



The Darfur Consortium

*African and International
Civil Society Action for Darfur*

ONE MONTH ON IN DARFUR AND SUDAN: THE EXPULSION AND SUSPENSION OF INTERNATIONAL AND NATIONAL HUMANITARIAN AND HUMAN RIGHTS ORGANISATIONS

A NOTE FROM THE DARFUR CONSORTIUM TO THE AFRICAN UNION

April 2009

The Darfur Consortium (the Consortium) is a group of more than 50 Africa-focussed and Africa-based non-governmental organisations (NGOs), academics and independent legal experts dedicated to a just and peaceful solution to the crisis in Darfur, western Sudan.

The Consortium was formed on the margins of the third extraordinary session of the African Commission on Human and Peoples' Rights (the African Commission) in Pretoria, South Africa in 2004 to project a united voice on the human rights abuses and humanitarian challenge in Darfur, Sudan and also to sustain engagement with key inter-governmental institutions such as the African Union (AU) to seek a peaceful solution to the conflict. Raising awareness on the abuses in Darfur, providing technical support in the areas of justice and advocating at the AU and the United Nations (UN) are some of the activities of the Consortium.

INTRODUCTION

It has been just over one month since the expulsion of 13 international humanitarian agencies from Sudan by the Government of Sudan and the suspension of the operations of three leading local organisations which provided protection and humanitarian aid. Along with all well-meaning peoples and entities within and outside Africa, the Consortium remains deeply troubled by the deeply adverse effects that these developments have on the protection of civilians, the humanitarian situation in Darfur, the protection of human rights in Sudan, and the indigenous Sudanese human rights movement more generally. This

briefing note, which was compiled with the assistance of members of the Consortium working on the ground in Darfur and Sudan, addresses the following issues:

- The humanitarian situation following the expulsions and suspensions;
- The suspension of indigenous organisations providing assistance and protection in Darfur and Sudan and the harassment and detention of human rights defenders; and
- Sudan's legal obligations under its Constitution and regional and international humanitarian and human rights law.

It concludes with recommendations principally for the African Union and its member states and governments.

THE HUMANITARIAN SITUATION IN DARFUR

The decision of the Government of Sudan to expel 13 international humanitarian non-governmental organisations (NGOs) on 4 and 5 March has caused the precarious humanitarian situation in Darfur to deteriorate.¹ While acknowledging the efforts of the UN and remaining NGOs to address the shortfall, with the approaching "hunger gap" season this month and annual floods in May, the Consortium is concerned that the already severe problems being experienced in accessing basic needs by Darfur's 2.7 million displaced will be exacerbated. The 13 international organisations which were expelled provided more than 50 percent of the aid in Darfur and were leaders in humanitarian coordination and planning.²

From 11-18 March 2009 the United Nations and the Government of Sudan undertook a joint assessment of humanitarian needs in Darfur. They released the report of the assessment (hereafter Sudan-UN Joint Assessment) on 24 March 2009, approximately three weeks after the expulsion of the NGOs. Overall, the assessment concluded that the UN and remaining NGOs could only cover 20-30% of the gap left by the departure of the NGOs. This estimate assumed that there will be no new needs arising in this period.

The findings of the Sudan-UN Joint Assessment, coupled with consultations with partners on the ground in Darfur, clearly indicate that if urgent action is not taken soon to compensate for the loss of programs and services, Darfur's displaced populations may face a major crisis.

¹ On 4 March 2009, Sudan ordered ten humanitarian groups to leave Sudan: Oxfam GB, CARE International, Medecins Sans Frontieres-Holland, Mercy Corps, Save the Children UK, Norwegian Refugee Council, International Rescue Committee, Action Contre la Faim, Solidarites, and CHF International and dissolved two local organisations: Khartoum Centre for Human Rights and Environmental Development and Amal Centre for Rehabilitation of Violence Victims. "Sudan Expels 10 Aid NGOs and Dissolves 2 Local Groups," *Sudan Tribune*, 5 March 2009. The following day, 5 March 2009, an additional three international humanitarian groups were expelled: Medecins Sans Frontieres-France, PATCO and Save the Children US. "Sudan Says Ejected Aid Workers are Involved in ICC Decision," *Sudan Tribune*, 6 March 2009.

² UN Security Council, "Top Humanitarian Official, Briefing Security Council, Urges Sudanese Government to Reverse Expulsion of Non-Governmental Organizations," UN Department of Public Information, 20 March 2009, available at <http://www.un.org/News/Press/docs/2009/sc9622.doc.htm> (last visited 26 March 2009).

