work plan for Sudan (*2005 United Nations and Partners Work Plan for the Sudan*), divided into north and south Sudan, Darfur, eastern Sudan and transitional areas' sectors, and provide a status report on immediate humanitarian needs and the response of the international community. The Joint Assessment Mission (JAM) will put forward its report on immediate and long-term reconstruction and development requirements for Sudan following the signing of the CPA ending the two-decades-long conflict between the government of Sudan and the SPLM.

United Nations Mission in Sudan (UNMIS), human rights measures called for in Security Council Resolutions 1590, 1591 and 1593 (2005) as well as the CPA.² We call on donors to prioritize the following areas for funding: justice and the rule of law, human rights monitoring, reintegration of refugees and displaced persons, women and children's rights, transparency and accountability in governance, including a south-south conference and land and property issues.

At the same time, donors must take further steps to end the ongoing human rights crisis in Darfur. Much greater international support is needed to protect civilians and reverse the ethnic cleansing that has taken place. While the Security Council referral of the situation of Darfur to the International Criminal Court (ICC) is an excellent step that should lead to a reduction in abuses, more international military presence is required in Darfur to protect civilians who need to return to their homes and farms to cultivate. Without an improvement in the dire security situation that currently prevents displaced persons from returning home, ethnic cleansing will be consolidated and the humanitarian crisis will continue to expand. The World Food Programme estimates that up to 3.5 million persons in Darfur could need food assistance in 2005, compared to two million in 2004.

Darfur

Ongoing Insecurity and Human Rights Abuses

The Security Council's referral of Darfur to the ICC is only one of several approaches needed to stop and reverse the effects of crimes against humanity and ethnic cleansing in Darfur.

International prosecution, and the commencement of investigations, should deter some abuses, which have flourished because of the Sudanese government's guarantee of impunity for its forces and allied militias. But insecurity persists, in the form of continuing violent displacement, attacks on civilians in displaced persons camps or attempting to return home, and sexual violence against women and girls outside the camps and on the road to market. Some of these attacks are designed to prevent displaced persons from returning to their land so that the attackers can occupy and use

² The U.N. Work Plan envisions support to the protection and promotion of human rights and the rule of law as one of its five strategic priorities for 2005 and identifies several key areas of focus. In addition, Security Council Resolutions 1590 (establishing the U.N. Mission in Sudan), 1591 (sanctions enforcement) and 1593 (referring the situation of Darfur to the International Criminal Court) contain provisions on promoting and protecting human rights and the rule of law in Sudan and Darfur, and on ending human rights violations and increasing security for civilians and internally displaced persons in Darfur and refugees in Chad.

the land for their own purposes, including grazing and farming. The Sudanese government, which promised to prosecute the abusers and protect civilians in Darfur, has made no serious efforts to do either.

Need for Plan to Reverse Ethnic Cleansing and Improve Protection for Civilians

The U.N. 2005 Work Plan and Security Council Resolution 1590 (2005) state that a protection strategy for Darfur will be implemented in 2005. We recommend that such plans include measures deliberately designed to reverse the ethnic cleansing in Darfur and ensure the right to return for displaced communities, voluntarily and in safety and dignity.

Donor governments and the United Nations must take immediate steps to prevent consolidation of ethnic cleansing as it would guarantee continued instability and retribution in Darfur, reward the perpetrators of these crimes and leave some two million Darfurians without their homes, land and property. It would also confine the victims to displaced person camps and leave them entirely dependent on international humanitarian assistance.

In practical terms, reversal of ethnic cleansing means an end to attacks on civilians in Darfur. Donors should pledge support for civilian protection under an expanded African Union (A.U.) mandate and mission in Darfur. None of the projects in the U.N. Work Plan, however, for protection in Darfur include assistance to the A.U. Mission in Sudan (AMIS) and other forces necessary to restore security before any other reconstruction work can start. Physical protection is the foundation for any progress in Darfur. We suggest that a protection strategy include the following elements at a minimum:

- Urgent and substantial increase in the number of forces in the AMIS mission to ensure that the AMIS is adequately deployed throughout Darfur, has sufficient capacity to protect civilians and can undertake additional responsibilities as needed.
- Provide sufficient logistics to strategically deploy AMIS forces in many more small towns and villages throughout Darfur and pro-actively patrol and secure the main roads for humanitarian, commercial and civilian traffic.
- Cooperate with the United Nations and human rights monitors from the Office of the High Commissioner for Human Rights (OHCHR) to identify and secure key evidence; deploy experts within the AMIS force with specific expertise in ensuring witness and victim protection.

