

Annex 27/2

ICC-02/05-03/09-HNE-28

Letter dated 24 January 2011 from former Members of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005) and renewed pursuant to resolution 1945 (2010) addressed to the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan

Excellency,

We have the honour to transmit herewith the conclusions emerging from our several months' work in the Panel of Experts on the Republic of the Sudan, established pursuant to resolution 1945 (2010).

(Signed) Mr Claudio **Gramizzi**, Former Arms Expert
(Signed) Mr Michael **Lewis**, Former Aviation Expert
(Signed) Dr Jérôme **Tubiana**, Former Regional Expert

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Abbreviations

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| AOC | Air Operator Certificate |
| AU | African Union |
| AUHIP | African Union High-level Implementation Panel for the Sudan |
| AUPD | African Union High-level Panel on Darfur |
| CPA | Comprehensive Peace Agreement |
| DPP | Darfur Political Process |
| EUC | End-User Certificate |
| GoS | Government of the Sudan |
| ICAO | International Civil Aviation Organisation |
| JEM | Justice and Equality Movement |
| JSR | Joint Special Representative |
| LJM | Liberation and Justice Movement |
| PDF | Popular Defence Forces |
| SAF | Sudanese Armed Forces |
| SCAA | Sudanese Civil Aviation Authority |
| SGBV | Sexual and Gender-Based Violence |
| SLA-AW | Sudan Liberation Army-Abdulwahid faction |
| SLA/Justice | Sudan Liberation Army-Justice |
| SLA-Karabino | Sudan Liberation Movement-Karabino faction |
| SLA-MM | Sudan Liberation Army-Minni Minnawi faction |
| TS | Team Site |
| UAE | United Arab Emirates |
| UN | United Nations |
| UNAMID | United Nations/African [Union] in Darfur |
| UNDPA | United Nations Department for Political Affairs |
| UNDPKO | United Nations Department of Peacekeeping Operations |
| UNDSS | United Nations Department of Safety and Security |
| UNECA | United Nations Economic Commission for Africa |
| UNMIS | United Nations Mission in Sudan |
| UNMISS | United Nations Mission in South Sudan |

I. Introduction

1. This report is submitted by three former Experts appointed in January and February 2011 as members of the Panel of Experts on the Sudan, established pursuant to resolution 1591 (2005) and renewed in conformity with resolution 1945 (2010). Mr Michael Lewis tendered his resignation to the UN Secretariat on 21 July 2011, forwarded to the Secretary General on 6 August 2011; while Mr Claudio Gramizzi and Dr Jérôme Tubiana submitted their resignation letter to the Secretary General on 16 September 2011. Both letters were subsequently circulated to the Chair of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan (henceforth referred to as the Sanctions Committee).

2. As anticipated in their resignation letter dated 16 September 2011, the authors of this report consider it is their duty to communicate to the Committee the conclusions of their enquiries undertaken on behalf of the Panel of Experts, during their period of service. The evidential basis of this report is contained within the archives left by its authors for the Panel, following their resignation. It is hoped that this report, submitted by the authors in their personal capacity, will help to assist the Panel and the Sanctions Committee in their task of monitoring the implementation of measures relating to Darfur imposed by the UN Security Council in accordance with Resolution 1591 (2005).

3. Since the start of its mandate in February 2011, the Panel of which the authors were Members suffered from a major dissension between its Members: one part (including the coordinator) stating that each member should work separately on his or her area of expertise without coordinating or exchanging information with the other members; while the other part understanding the Panel's work, and the subsequent report, to be essentially a joint work for which the Panel's Members, by dint of signing the entire report, should take collegiate responsibility. The present report is the product of joint, corporate work amongst those member who adopted a collegial approach.

4. To ensure a clear distinction between this report and the reporting of the current Panel the authors have referred to themselves herein as "Members of the Panel" rather than as "the Panel" or "the Experts"¹. The authors would be keen for this report to be published by the Committee, either as an annex to the Panel's main reporting or as a free-standing document. This description is in no way intended to comment upon the work of the current members of the Panel, who were appointed after August 2011 and on whose working methods the authors are of course not in a position to make comment.

5. The scope of this report is limited to those areas covered by the work its authors during their mandate, and which were not included in the Panel's mid-term report. It thus focuses on issues related to the arms embargo on Darfur (established pursuant to paragraphs 7 and 8 of resolution 1556 of 2004 and paragraph 7 of resolution 1591 of 2005), the prohibition on offensive military overflights imposed by paragraph 6 of resolution 1591 of 2005 and other civil aviation related issues, and the implementation of the sanctions imposed against four individuals on 26 April 2006 pursuant to paragraph 3 of resolution 1591 (2005).