Basic Needs

- **Health: The Sudan-UN Joint Assessment concluded that due to the expulsions 650,000 individuals are now without access to the medical services that they need³.** The World Health Organisation (WHO) has warned that in its estimation more than 1.5 million persons no longer have access to primary healthcare, and that immunisations will be disrupted⁴. UNICEF has said it is currently working 24 hours a day with its technical partners in the various government ministries, but it cannot fill all the gaps.⁵ Sudan has not so far, for example, been able to supply enough doctors to staff all 43 health care centres that were previously run by the expelled groups.⁶ In this context an outbreak of serious disease in a camp constitutes a major threat: by 13 March 2009, 41 cases of meningitis, for example, had been confirmed in Kalma Camp in South Darfur.⁷ Critical for both response and planning in the health sector, there has also been a 20 percent decrease in reporting of health and nutrition emergencies according to the Sudan-UN Joint Assessment.⁸ Without this monitoring, potential health emergencies may not be addressed in a timely manner and are more likely to develop into full scale epidemics. With the annual flood season starting in May, preparedness activities to prevent and minimise cholera outbreaks and response capacity are also likely to be severely hampered.⁹
- **Food and Nutrition: The Sudan-UN Joint Assessment found that 1.1 million people have lost their food rations as a result of the expulsions.** The World Food Program (WFP) confirms that four of the expelled NGOs¹⁰ were crucial partners providing 35 per cent of its food distribution capacity in Darfur including services for 5,500 malnourished children and mothers receiving supplementary feeding.¹¹ Any disruption to health services and food distribution for children is likely to exacerbate malnutrition levels, particularly with the approaching 'hunger gap'.¹² WFP has conducted a one-time distribution of a two-month food ration through local food relief committees¹³ but are unlikely to be able to repeat this. As a result 1.1 million affected persons may find themselves without food again on 1 May.

³ Joint Government of Sudan - United Nations Assessment on the Situation Created by the Departure of NGOs in Darfur, 24 March 2009.

⁴ "UNAMID Peacekeepers Shot, As Concerns Grow Over Humanitarian Aid," *UN Daily News*, 10 March 2009, available at www.un.org/news/dh/pdf/english/2009/10032009.pdf (last visited 25 March 2009).

⁵ *Ibid.*

⁶ Neil MacFarquhar, "U.N. Official Calls Darfur Aid Tenuous," *New York Times*, 24 March 2009.

⁷ UNOCHA, "Sudan Situation Report," 13 March 2009.

⁸ Joint Government of Sudan - United Nations Assessment on the Situation Created by the Departure of NGOs in Darfur, 24 March 2009.

⁹ "UNICEF Committed to Meeting Most Urgent Life-Saving Needs in Sudan Following Suspension of Key Partners," *UNICEF News*, 16 March 2009, available at http://www.unicef.org/media/media_48710.html (last visited 25 March 2009).

¹⁰ The four organisations are ACF, Care, Save the Children US, and Solidarities. Joint Government of Sudan - United Nations Assessment on the Situation Created by the Departure of NGOs in Darfur, 24 March 2009, available at http://www.reliefweb.int/rw/rwb.nsf/retrieveattachments?openagent&shortid=SODA-7QFT8D&file=Full_Report.pdf (last visited 25 March 2009).

¹¹ "UNAMID Peacekeepers Shot, As Concerns Grow Over Humanitarian Aid," *UN Daily News*, 10 March 2009.

¹² UNICEF, "Urgent Needs for Children and Women Affected by the Suspension of Activities of Major NGOs in North Sudan," *UNICEF Humanitarian Action Update*, 13 March 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/RMOI-7Q5KGT?OpenDocument> (last visited 25 March 2009).

¹³ *Ibid.*

- **Water and Sanitation: The Sudan-UN Joint Assessment found that since the expulsions 873,000 people have lost assistance in maintaining hygiene, 857,000 in latrines, 976,000 in solid waste sanitation and 45,000 in water.** UNICEF estimates that only 30 to 35 percent of drinking water needs will be addressed in the coming weeks.¹⁴ Water provision is also dependent on other scarce resources impacted by the expulsions. In Kalma Camp, generators are needed to pump water to 89,000 residents. In Kass, a town with several IDP camps and approximately 20,000 individuals relying on pumped water, there has been no fuel since 4 March 2009. Sanitation and hygiene services have already been compromised and chlorination services interrupted in many areas. In Al Salaam Camp, near El Fasher, sanitation trucks servicing some 600 latrines have halted their service because the international NGO that operated them has been expelled.¹⁵ In addition remaining health facilities and feeding centres which previously relied on water services provided by the expelled NGOs are now scaling back their services. If water needs are not addressed quickly, there is increased risk of hygiene-preventable illnesses such as diarrhoea and cholera. Reports have already emerged that in Otash camp, infant deaths due to diarrhoea are increasing.¹⁶