- Women and girls who have suffered sexual violence have a full range of health needs that donors should address. These include treatment of injuries that may have occurred during the course of sexual violence, information and preventative treatment for sexually transmitted infections, HIV and hepatitis, information and access to treatment to prevent unwanted pregnancies, and counseling to address the emotional and psychological impact of sexual violence. As well, the social and economic consequences of the stigma accompanying rape demand that economic security may be provided through other means, such as income-generating activities. For further information on sexual and gender based violence in Darfur and Chad, please see Human Rights Watch’s briefing paper released on April 11, 2005.
- The U.N. Work Plan for Sudan proposes protection in Darfur based on the “protection by presence” approach for U.N. and nongovernmental agencies working in Darfur and the operational plan outlines responsibilities at the national and state level. But recently the Sudanese government has restricted access to Darfur for aid workers who have been subjected to increasing intimidation and attacks by government and rebel forces. International pressure for improved access must not cease, and must be increased. See Human Rights Watch press release Darfur: Aid Workers Under Threat dated April 7, 2005.
- Human Rights Watch has expressed concern about the August 21, 2004 Memorandum of Understanding (MOU) entered into between Sudan, the United Nations and the International Organization for Migration (IOM) on the voluntary return of internally displaced persons in Darfur. The U.N. Work Plan states that the returns process will be governed by the MOU through a Management Coordination Mechanism (MCM) that is tasked with reviewing the voluntariness and appropriateness of returns and relocations. IOM is responsible for the returns process in North and South Darfur; UNHCR in West Darfur. Human Rights Watch believes that the MOU lacks important fundamental legal standards, a provision for the independent monitoring of conditions for displaced persons after return, and provisions for enforcement and accountability. The IOM itself does not have the mandate, expertise or capacity to carry out its obligations under this MOU. Donors must ensure that the voluntary and safe return of displaced persons is conducted in coordination with appropriate U.N. and nongovernmental organizations.

Need for Measures to Address Land Issues and Compensation

Resolving conflicts over land in Darfur and ensuring that the violent and forced eviction of farmers and others from their homes is not permanent are also needed to reverse ethnic cleansing. Human Rights Watch suggests the following measures be prioritized:

- A temporary ban on land transfers in Darfur. Donors should insist that no permanent land transfers or profit be made as a result of ethnic cleansing in Darfur. Human Rights Watch has received reports that, rather than redressing or reversing the ethnic cleansing in Darfur, the Sudanese government may be moving to consolidate the illegal transfer of land and resources. We are concerned that while a political solution is being negotiated, land grabs may occur (informally and formally, through new decrees and legislation, forced relocation, resettlement and allocations to powerful persons) that could make ethnic cleansing very difficult to reverse.
- The U.N. Work Plan proposes one project for reduction of resource-based conflict between pastoralists and farmers, based on a study done by the United Nations Development Programme (UNDP) in 2002. Donors should give priority to U.N. involvement in this effort to redress the land and resource conflicts which are among the key causes of the human rights and humanitarian crisis in Darfur.
- Donors should also require, in the context of the National Land Commission (to be established under the terms of the Comprehensive Peace Agreement), that a subsection be created for Darfur. This Darfur section should employ respected historians, land use specialists, anthropologists, linguists, and others, both Sudanese and foreign, giving priority to those who have worked in Darfur and to findings of the UNDP study above. It should also include representatives of each of the affected ethnic groups, as chosen by each group. The Darfur section should be charged with mapping land use, ownership and customary land rights prior to the conflict and arbitrating disputes, devising mechanisms for regulating land use, and ensuring reparations. This Darfur section should also be tasked with making efforts to accommodate landless nomads and ensure that migration routes are respected.
- Compensation to victims is essential: some two million persons have been stripped of all their assets—livestock—and their household goods and clothes have been looted or destroyed, along with their homes. They were once self-supporting; they are now thoroughly impoverished with few prospects for improving their economic situation because the campaign of massive ethnic cleansing has also destroyed the economy of Darfur. The victims need assistance to restart their lives. Compensation should be made in cash or in kind (livestock, seeds and tools) through a compensation mechanism. We note the recommendation of the International Commission of Inquiry on Darfur that the United Nations establish an international compensation commission for payment of compensation to victims of crimes committed by government forces, de facto agents of the government, and rebel groups.

Human Rights Monitoring in Darfur and Sudan

Impartial observation by human rights monitors throughout the country is needed as allegations of human rights violations can jeopardize the consolidation of peace, especially in southern Sudan and areas where southern Sudanese live throughout Sudan. The mandate of the human rights monitoring mission in Sudan should clearly include monitoring, documentation and regular public reporting. Timely public reporting is also important as a deterrent and a preventive mechanism, particularly in Darfur.