6. A number of conclusions presented in this report are based on documentary evidence gathered in an area of North Darfur around Shangal Tobay and are related to the deterioration of the security situation there, over the period from December 2010 to August 2011, immediately following the departure from the area withdrawal of SLA-MM forces after the group's retreat from the Abuja Agreement it had signed in 2006, and the establishment of a new local 'Popular Defence Force' (PDF) militia. The inclusion of the Shangal Tobay case-study in the report is mainly justified by the fact that the Members of the Panel documented the most significant incidents in the area, and had the opportunity to meet with relevant actors including government and 'traditional authorities' (or 'native administration'), SAF and PDF representatives, civilians, victims of armed violence and UNAMID personnel. The authors did not benefit from a similar level of access to relevant interlocutors and locations in other areas of Darfur. Nonetheless, from their experience and direct observations elsewhere in Darfur, and from information and testimonies gathered from sources in Darfur, Khartoum and countries neighbouring the Republic of the Sudan, the Members of the Panel consider that some elements emerging from the Shangal Tobay case-study represent a reliable illustration of more generic trends of the recent evolution of the conflict in neighbouring areas of the same region of eastern Darfur, straddling the border between North and South Darfur. Members of the Panel also found that the most intense violence in Darfur during their mandate happened in those areas of eastern Darfur, and in particular in Shangal Tobay area..

¹ This follows an orthographic convention suggested by the UN Secretariat in relation to the Panel's mid-term report.

1) Methodology and Standards of Evidence

7. This report aims to provide a technical assessment, and to present facts with objectivity, impartiality and independence. It reflects information gathered by the Members of the Panel, and is based on statements of fact without assumptions, interpretation or unsupported assertion.

8. While conducting their enquiries, the Members of the Panel committed to maintain strict impartiality from the positions of any party to the conflict in Darfur, any government, and any non-governmental entity; and to investigate in equal measure, given the availability of access to relevant sites, information and evidence, any violations of resolutions 1556 (2004) and 1591 (2005). Every effort was made to conform strictly to the methodological standards imposed by the best practices and methods set out in the report of the Security Council's Informal Working Group on General Issues of Sanctions (S/2006/997) and other existing relevant provisions.

9. The Members of the Panel agreed to identify the sources of information contained in this report, wherever this practice does not prejudice the agreed terms of confidentiality or security of the source. The Members of the Panel have taken particular care when analysing the veracity of information gathered from confidential sources, keeping in mind the identity and role of the source of such information. Similarly, the level of reliability of each piece of information presented has been assessed against other corresponding sources before being considered for inclusion in this report.

10. In conformity with the Panel's previous mandates and standard practices, the working methods of the Members of the Panel included:

- Conducting field research and inquiries, including interviews, within Sudan and particularly Darfur;
- Meeting officials of the Government of the Sudan (GoS) and other Member States, national and international non-governmental organizations, relevant units of peacekeeping missions in the region, civil society organizations, community leaders, alleged victims and eyewitnesses of violations of resolutions 1556 (2004) and 1591 (2005), members of rebel movements and other stakeholders relevant to the Panel's mandate;
- Visiting other relevant countries to gather information and evidence;
- Reviewing existing documents, including those generated by and gathered under previous mandates; public and non-public reports and literature; in order to generate leads for further inquiry and research;
- Collating and verifying the information gathered;
- When possible, providing the right of reply to interlocutors (individuals, organisations or states).

II. Shangal Tobay Study-Case: Intertribal Conflict and Militias

1) Background of the violence

11. The area of Shangal Tobay in North Darfur is an area of great ethnic diversity, with around 30 different ethnic groups – mostly small non-Arab groups as well as a few small Arab groups. In principle all ethnic groups are under the administration of a *shartay* (the most common title for paramount traditional leaders) of the Tunjur (non-Arab) ethnic group – currently Adam Abbakar Rashid.² One, if not the most important ethnic group in demographic terms, are the (non-Arab) Zaghawa, originally living further north in Kutum locality, who started to settle in Shangal Tobay area in the 1940s and even more extensively during the major drought wave of the 1970s.

12. When the war in Darfur started in 2003 many Zaghawa, notably those from communities who had left their original area to settle in eastern Darfur, joined the rebel Sudan Liberation Army (SLA). In 2003-4, when the Zaghawa part of the SLA chose to expand out of their original area of Dar Zaghawa north of Kutum, then under heavy attack from the government, they quickly took control of areas of eastern Darfur, heavily populated by Zaghawa migrants since the 1970s and 1980s. This included Shangal Tobay area, where the SLA took control in early 2004. The Zaghawa part of the SLA (which soon became an independent movement known as SLA-MM after its chairman Minni Arku Minawi) relied on support from the Zaghawa population and traditional leaders in the area and empowered their kin, while other communities suffered abuses (including taxations, arrests and murders) at the hands of the rebels – although the other non-Arab communities had initially suffered from

² Interviewed by Members of the Panel on three occasions in May 2011 and August 2011.

attacks of Arab militias, and at first were quite sympathetic to the rebellion. After SLA-MM signed the Darfur Peace Agreement (DPA) in Abuja, Nigeria, in May 2006, the government accepted SLA-MM to maintain its control over the same areas, where the patterns of abuses against non-Zaghawas civilian remained unchanged. This triggered an increasing hostility on behalf of non-Zaghawa communities toward the Zaghawa.