Safety and Security

In late 2008, even before the expulsion of the aid groups, insecurity limited the population of Darfur's conflict-affected population with access to humanitarian agencies to only 65 percent. Since the expulsions government rhetoric around the work of international agencies has created an increasingly hostile environment. Unknown gunmen abducted four staff members of *Médecins Sans Frontières*-Belgium in North Darfur on 12 March and released them three days later. On 21 March, a Sudanese staff member of Fellowship for African Relief was beaten and then murdered two days later.¹⁷ On 4 April, a Canadian and a French aid worker were also kidnapped. Armed raiders set fire to Abu Zor camp near El Geneina, killing at least two camp residents in late March.¹⁸

These attacks have further debilitated an already severe situation of insecurity. Consortium members in Darfur assess that if the humanitarian gap is not filled appropriately and adequately the insecurity and uncertainty already on the rise in the camps before the expulsions will only increase, creating greater instability. The displaced will flock to Darfur's major cities, swelling urban populations, depressing wages and generating additional tensions. The impact of the expulsions is also likely to spill over to Chad and southern Sudan as populations search for supplies and food. NGOs in Chad and southern Sudan are reportedly bracing for further inflows of refugees and internally displaced persons (IDPs).¹⁹

Impact outside Darfur

The lives of vulnerable populations in areas outside the three Darfur states are also being affected by the expulsions and suspensions. The expelled NGOs provided health, nutrition, water, sanitation, education, food security and other assistance to hundreds of thousands in Abyei, Blue Nile State and Southern

¹⁴ UNOCHA, "Sudan Situation Report," 13 March 2009.

¹⁵ "Water Shortage Foreseen at Huge Darfur Camp," *Sudan Tribune*, 20 March 2009.

¹⁶ Lynsey Addario and Lydia Polgreen, "Aid Groups' Expulsion, Fears of More Misery," *New York Times*, 22 March 2009.

¹⁷ "Darfur Aid Worker Beaten, Murdered Two Days Later," *Sudan Tribune*, 25 March 2009.

¹⁸ "Two Killed in Darfur Arson Attack - Peacekeepers," *Reuters*, 25 March 2009.

¹⁹ "Aid Groups in Chad Brace for Refugees From Darfur," *Reuters*, 14 March 2009. "Sudan: South Preparing for Possible Influx from Darfur," *IRIN*, 13 March 2009.

Kordofan State.²⁰ In these border areas there is increasing levels of frustration as a result of the withdrawal of services, exacerbating local tensions and undermining gains made in realising the 'peace dividend' from the Comprehensive Peace Agreement (CPA) in those areas.²¹ Affected agencies also operated in Eastern Sudan, a region which is emerging from over a decade of conflict and has some of the worst humanitarian indicators in Sudan. The impact of the Government of Sudan's decision to expel aid agencies in these areas has not been assessed in a thorough manner. In this sense the Sudan-UN Joint Assessment gives only a partial view of the challenges faced in responding to the expulsions.

Filling the Gap in Darfur

With continuing insecurity and the peace process in stalemate, the humanitarian need in Darfur is growing. The arrival of over 30,000 persons into Zam Zam camp, newly displaced by clashes in South Darfur camp, for example, has exacerbated the water shortage felt by all the camp's residents.²² Originally built to accommodate 30,000, Zam Zam Camp is now massively overcrowded and home to about 80,000 persons.

The UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes has said that in the context of the expulsions, "the UN system, the [remaining] NGOs [...] and the government [do] not have the capacity to replace all the activities that have been going on, certainly not on any short- or medium-term basis".²³ UN and national agencies are expected to be able to cover only 20 to 30 percent of the gap.²⁴

Despite these UN pronouncements the Government of Sudan has said the Sudan-UN Joint Assessment demonstrates that "the humanitarian situation is under control".²⁵ Sudan has announced that it will turn to national, Arab and Islamic humanitarian agencies to replace the expelled organisations. Several Arab and Asian organisations, including Red Crescent Societies of Iran, Saudi Arabia, Kuwait and United Arab Emirates have already applied to work in Darfur.²⁶

Consortium members report, however, that those national agencies which remain not only lack the scale and nature of expertise required for such operations, but are generally closely allied with the government, compromising the independence with which aid may be provided. Further, in the particular context of the violence and insecurity suffered in Darfur, these organisations are likely to be viewed with suspicion and mistrust by displaced communities, thus reducing their effectiveness. Between August 2008 and December 2008, there were a series of attacks on camps for the displaced, including by government forces.²⁷ The Sudan-UN Joint Assessment now confirms that in Kalma and Kass camps in South Darfur and Hamadia and Hassa Hissa in West Darfur, camp residents are denying access to some national NGOs. In such a

²⁰ UN, "Spokesperson's Noon Briefing" Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, 11 March 2009, available at <http://www.un.org/News/briefings/docs/2009/db090311.doc.htm> (last visited 25 March 2009).