- The United Nations Office of the High Commissioner for Human Rights (OHCHR) was given a mandate to monitor on-going abuses in Darfur. Although the monitors now number about 30, a significant human rights presence in Darfur, as called for in Security Council resolution 1590 (2005) is critical. We urge donors to support and facilitate the intended expansion of the OHCHR monitoring presence in Darfur.
- OHCHR human rights reports on Sudan and Darfur should be periodic and public. Many victims and witnesses interviewed by the OHCHR monitors have no knowledge of the OHCHR's conclusions and the follow up to their complaints. Rumor continues to poison the environment particularly in Darfur and exacerbates ethnic tensions.
- The OHCHR mandate in Darfur should be expanded to include the monitoring, investigation, and public reporting on human rights violations committed by the three rebel groups in addition to abuses committed by other parties to the conflict. This will not only help establish the bona fides of the OHCHR and the international community generally, but it will also require accountability of the rebels and recognize the victims.
- OHCHR must have the capacity to deploy throughout Sudan and Darfur. It is vital that the OHCHR monitors are located not only in the state capitals, but in Sudan and Darfur's cities, smaller towns and troubled rural areas where internally displaced persons are attempting to return, and near camps and concentrations of displaced persons. They urgently require adequate logistics to reach remote locations where abuses continue to be committed.
- Donor governments need to ensure that experts on sexual violence in armed conflict are deployed in the monitoring teams of AMIS and the OHCHR, and that all military and civilian units charged with protective and monitoring roles receive proper training in observation, investigation and recording of abuses.

Sudan under the Comprehensive Peace Agreement

Justice, the Rule of Law and Accountability

Donor governments should prioritize support for an independent and impartial justice system and accountability mechanisms in Sudan. Other key requirements for rule of law and human rights protection in southern Sudan are political-military south-south reconciliation and active participation of civil society in the new government.

Although the report of the Joint Assessment Mission (JAM) mentions justice, the costing estimates reveal that both in northern and southern Sudan, the parties are more interested in putting in place a law enforcement sector than in encouraging the judiciary or human rights: for southern Sudan, the judiciary would receive only U.S. \$7.4 million over three years (2005-07) and human rights only U.S. \$2.1 million. The monies for law enforcement, however, are to be U.S. \$58.5 million, with media development coming in second at U.S. \$48.2.³ Spending at the national level on the judiciary (U.S. \$10.2 million) and human rights (U.S. \$11.9 million) will be greater than in southern Sudan over the same period⁴—despite the fact that the southern judicial system is extremely rudimentary and clearly requires more assistance.

Other areas requiring specific support include:

- Accountability processes at the national level to investigate alleged violations of international human rights and humanitarian law by all parties to the conflict, and prosecuting, before fair, impartial, and independent courts, those accused of having committed such crimes or of having facilitated or tolerated such crimes by groups over which they exercised control.
- Creation of a Truth and Reconciliation Commission composed of individuals of known honesty, integrity, and impartiality, to be appointed by the parties to the peace agreement and IGAD, the U.N., and the governments of the U.S., U.K., and Norway to provide full disclosure of past human rights abuses in the various armed conflicts since 1983.
- Ensuring that restructuring of the police service in Sudan includes vetting of the members of the newly constituted police and military forces for past records of

³ Southern Sudan expenditures (judiciary projected at 7.4 mm for three years, etc.): Joint Assessment Mission Sudan, Vol. II, Cluster Costings and Matrices, March 18, 2005, Table 3, p. 14.

⁴ National expenditures (judiciary for three years, etc.): Joint Assessment Mission Sudan, Vol. II, Cluster Costings and Matrices, March 18, 2005, Table 1, p. 11.

human rights abuse, and dismissal or not hiring of any individuals found to be questionable in this regard.

- Review of Sudanese government (and any SPLM or southern regional government) legislation to ensure compatibility with international human rights standards and removal of barriers to full and free civil society participation.
- Ratification by the government of Sudan of the Convention for the Elimination of All Forms of Discrimination against Women and other human rights treaties and ensure respect for their provisions.

Transparency and Accountability in Governance: south-south conference

- Donors should continue to pressure and provide funding for the SPLM to participate meaningfully in a south-south reconciliation conference. Continuing peace will not occur unless deep political and ethnic divisions in southern Sudan are reconciled, and the participants in government are representative of all ethnic groups in southern Sudan.
- Peace will not take hold unless the southern regional government is inclusive and permits all who wish, including civil society, to play an active role in government. Donors should support initiatives that foster and build civil society participation in government.

The Sudanese people have suffered from decades of armed conflict and repression. Darfurians continue to experience severe insecurity and human rights abuse daily. In several U.N. Resolutions, the international community condemned abuses, urged that they be ended and redressed, and pledged support for reconstruction. Donor governments should now fulfill those pledges by ensuring that Sudan's transition process prioritizes promotion of human rights, the rule of law and addresses past abuses while enhancing human rights protection for the future. At the same time, donors must urgently act to end the continuing atrocities in Darfur.

Human Rights Watch looks forward to continued dialogue with donors on these issues and wishes the meeting every success.