2) Recent events (December 2010 – June 2011) and inter-tribal dynamics

i) Anti-Zaghawa violence since December 2010

13. At the end of 2010, when Minni Arku Minawi and most of his followers left the government to return to rebellion, SLA-MM troops abandoned most of the areas they had controlled in eastern Darfur, notably the town of Shangal Tobay, and gradually most of the neighbouring rural areas. This put an end to the protection from which the Zaghawa community had previously benefitted, and triggered what proved to be the main cycle of violence in Darfur during the mandate of the Panel. Members of the Panel documented systematic attacks between late December 2010 and June 2011 against Zaghawa communities of eastern Darfur; notably in Dar-es-Salam locality, which includes Dar-es-Salam, Shangal Tobay, Abu Zerega, Sag-el-Na'am, Ab Deleig, Idd-el-Beyda, Wada'a, as well as Um Kaddada, and Al Taweisha localities in North Darfur; and She'eria, Khor Abeshe and Ghazan Jedid in South Darfur.

14. These attacks included harassment inciting them to leave their area, looting of properties, burning of villages and deliberate killings of civilians. As an example to illustrate this anti-Zaghawa dynamics, it is worth noting that the UNAMID team-site in Shangal Tobay received, on 2 March 2011, a letter signed by a prominent local PDF supporter and requesting the Mission to expel a list of staff, all but one Zaghawa. The letter refers to the listed staff stating that *"They are intelligence agents of the armed movements seeking to undermine security and plant fear among the people of the area. They strive to destabilize peace and spread fear among the citizens in the region"*.³

15. This cycle of violence provoked one of the most significant displacements that Darfur has experienced since the height of the conflict between 2003 and 2005, with the reported registration of around 70,000 new IDPs, some of which had already been displaced in former years. Most of those new displaced reportedly belonged to the Zaghawa group, according to UN agencies, and IDP and community leaders in the area and took refuge in the already crowded Zam Zam IDP camp, as well as the town of Abu Zerega, south of El Fasher. The effect of this displacement is that the Zaghawa migrant communities who had left their area of origin, in particular in the 1970s and 1980s, are now largely displaced from the non-Zaghawa areas where they had settled. A first wave of attacks had displaced most Zaghawa communities living south of Nyala in 2006, while the present wave of displacement has displaced a large part of the Zaghawa living in eastern Darfur in the highly strategic area between El Fasher, Nyala and the border with Kordofan.

16. Based upon extensive interviews with both victims and perpetrators of this violence in the area around Shangal Tobay and Abu Zerega in May 2011, including with local government officials, SAF and PDF militia leaders with direct command responsibility for the units involved in this violent incidents, Members of the Panel believe that the cycle of violence in eastern Darfur in the first half of 2011 was characterised by ethnic cleansing targeting one particular group. Evidence gathered on this matter is discussed in detail below.

17. The main authors of the violence are newly formed militias recruited - unlike in 2006 and prior to this, when most of the militias were recruited from Arab tribes - among small non-Arab tribes in the area. In particular, members of these militias interviewed by Members of the Panel were and listed recruits from the Tunjur (Shangal Tobay), Bergid (She'eria), Mima (Wada'a, Kalimendo, Shangal Tobay) and Berti (Um Kaddada, Al Taweisha) groups. These are the same groups to which belong the main paramount leaders of eastern Darfur, so are largely seen and see themselves as the 'indigenous landowners' of the area. These non-Arab militias represent a significant evolution of the character of government-aligned and government-supported forces in Darfur.

18. Following the departure of SLA-MM from the area in late 2010, male members of the afore-mentioned groups and some other non-Zaghawa groups were quickly mobilized by some of their main traditional leaders, as well as some of their kin members in the North Darfur government. According to PDF members in Shangal Tobay and two SAF commanders of the PDF interviewed by Members of the Panel, these newly-recruited forces were trained, armed (mostly with Type-56 variant AK-type assault rifles, according to the Panel's direct

³ Quote from the translation made by the Panel. A copy of this letter has been archived in the Panel's official records.

observations) and integrated into the Popular Defence Forces (PDF). Members of the Panel interviewed at length several PDF leaders and members, as well as traditional leaders, local politicians and Sudanese Armed Forces (SAF) officers supporting the training and management of those militias in the Shangal Tobay area. PDF leaders and their SAF officers admitted openly that their main aim was to expel the Zaghawa from the area and to prevent their return. Several of these interlocutors told the Members of the Panel that they considered all Zaghawas, including women and children, as rebels, and thus as legitimate targets.

19. In return, the Members of the Panel have established that Zaghawa self-defence militias and Zaghawa rebels of various movements, in particular SLA-MM and SLA-Karabino, committed retaliation attacks not only against PDF militias but also against civilians from other ethnic groups. These included looting of properties, burning of houses and both random and targeted killings.

ii) May 2011 Mass Execution

20. The most violent incident against civilians that took place in Darfur during the scrutinized period was perpetrated by Shangal Tobay PDF militias against Zaghawa civilians of Abu Zerega, and marks the apex of the conflict described above between non-Arab communities, specifically Zaghawa newcomers against other non-Arab tribes of the area.