²¹ See Humanitarian Policy Group, *Where to Now? Agency Expulsions in Sudan: Consequences and Next Steps*, 1 April 2009.

²² "Water Shortage Foreseen at Huge Darfur Camp," *Sudan Times*, 20 March 2009.

²³ "Sudan: We Will Fill the Aid Gaps, Government Insists," *IRIN*, 10 March 2009.

²⁴ Humanitarian Policy Group, *Where to Now? Agency Expulsions in Sudan: Consequences and Next Steps*, 1 April 2009.

²⁵ Neil MacFarquhar, "U.N. Official Calls Darfur Aid Tenuous," *New York Times*, 24 March 2009.

²⁶ "Sudan: Other NGOs Ready to Move Into Darfur - Official," *IRIN*, 12 March 2009.

²⁷ *Rhetoric vs. Reality, the Situation in Darfur*, available at www.reliefweb.int/rw/rwb.nsf/db900sid/KSAI-7LX8MT?OpenDocument (last visited 6 April 2009).

volatile and uncertain environment, it is important that humanitarian solutions and partners which are also acceptable to Darfur's conflict affected communities are found.²⁸

The capacity and mandate of UNAMID is also likely to be undermined and overstretched as UNAMID is pressed into service to fill the urgent humanitarian gap.²⁹ In Zam Zam camp, for example, UNAMID has already provided 100,000 litres of water, four water storage bladders and expects to provide more water in the coming days.³⁰ This direct engagement in aid distribution sits uneasily alongside UNAMID's protection and ceasefire monitoring mandate. In addition, in the absence of the expelled and suspended international and national NGOs, there is likely to be increasing need for, and pressure on, UNAMID to take on a more active role in monitoring civilian protection concerns. UNAMID's fragile protection capacity, already stretched to breaking point, must not be further undermined. UNAMID is coming under increasing direct attack by the hostile parties in Darfur. Following the death of another UNAMID peacekeeper on 17 March, the UN Secretary General issued a statement noting deep concern over "the increased security threats faced by UNAMID in Darfur".³¹ In this context, any extended engagement may also erode the perception of independence and impartiality of the humanitarian effort in Darfur and further jeopardise the security of aid workers and the displaced alike.

DISMANTLING INDIGENOUS HUMAN RIGHTS AND HUMANITARIAN ORGANISATIONS

In the wake of the humanitarian expulsions the Sudanese government has claimed that it desires to "Sudanise" humanitarian services.³² The revocation of the licenses and seizure of the assets of three leading local NGOs the Khartoum Centre for Human Rights and Environmental Development (KCHRED), the Amal Centre for Rehabilitation of Violence Victims (Amal Centre) and the Sudan Social Development Organisation (SUDO) which provided critical protection, legal and humanitarian services including in Darfur, would seem to undermine this assertion.³³ The Khartoum Centre provided human rights defence and protection. The Amal Centre provided rehabilitation and access to redress for victims of torture and sexual violence. SUDO provided humanitarian, development and legal aid to roughly 700,000 displaced individuals through ten field offices.³⁴ Unlike the expulsion of the 13 international NGOs, which was relatively unforeseen and carried out swiftly, the three local NGOs have been under increasing pressure from the authorities over the course of the last year, culminating in a series of measures which ensured their complete closure between the end of February and the beginning of March. No other local organisations are currently equipped to replace the services provided by the suspended organisations and with assets seized and staff under siege, they are unlikely to be able to reconstitute in the near future, although two of

²⁸ Joint Government of Sudan - United Nations Assessment on the Situation Created by the Departure of NGOs in Darfur, 24 March 2009.

²⁹ For a review of the challenges and progress made in the first six months of UNAMID's operation see Darfur Consortium, Putting People First: The Protection Challenge Facing UNAMID in Darfur, at http://www.darfurconsortium.org/darfur_consortium_actions/reports/2008/Putting%20People%20First%20UNAMID%20report.pdf

³⁰ "UNAMID Provides Water to New Arrivals in Zam Zam IDP Camp," *UNAMID Featured News*, 18 March 2009, available at <http://unamid.unmissions.org/Default.aspx?tabid=888&ctl=Details&mid=1062&ItemID=3212> (last visited 25 March 2009).

³¹ See New York, 17 March 2009 - Statement Attributable to the Spokesperson for the Secretary-General on Darfur: Attack against UNAMID peacekeepers at <http://www.un.org/apps/sg/sgstats.asp?nid=3744>.

³² "UN Official Warns Darfur Could Face Key Humanitarian Test," *Sudan Tribune*, 25 March 2009.

³³ "Sudan: Expulsion of Aid Agencies," United Nations Office for the Coordination of Humanitarian Affairs - Relief Web, 5 March 2009, available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/SHIG-7PUDRB?OpenDocument> (last visited 25 March 2009).

"Sudan: Expelling Aid Agencies Harms Victims," Human Rights Watch, 5 March 2009, available at <http://www.hrw.org/en/news/2009/03/05/sudan-expelling-aid-agencies-harms-victims> (last visited 27 March 2009).

³⁴ "Sudan: We Will Fill the Aid Gaps, Government Insists," *IRIN*, 10 March 2009.

the organisations have, however, lodged formal appeals against their dissolution. Other local NGOs working on human rights and protection in Darfur and Sudan are also suffering harassment and disruption of their operations.

Since 4 March there has been a sharp rise in harassment, interrogation and arrest of Sudanese human rights defenders, those who attempt discussions relating to Sudan's obligations under the Rome Statute of the International Criminal Court (the Rome Statute), local staff members of some of the expelled aid agencies,³⁵ and family members of these categories of persons. There have also been reports of severe torture, verified by members of the Consortium, of Sudanese citizens engaging in public discussion of the ICC.³⁶ These incidents reflect an intensification of an escalation of activity by the National Security Service against human rights defenders since November 2008, marked by the arrest and interrogation of three prominent human rights defenders, and torture of two, who were "accused" *inter alia* of promoting the implementation and operation of the Rome Statute in Sudan. These three persons have now been declared by the Government of Sudan media centre to be "witnesses" in the ICC case against President Bashir. New legislation being rushed through the Parliament specifically criminalises co-operation with the ICC and prohibits the transfer of any Sudanese national to the ICC for trial.³⁷

In summary, and in an escalating pattern of persecution since 4 March 2009, Sudan's domestic human rights community (and indeed local staff of international humanitarian and UN organisations) are currently facing internal restrictions on freedom of movement, arrest, interrogation, incommunicado detention,³⁸ ill-treatment and torture, physical and electronic surveillance, summary closure of organisations, freezing of institutional accounts, confiscation of personal property, infiltration of organisations by intelligence agencies, and preferring of serious criminal charges (crimes against the state) with reference to activities such as receipt of international funding and the representation of victims of crimes allegedly committed by state officials³⁹. In this context, heightened by the unequivocal threats to life and limb directed at those promoting international treaties signed by Sudan (in particular the Rome Statute of the International Criminal Court) made publically by senior government officials, a number of human rights defenders have been forced to flee. In short, the entire independent human rights movement in Sudan is under threat with serious implications for democratic transition in Sudan as a whole.

Further, in a deeply worrying development, with potentially far reaching implications for inter-State relations and the protection obligations of African states for their own nationals, the Consortium can confirm that in at least one incident a non-Sudanese African human rights defender in his country of citizenship was threatened with death, assaulted, told his calls and movements were under surveillance and ordered to halt his advocacy activities before the African Union on human rights issues relating to Darfur and Sudan by persons intimating to be acting on behalf of the Government of Sudan.⁴⁰

³⁵ About 15 of such persons are believed to be in detention in Nyala, South Darfur alone.

³⁶ Details available from the Consortium. One case has been raised formally with the UN Special Rapporteur on Torture.

³⁷ Under provisions of existing law a former police officer was sentenced to seventeen years imprisonment in December 2008 for an alleged attempt to offer collaboration to the ICC.

³⁸ See, for example, the current incommunicado detention of a prominent Darfuri human rights defender, *inter alia*, reported at <http://www.fidh.org/Sudan-Press-Release-A-human-rights>

³⁹ Further information available from the Darfur Consortium.

⁴⁰ See Resolution on the Protection of Human Rights in Africa, African Commission on Human and Peoples' Rights, 35th Ordinary Session, 21st May to 4th June 2004, Banjul, The Gambia.

SUDAN'S LEGAL OBLIGATIONS

The expulsions of international NGOs and dissolution of national NGOs raise several critical issues under international law. Many of these obligations are not only obligations at international law – they are also fundamental building blocks of Sudanese domestic law by operation of 27(3) of Sudan's Interim National Constitution (the Constitution), Sudan's highest governing law. This provision stipulates that the rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan "shall be an integral part of the Bill of Rights in the Constitution".⁴¹ Thus the rights protected in the African Charter on Human and People's Rights (African Charter),⁴² which Sudan has ratified, for example, must be considered as part of Sudan's highest law.