21. On 31 May 2011, the recently formed PDF elements based in Shangal Tobay, mostly from the Tunjur and Bergid ethnic groups, moved north toward Abu Zerega. Abu Zerega is one of the most important Zaghawa communities in the area, and as most Zaghawa living south of it had already been displaced, many having taken refuge in Abu Zerega, it became, since April 2011, the southernmost Zaghawa settlement north of Shangal Tobay. PDF elements reportedly looted livestock belonging to the Zaghawa, triggering an important *faza'* (raid to re-capture stolen livestock) of several hundred Zaghawa civilians from Abu Zerega. Initially overrun by the *faza'*, the PDF received reinforcement from the SAF garrison in Shangal Tobay, causing the *faza'* to disperse. The SAF and PDF then proceeded jointly to arrest participants of the *faza'* who were on their way back to Abu Zerega. Three of those arrested were loaded onto SAF vehicles; all others, left under PDF custody, were executed shortly after their arrest.

22. Shortly after these killings, the North Darfur governor agreed to form an investigation committee of 17 members. The committee moved to Abu Zerega and Shangal Tobay areas on 5 June, accompanied by the commissioner of the locality (Dar-es-Salam locality) as well as representatives of the NISS, police and SAF. On 7 June, the committee presented a detailed report on their investigation, seen by Members of the Panel. The committee was able to find, identify and bury four bodies of Zaghawa civilians who had been murdered, and reported that they obtained evidence of 14 other executions. The bodies of the victims appeared to have been removed quickly before the arrival of the committee, allegedly by the local PDF. The committee concluded that a total of 18 Zaghawa civilians had been summarily executed. The committee also secured the release of the three Zaghawa civilians who had been arrested by the SAF.

23. At the sites of the executions, the committee reported finding ammunition and « cases » of small calibre ammunition for AK 47-type rifles, 'Dushka' (DSHK-type) and 'Goronov' (SGM-type) machine guns, and concluded that the executions had been carried out by heavy weapons mounted on vehicles. Members of the Panel also obtained photographs, all taken on the site of the execution in early June, picturing some of the bodies of the executed civilians as well as of cartridges of the bullets used to perpetrate the killing. While the photographs do not show the headstamps of the bullets to allow detailed comparison with stocks of armed actors in the region, they visually match precisely the same type of ammunition documented by Members of the Panel in the hands of the PDF in Shangal Tobay (see below).

iii) 17 June 2011 attack on Shangal Tobaya

24. In the evening of 17 June, Shangal Tobay was attacked by a raid the Member of the Panel understand was launched by both Zaghawa rebels, in particular from SLA-MM (with cars and camels), and Zaghawa civilians (on camels). The attackers killed 19 people (including 3 PDF and 3 SAF soldiers, all others being civilians), and burnt more than 100 houses. Members of the Panel believe this was a clear act of retaliation for the mass execution of 31 May.

3) Roles and responsibilities

i) GoS Responsibility and Role

25. Members of the Panel found that government officials and forces under the control of the Government of Sudan had a primary role in the violence in Shangal Tobay area, even if, in parallel, the government, or at least some of its members, also tried to stop the escalation of the conflict between the Zaghawa and other non-Arab tribes.

26. Members of the Panel established that the recruitment of new local PDF militias aiming at displacing the Zaghawa population was mostly supported by local traditional leaders (who as members of the so called "Native Administration" are appointed and paid by the government), officials in the local government and politicians belonging to the North Darfur government and/or the ruling National Congress Party (NCP). In Shangal Tobay the recruitment of several hundred PDF started only one week after a visit of the governor of North Darfur, Osman Mohamed Yusif Kibir, during which SLA-MM elements who had stayed in town shot at the governor's convoy – reportedly triggering his green light to start recruiting anti-Zaghawa militias: Governor Kibir, who himself belongs to the Berti tribe of eastern Darfur, was was often cited, both by Zaghawa civilians and rebels, and non-Zaghawa civilians in the area, as the main supporter of a policy of displacing the Zaghawa out of eastern Darfur.⁴

27. The PDF themselves informed Members of the Panel that they were trained and armed by SAF officers and operate under the command of two SAF officers, who were also interviewed by Members of the Panel. These SAF officers openly emphasized their responsibility of command, as did PDF leaders and members, during interviews with Members of the Panel.

28. The Members of the Panel also monitored the operations lead in the area of Shangal Tobay by SAF themselves, both with ground forces and with aircraft, and intervened several local military officers between December 2010 and June 2011. While Members of the Panel found that while some of SAF interventions, alongside with the PDF, were targeting rebel forces, they also included ground and air attacks targeting civilians. Further details of these aerial attacks are given in Section VIII below. In particular, multiple witnesses stated that the SAF, including aircraft, were operating alongside the PDF during the 31 May 2011 events that led to the execution of 18 civilians.