The Obligation to Provide Assistance

Sudan has obligations both domestically and at international law to ensure that the humanitarian gap created by its expulsion and suspension of the NGOs is appropriately filled. The Constitution itself provides that every human being has "the inherent right to life, dignity, and the integrity of his/her person, which shall be protected by law"⁴³ and creates affirmative duties for the government with respect to provision of medical care and promotion of public health. Article 32 guarantees that the state shall "provide maternity and child care and medical care for pregnant women" and "protect the rights of the child as provided in the international and regional conventions ratified by the Sudan". Article 46 states that the state shall "promote public health".

Integral to the Constitution's Bill of Rights are protections guaranteed in ratified international human rights instruments. Article 16 of the African Charter stipulates that every individual has "the right to enjoy the best attainable state of physical and mental health". Article 21 guarantees a "general satisfactory environment favourable to development". Article 4 confirms that "[e]very human being shall be entitled to respect for his life and the integrity of his person". Article 11 (2) of the International Covenant on Economic and Social Rights provides for the right of everyone to be free from hunger and that states parties shall take the required measures individually and through international cooperation. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) also obliges states to adopt positivist measures to ensure enjoyment of the right to life. Refusal of the state to consent to an offer of relief might amount to a violation

⁴¹ According to the High-Level Mission on the situation of human rights in Darfur appointed by the UN Human Rights Council, Sudan has ratified the following treaties: International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of the Child; the African Charter on Human and Peoples' Rights; and the four Geneva Conventions of 1949. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 999 U.N.T.S. 171 (18 March 1986); International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 993 U.N.T.S. 3 (18 March 1986); International Covenant on the Elimination of all Forms of Racial Discrimination, G.A. res. 2106 (XX), 660 U.N.T.S. 195 (21 March 1977); Convention on the Rights of the Child (CRC), G.A. res. 44/25, UN Doc. A/44/49 (3 August 1990); the African Charter on Human and People's Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 Oct 1986 (11 March 1986); *Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101*, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/4/80&Lang=E> (last accessed 6 April 2009).

⁴² African Charter on Human and People's Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* 21 Oct. 1986.

⁴³ Interim National Constitution of the Republic of Sudan, 2005, art. 28. English version available at www.sudan-embassy.de/c_Sudan.pdf (last visited 26 March 2009).

of the right to life under the ICCPR in certain circumstances.⁴⁴ Under the terms of Article 7 of the N'Djamena Protocol on the Establishment of Humanitarian Assistance in Darfur, entered into between the major belligerents in Sudan, including the Government of Sudan and binding on all the parties, all the belligerents undertook to “guarantee the freedom of movement to the personnel participating in assistance activities, including evaluation of needs, humanitarian assistance distribution and follow-up, that will help to reach people in need of humanitarian assistance without delay. The Government of the Republic of Sudan will, particularly, facilitate trips of the humanitarian personnel to, from and within Darfur.” By expelling the humanitarian agencies, the Government of Sudan repudiates the N'Djamena Protocol which preceded, and is also incorporated into, the Darfur Peace Agreement. By so doing, the Government of Sudan clearly calls into doubt its commitment to a just and peaceful resolution of the situation in Darfur.

International Engagement in Securing Humanitarian Access

Although the primary duty for supplying humanitarian assistance lies with the national authorities,⁴⁵ evolving norms are moving towards granting less discretion to the governing state. As the International Committee of the Red Cross noted in its Commentary on Article 18 (2) of Protocol II of the Geneva Conventions – an instrument to which Sudan acceded during the course of the Darfur conflict:

[t]he fact that consent [of the state] is required does not mean that the decision is left to the discretion of the parties. If the survival of the population is threatened and a humanitarian organisation fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place.⁴⁶

In his comprehensive study of internal displacement issues, submitted to the then UN Commission on Human Rights, former Sudanese Foreign Minister (and current Special Advisor to the UN Secretary General on the Prevention of Genocide) Francis Deng, noted that:

[r]ecent events have shown that increasingly the application of Chapter VII of the Charter has been expanded to include massive starvation and other human rights violations, when there is agreement that these constitute threats to international peace and security. In such cases, States are obliged by this prescription to provide access and cooperate in the delivery of humanitarian assistance to those in need. [...] Responsibility for assisting internally displaced persons lies in the first instance with the home country, but if a country is unable or unwilling to meet the minimum standards required by humanitarian or human rights law, these guarantees may be met only through international assistance.⁴⁷

⁴⁴ Walter Kalin, “Guiding Principles of Internal Displacement, Annotations, 2nd edition,” Spring 2008, available at <http://www.asil.org/pdfs/stlp.pdf> (last visited 26 March 2009).

⁴⁵ “Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory.” Annex to GA Resolution 46/182 on the Strengthening of Coordination of Humanitarian Emergency Assistance of the UN.