29. However, Members of the Panel concluded that there was no unanimous support for attacks against Zaghawa civilians in the area within GoS representatives and officials. Not only did Zaghawa members of the government and the NCP express strong criticism, but local administrators such as the commissioner of Dar-es-Salam locality appear to have taken steps against the recruitment of PDF serving in the area among local tribes.

30. Members of the Panel also appreciate that the establishment of the Government's investigation committee to investigate the 31 May 2011 execution constitutes an unusually strong and positive reaction on the part of the Sudanese authorities, despite the fact the committee itself did not enjoy unanimous support from GoS forces. Thus during the committee's visit to Abu Zerega and Shangal Tobay on 5 June 2011, local PDF shot at the committee's convoy and also executed, the meantime, another Zaghawa civilian, Mohamed Saleh Haroun, a witness of some of the 31 May executions, who was serving as a guide for the committee. It appears that Mohamed Saleh Haroun was pulled-out from the car of the commissioner of Dar-es-Salam locality by the PDF and shot in presence of the commissioner and several representatives of the security forces. Following this grave incident, the committee was able to order the arrest of six PDF leaders and members suspected to be responsible for the murder. Members of the Panel believe that this murder, which gravely undermines the authority of the commissioner of Dar-es-Salam and of the GoS in Shangal Tobay area, clearly indicates that the GoS is not in full control of the PDF militias it has formed, trained and armed. The committee report concluded that *"unruly elements from the Popular Defence Forces in the area should be brought under the control of the armed forces."* It is still to be seen whether the committee's recommendations and the subsequent arrests will lead either to legal consequences, or to tighter control or disarmament of the PDF.

ii) UNAMID Role and Responsibilities

31. UNAMID's presence is well established in the area where most of the violences and displacements took

⁴ Despite several requests, the Governor of North Darfur declined to meet with the Members of the Panel during their time in El Fasher.

place, with a team site in Shangal Tobay itself^{eria}, Khor Abeshe and Tawila. Members of the Panel found, however, that UNAMID forces have not been able to protect Zaghawa or other civilians, including those already living in IDP camps, from attacks, harassment and displacements, some of which took place just in front of Shangal Tobay UNAMID team site. In particular, starting immediately after the incident that occurred during the governor's visit on 14 December 2010, UNAMID reported that approximately 5,000 Zaghawa civilians (some 3,000 being already IDPs living in Shangal Tobay Jedid existing IDP camp) gathered within the security perimeter (space located between the exterior and interior fences of the camp) of the UNAMID team site in Shangal Tobay. In spite of some attempts, the peace-keeping force was unable to prevent repeated harassment (including arrests) of some of those IDPs who gathered for protection around the team site, finally leading the civilians to abandon the team site perimeter and leave Shangal Tobay area altogether.

32. Members of the Panel also found that UNAMID had not been able to investigate the executions of 31 May 2011 in an adequate or timely way. Although these events took place only a few kilometres from the UNAMID Shangal Tobay team site, UNAMID first visit to this location, by the Human Rights Section, took place on 12-13 June, and UNAMID Human Rights Section finally issued a code cable on the issue only on 24 June – after most evidence, including the bodies themselves, had either been hidden by the perpetrators, buried or taken by the government investigation committee, or were otherwise no longer visible. UNAMID could therefore only conclude that people had been "*allegedly killed/disappeared*", in contrast to the firm conclusions of the Sudanese government's own investigation.

33. Members of the Panel also found that violent incidents against Zaghawa civilians were on occasion not passed up the UNAMID reporting chain in the same way as violence committed by Zaghawa rebels and militias, including the 17 June attack on Shangal Tobay. Members of the Panel also found that events they themselves witnessed alongside UNAMID personnel were not fully reported in UNAMID Patrol Reports or Situation Reports.

34. For example, on 22 May 2011 Members of the Panel were travelling in a UNAMID convoy between Abu Zerega and Shangal Tobay when a large fire appeared on the road ahead. The patrol then crossed the village of Nyortik while it was burning, and after a few kilometres came across a lorry whose driver had just been ambushed and murdered by Zaghawa rebels or militias. Members of the Panel were later informed that the lorry driver and owner was a supporter of Shangal Tobay PDF, and local residents stated that he had likely been targeted as a retaliatory act for the violence against Zaghawa communities.

35. When the Members of the Panel and UNAMID personnel arrived at the site of the killing, PDF and SAF forces were already deployed, as they had been informed about the attack by the only passenger of the lorry who had walked, wounded, to Shangal Tobay town. They also informed the Panel and UNAMID that the Zaghawa attackers who had ambushed the lorry had then also set fire to the village (a village hitherto populated by their own tribe).