⁴⁶ See the ICRC’s commentary to Article 18(2) of Protocol II of the Geneva Conventions in ICRC “International Humanitarian Law - State Parties/Signatories,” available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P> (last visited 26 March 2009). Sudan ratified the Geneva Conventions on 23 September 1957 and acceded to the first and second Additional Protocols on 7 March 2006 and 13 July 2006, respectively. [http://www.icrc.org/IHL.nsf/\(SPF\)/party_main_treaties/\\$File/IHL_and_other_related_Treaties.zip](http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.zip).

⁴⁷ Comprehensive study prepared by Mr. Francis M. Deng, Representative of the Secretary-General on the human rights issues related to internally displaced persons, pursuant to Commission on Human Rights resolution 1992/73. UN doc. E/CN.4/1993/35 (1993), paras. 84 to 89.

It appears that Sudan has taken steps to endorse this normative evolution. In December 2006, Sudan signed the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact) a multilateral instrument which includes a binding Protocol on the Protection and Assistance of Internally Displaced Persons (IDP Protocol).⁴⁸ The IDP Protocol stipulates clearly that “where Governments of member states lack the capacity to protect and assist” IDPs, governments “*shall* accept and respect the obligation of the organs of the international community to provide protection and assistance to IDPs” (emphasis added).⁴⁹ This provision of the IDP Protocol reflects the right to provide assistance set out in Principle 25 of the internationally accepted Guiding Principles on Internal Displacement, but goes further by strengthening the obligation of states to accept offers of assistance in certain circumstances.⁵⁰ Article 6 (4) (d) further enjoins member states to create a legal framework for the implementation of the Protocol which provides for “channels of engagement and cooperation between the organs of Government, organs of the United Nations, the African Union, and civil society.” The Protocol clearly recognises that national NGOs as well as international humanitarian agencies have a role to play in protection and assistance to IDPs.

It is also worth noting that in addition to the IDP Protocol, the Great Lakes Pact also contains a binding multi-lateral Declaration, the Declaration on Peace, Security, Democracy and Development (the Dar es Salaam Declaration), signed by Sudanese President Omar Al Bashir alongside ten other regional heads of state, which undertakes that Sudan will “strictly adhere” to the norms and principles of international humanitarian law, “including full and free access to all persons requiring assistance”⁵¹ and containing a guarantee of safety for humanitarian personnel.⁵²

Rights of Non-Nationals in Sudanese Law

The summary manner in which a large group of non-nationals working for international humanitarian organisations was expelled also raises questions of Sudanese constitutional law and attracts international obligations. The jurisprudence of the African Commission on Human and Peoples Rights clearly confirms that the rights granted by the African Charter, including the right to have one’s “cause heard” (Article 7) must be secured to “all persons” within the jurisdiction of state parties to the treaty.⁵³ Not only does the Charter prohibit the expulsion of non-nationals without due process or recourse to legal procedures (Article 12(4)), it also provides for protection of the property rights of such persons (Article 14). Further to the African Charter and the Sudanese Constitution, therefore, the property rights of international organisations “may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws”.⁵⁴ The summary seizure of assets and funds of

⁴⁸ The Vienna Convention on the Law of Treaties, Article 18 recognises signature is one of the means by which a state expresses consent to be bound by a treaty and must refrain from acts which would defeat the object and purpose of the treaty.

⁴⁹ IDP Protocol, art. 3 (10).

⁵⁰ The Protocol also recognises that humanitarian actors also have duties in carrying out their functions: “member States accept the obligation of humanitarian personnel to observe and respect the laws of the country in which they are operating” (Article 3 (8)).

⁵¹ Dar es Salaam Declaration, paragraph 59.

⁵² Dar es Salaam Declaration, paragraph 60. For a Guide to the Great Lakes Pact and its Protocols, with particular reference to displacement in the region see, International Refugee Rights Initiative and the Internal Displacement Monitoring Centre, *The Great Lakes Pact and the rights of displaced people: A guide for civil society* at <http://www.refugee-rights.org/Publications/Papers/2008/PDFs/GLGuide.Sep2008.pdf>.

⁵³ See, for example, the case of *Rencontre Africaine pour la Défense des Droits de l’Homme (RADDHO) v. Zambia* which concerned the detention, ill treatment and eventual mass expulsion of 517 West Africans from Zambia.

⁵⁴ African Charter, art. 14.

international organisations in the wake of the decision to expel them clearly fails to comply with Sudan's obligations under the African Charter on Human and Peoples' Rights and Sudanese domestic law.