36. The timeline of this account does not correspond with the Panel's own observation of the start of the fire a short time before they encountered the PDF next to the village. It appears more likely, therefore, that the village, previously abandoned by its primarily Zaghawa residents, had been set alight by PDF forces themselves in retaliation for the killing. Members of the Panel observed that UNAMID's subsequent patrol report reiterated the account of the PDF and SAF forces, but did not note its evident discrepancies with the situation on the ground. Members of the Panel were also unclear as to why this important incident, even if inaccurately reported in the patrol report, did not make its way into UNAMID's (daily or weekly) situation reports in this period, or into other reports of less limited circulation than the team site patrol report..

37. Members of the Panel believe that in under-reporting or deliberately omitting to report some incidents in the area of Shangal Tobay, UNAMID prevented itself to have a clear understanding of the chain of violence: thus Members of the Panel believe that the 31 May executions were another retaliatory action, this time from the PDF replying to the 22 May murder.

38. Members of the Panel also consider that UNAMID public communication on the violence in eastern Darfur mostly circulated the views of one side of the conflict without seeking to represent other victims of violence. For instance, the February 2011 issue of the UNAMID magazine 'Voices of Darfur', published soon after the major wave of displacements of January, contained an interview with Shangal Tobay *shartay* Adam Abbakar Rashid, one of the main and open supporters of the PDF actions, under the title of "Shangal Tobay – a town of social harmony". To the question "*There has been some fighting lately in Shangal Tobay that has been of concern. What exactly happened there?*", the *shartay* simply replied: "*I cannot say whether or not the attack was*

organized against certain groups as I wasn't in the place when the attack happened, but during armed conflict anything can be expected". This is in stark contrast to Adam Abbakar Rashid's statements to Members of the Panel during several interviews between May and August 2010, when he, on the contrary, recognized his responsibility, together with the government's role, in the formation of the militias, and justified the specific targeting of the Zaghawa, while condemning to some degree some particularly violent incidents.

39. Alongside UNAMID's inability to protect civilians in the Shangal Tobay area, publicly communicating the account of an individual involved in forming and supporting the major perpetrators of violence in the area, without other viewpoints, risks exacerbating existing perceptions of UNAMID as insufficiently neutral: perceptions which may pose a threat both to UNAMID's own security and to the eastern Darfur area's peace and security.

III. Shangal Tobay Study-Case: Military Equipment & Arms Embargo

40. During their presence in the areas around Shangal Tobay and Abu Zerega in May 2011, the Members of the Panel inspected locations where military clashes between GoS security forces and armed movements had recently occurred, and where air strikes had been reportedly carried out by the Sudanese Air Force. To verify the information collected through physical inspection, the Members of the Panel also met with a wide range of local authorities and stakeholders: local commanders of GoS security agencies, including the SAF, GoS police services and PDF in Shangal Tobay, Tabit and Dar-es-Salam; traditional and community leaders; victims of displacement, and UNAMID personnel present in the Shangal Tobay area during the period under inquiry.

41. The Members of the Panel were able to directly inspect ammunition and ammunition boxes for small arms and light weapons, and remnants and fragments of air-to-ground rockets, in ten locations. These included sites of military clashes, villages targeted by military action, and facilities for SAF and PDF forces in the Shangal Tobay area. From dates of manufacture, it is clear that some of the material found in these locations has entered Darfur after the imposition of the embargo in March 2005. Any conclusions regarding direct responsibility for the transfer of military equipment in contravention of resolution 1591 are constrained, however, by the lack of information provided by the Government of Sudan and its agencies regarding SAF and GoS-managed equipment, and its chain of custody.

42. In addition, the Members of the Panel were not authorised by GoS to conduct any physical inspection of weapons in the possession of GoS-deployed personnel, nor to visit any facility where official stockpiles are stored by Sudanese military and security agencies. Given this lack of information regarding the Government's management and chain-of-custody of its military stocks, and the impossibility to determine the precise date and circumstances of the majority of the deliveries into Darfur, it has not been possible to reach definitive conclusions regarding responsibility for the supply of the observed weaponry. This remark also applies for instance, to weapons distributed to PDF elements based in Shangal Tobay by the SAF Command in El Fasher in January and February 2011.

43. In addition, the Members of the Panel were able to ascertain that the Sukhoi-25 (Su-25) combat aircraft whose presence in Darfur they documented in May, June and August 2011, constitute a violation by the Sudanese Armed Forces of the arms embargo established by resolution 1591 (2005). Additional questions related to the conformity of these aircraft's use with the prohibition on offensive military flights established by paragraph 6 of resolution 1591 (2005) are further discussed in the relevant sections below.

1) Post-embargo Manufactured Small Calibre Cartridges in the Shangal Tobay Area

44. While in the Shangal Tobay area, the Members of the Panel collected a large number of small-calibre cartridges. A significant number of these cartridges carried marking codes indicating a date of manufacture after the establishment of the arms embargo pursuant to paragraph 7 resolution 1591 (2005). The Panel also observed cartridges manufactured in 1971, 1975 and 1991, 107mm shells and weapons-fired cartridges of 35mm grenades: in view of the limited possibility to determine the chain of custody of these cartridges, these cases will not be fully discussed in this report (see Annex I for references).

45. Some of the cartridges observed during the Panel's current mandate presented the same company/factory codes and years of manufacture as those already documented in paragraphs 48 to 52 of the Panel's previous report (S/2011/111). During May 2011, however, the Members of the Panel also documented the presence of

several batches of ammunition that were never observed previously. These are shown in the table below and in the relevant annexes.

Table 1: Selected small calibre cartridges observed in Darfur during the Panel's current mandate

| Calibre | Picture | Documented presence | Year of manufacture | Company Code |
|---|-------------------------------|---|---------------------|--------------|
| 7.62x54mm | Picture I, Annex II | Cartridge collected near Tukumare village (N 13° 16'51.65"/E 25° 00' 57.06"), where a military confrontation between SAF troops and armed movements occurred in late January 2011. Cartridge collected on 20 May 2011. <i>Presence in Darfur also documented in S/2011/111.</i> | 2006 | 945 |
| | Picture II and III, Annex II | Cartridge collected in front of the PDF Head Quarter in Shangal Tobay (19 May 2011). A second piece was also collected, on 20 May 2011, near Tukumare village (N 13° 16'51.65"/E 25° 00' 57.06"), where a military confrontation between SAF troops and armed movements occurred in late January 2011. Cartridge collected on 20 May 2011. | 2008 | 945 |
| 7.62x39mm | Picture IV, Annex II | Cartridge collected in front of the PDF Head Quarter in Shangil Tobay (21 May 2011). | 2006 | 71 |
| | Picture V and VI, Annex II | Cartridge gathered from the personal body-guard (GoS Popular Police officer) of a local government official of Shangal Tobay Area, in Shangal Tobay, on 19 May 2011. A second matching cartridge was also collected on 20 May 2011, near Tukumare village (N 13° 16'51.65"/E 25° 00' 57.06"), where a military confrontation between SAF troops and armed movements occurred in late January 2011. Cartridge collected on 20 May 2011. <i>Presence in Darfur also documented in S/2011/111.</i> | 2008 | 71 |
| | Picture I, Annex III | Cartridge collected near Tukumare village (N 13° 16'51.65"/E 25° 00' 57.06"), where a military confrontation between SAF troops and armed movements occurred in late January 2011. Cartridge collected on 20 May 2011. <i>Presence in Darfur also documented in S/2011/111.</i> | 2007 | 61 |
| 12.7x108 mm – API (Armour-Piercing-Incendiary), type 54 | Picture II and III, Annex III | Cartridge collected near Tukumare village (N 13° 16'51.65"/E 25° 00' 57.06"), where a military confrontation between SAF troops and armed movements occurred in late January 2011. Cartridge collected on 20 May 2011. Also collected, on 21 May 2011, in a location along the road axis between Shangal Tobay and Dar-es-Salam (N 12°57'19.50"/E 25°20'36.48"), where a military confrontation between SAF and armed movements occurred | 2007 | 11 |

| | | | | |
|--|----------------------------|--|------|----|
| | | in December 2010. <i>Presence in Darfur also documented in S/2011/111.</i> | | |
| | Picture I and II, Annex IV | Collected on 21 May 2011 in a location along the road axis between Shangil Tobay and Dar-es-SalamDar-es-Salam (N 12°57'19.50"/E 25°20'36.48"), where military confrontation between SAF and armed movements occurred in December 2010. Matching cartridge also collected near Nejorti village (on road axis between Abu Zerega and Shangal Tobay) on 22 May 2011. <i>Presence in Darfur also documented in S/2011/111.</i> | 2007 | 41 |
| | Picture III, Annex IV | Collected on 21 May 2011 in a location along the road axis between Shangil Tobay and Dar-es-SalamDar-es-Salam (N 12°57'19.50"/E 25°20'36.48"), where military confrontation between SAF and armed movements occurred in December 2010. | 2008 | 41 |
| | Picture IV, Annex IV | Collected on 21 May 2011, in a location along the road axis between Shangil Tobay and Dar-es-SalamDar-es-Salam (N 12°57'19.50"/E 25°20'36.48"), where military confrontation between SAF and armed movements occurred in December 2010. | 2009 | 41 |
| | Picture V, Annex IV | Collected in front of the gates of the SAF military camp north of Shangal Tobay town, on 22 May 2011. | 2010 | 41 |

46. On 21 May 2011, the Members of the Panel visited a location located along the road axis between Shangal Tobay and Dar El Salam,⁵ where a military confrontation between SAF troops and an armed movement (SLA-Karabino) had reportedly occurred in December 2010. Dar-es-SalamDar-es-Salam. During this field-visit, the Panel was able to collect six empty tin ammunition boxes, each originally containing 85 rounds of 12.7mm APF (Armour-Piercing-Incendiary) type-54 ammunition. According to the information marked on the boxes, they appeared to have all contained ammunition manufactured in 2009 by the same company (company code "41"); and to belong to four different batches of production (two boxes of batch 05-09, batch 08-09, two boxes of batch 12-09 and batch 13-09).