National Engagement in Human Rights and Promotion of Humanitarian Law

With respect to nationals, freedom of association and assembly, generously protected in the African Charter are defined broadly in the Constitution. Elements of the current legislation governing the operation of civil society organisations in Sudan, (the Organisation of Voluntary Work Act, 2006), the ostensible basis for the decision to suspend the operation of the three national organisations, are likely to be unconstitutional in the light of Article 39 and Article 40 (1) read together with the protections of the African Charter.⁵⁵ Sudan's compliance with constitutionally guaranteed property rights and the prohibition on unjust expropriation must also be mentioned, not just with respect to the formal seizure of assets belonging to the suspended local organisations but also with respect to the confiscation of the personal property of individual human rights defenders and credible reports of blatant plunder by individual security officials in the course of raids on organisational premises.

The host of legal issues engaged by the campaign of individualised harassment and persecution of human rights defenders which appears to be underway both in Darfur and Sudan cannot be fully addressed here. What is clear is that Sudanese domestic and international law absolutely forbid the practice of torture. Prolonged incommunicado detention and over-broad restrictions on internal freedom of movement are also incompatible with constitutional and international obligations.⁵⁶ Finally, the African Commission on Human and Peoples Rights has ruled that Article 12 (2) of the African Charter protects against forced exile by enshrining the right to leave and to return (voluntarily) to the country of one's nationality.

RECOMMENDATIONS

The Consortium urges the African Union to:

In respect of the expulsion and suspension of organisations

- Call on the Government of Sudan to review, through the appropriate channels, its decision to summarily expel 13 international humanitarian aid agencies and suspend three local organisations which carried out vital protection and assistance activities for the displaced in Darfur and throughout Sudan. This should include a full and fair examination of the appeals lodged by the local organisations against their suspension and any application made by the expelled organisations in pursuance of their rights at law with respect to, *inter alia*, the expulsion of legally admitted staff persons and the seizure of property.
- In the event that Sudan decides not to reconsider its decision, whether in whole or in part, ensure that alternative mechanisms for delivery of necessary services to conflict affected populations in

⁵⁵ Article 40 (1) provides that "...every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his interest."

⁵⁶ For an analysis of the compatibility of the powers of the Sudanese National Security Service with international and constitutional provisions see REDRESS and the Khartoum Centre for Human Rights and Environmental Development, *Reforming the National Security Services: Mandate, powers and accountability*, at http://www.redress.org/documents/Security_Briefing_Paper_26_Jan%20English%20_2_.pdf.

Darfur and the other impacted areas, including urging Sudan to expeditiously and fairly deal with residual issues relating to the expulsions, for example, with regard to severance pay for local staff and handover of assets, as well as to lift administrative barriers which are hampering the scale up of the operations of those agencies which do remain;

- In the light of Article 6(4)(d) of the Great Lakes Pact IDP Protocol to which Sudan is a party,⁵⁷ consider the appointment of a special Humanitarian Envoy who would assist in discussions between the Government of Sudan, the African Union and NGOs with respect to ensuring humanitarian space and the protection of the displaced, in addition to contributing to the formulation of a coordinated and appropriate AU response to the evolving humanitarian situation both in Darfur and in the affected areas;
- Review the mandate, operational capacity and resources of UNAMID in order to ensure that it can deliver on the increased protection and security needs of Darfur's displaced and the humanitarian community, including its monitoring role; and

In respect of the persecution of human rights defenders by the Government of Sudan:

- Request an urgent joint mission of investigation of the situation of human rights organizations and defenders in Sudan to be undertaken jointly by the Special Rapporteur of the African Commission on Human and Peoples' Rights on Human Rights Defenders, Ms. Reine Alapini Ginsou and the Special Representative of the UN Secretary General on Human Rights Defenders, Ms. Margaret Sekaggya, to report to the African Union at its forthcoming Summit in June/July 2009;
- Pending this report, call on Sudan to cease the harassment, arrest and detention of human rights defenders and others engaged in the promotion of the rights and freedoms set out in the African Charter and as inconsistent with the Interim Constitution of the Republic of Sudan;
- Request the Chairperson of the African Commission on Human and Peoples' Rights in accordance with Article 58 (3) of the Charter, to undertake an urgent assessment and investigation of the human rights situation in Sudan and report to the African Union at its Summit in June/July 2009;
- Pending both investigations and reports, request the Government of Sudan not to take any steps that may lead or contribute to a violation of the principles contained in Article 4 (h) of the Constitutive Act of the African Union.

.....
For more information please contact:

Nobuntu Mbelle	+27 722990553
Chidi Odinkalu	+234 803 419 0668
Dismas Nkunda	+256 782310404

⁵⁷ This provision enjoins member states to "provide for the channels of engagement and cooperation between the organs of Government, organs of the United Nations, the African Union, and civil society."