47. The Panel also collected a large number of empty 12.7x108mm cartridges in the same location bearing the "41" company code and the "09" year-of-manufacture code, consistent with the markings on the tin ammunition boxes. As illustrated in Annex V, all these ammunition boxes have Latin-alphabet markings. One of the boxes also contained a fragment of the technical instructions for the packaged ammunition, in English (see Annex VI). In the same location, the Members of the Panel also observed and collected larger wooden crates within which the tin boxes appear to have been stored, shown in Annexes VII and VIII. These were labelled with a date (2010), presumably of packing, and with the contact details of the Sudan Technical Centre (STC), a Sudanese military company located in El Shagra, Khartoum.

48. In view of the specifications and markings of the boxes, crates and associated ammunition collected in this location, the Members of the Panel consider that the tin boxes, originally containing 12.7x108mm ammunition, carry marking-codes consistent with those used by military company/factory "41" located in the People's Republic of China. The fact that the technical note found in one of the boxes is printed in English may suggest that these lots of ammunition were packaged for export. Furthermore, the presence of larger wooden crates appears to indicate that the ammunition, possibly originated in the People's Republic of China, may have been

⁵ Coordinates: N 12°57'19.50"/E 25°20'36.48".

consigned to the Sudan Technical Centre (STC) company near Khartoum, before being transferred to Sudanese security agencies and armed forces operating in Darfur.

49. While it was not possible for the Members of the Panel to definitively determine the identity of the users of the ammunition contained in the boxes collected between the localities of Shangal Tobay and Dar-es-Salam, evidence suggests that at some point they had formed part of the equipment used by SAF and associated troops. In particular, the Members of the Panel observed a wooden box identical to those collected in May 2011, on the back of a Land Cruiser vehicle belonging to NISS and parked in front of NISS Head-Quarters in El Fasher, North Darfur, on 24 August 2011. Similar boxes and ammunition were also visible in video footage and photographs of captured SAF military equipment, taken in South Kordofan in early August 2011, which the Members of the Panel have had the opportunity to view. In addition, and as illustrated in Table 1 above, ammunition of identical calibre and manufactured with the same "company code" were also collected in front of or inside SAF facilities in May 2011.

50. Despite several requests of information submitted to the Governments of the People's Republic of China and of the Republic of the Sudan, the Members of the Panel did not receive any substantive information on the origin or chain-of-custody of these lots of ammunition (batches 05-09, 08-09, 12-09 and 13-09). While the Government of the People's Republic of China acknowledged that the marking codes observed on the head-stamps of the ammunition and on the 12.7mm ammunition boxes observed in Darfur are identical to those used by some Chinese military production enterprises, it refused to confirm the origin of the cartridges as Chinese.

51. In the course of dialogue with the Panel regarding manufacture-code '41' and other small arms ammunition found in Darfur, the Chinese authorities claimed that *"it is still possible that ammunition produced by other countries could also bear the same marking codes"*, while admitting however that *"China does not possess the information about what countries produce such ammunition"*.⁶ The Panel also requested from the Chinese Government relevant information on possible authorised exports and deliveries of ammunition manufacturing machines or tools, including marking-stamps for cartridges as part of complete machine systems, which might have produced Chinese-marked ammunition outside the People's Republic of China. The Government of the People's Republic of China stated that it considered that *"it is not convenient for China to provide further information"* in this regard, as such information is *"related to bilateral relations between China and relevant countries, and their security interests"*.⁷

52. In this respect, the Chinese authorities also underlined that *"[t]he Government of the Sudan has not made clarification or explanations to China regarding the circumstances around which the arms of possible Chinese origin were found in Darfur [as detailed in the Panel's report S/2011/111], therefore no document can be provided to the Panel"*.⁸

53. The Government of the Republic of the Sudan replied to the Panel's requests for information on the presence of ammunition of possible Chinese origin in Darfur by reiterating its statement that *"all the ammunition referred to in the 2010 report [S/2011/111] was Sudanese-made"*.⁹ In addition, regarding the presumed origin of foreign post-embargo-produced ammunition in Darfur, the Sudanese Government reiterated the explanations provided to the Panel established pursuant resolution 1891 (2009) and reproduced in its final report of 2010.¹⁰ The Panel was unable to verify this statement, or the specifications of Sudanese-produced ammunition, since despite several requests and the emergence of new information such as the STC-marked boxes, since the Members of the Panel were not authorised by the Sudanese Government to establish any dialogue with the Sudanese military corporations reportedly manufacturing small calibre ammunition, which the Sudanese Government deemed to be irrelevant to the Panel's mandate.¹¹

54. Considering the complete lack of detailed information provided on Sudan's nationally manufactured ammunition and its marking codes, and the use of some of the observed ammunition by GoS security agencies (SAF, GoS police and PDF) and the lack of detailed information about movements of military equipment by

⁶ Official correspondence to the Panel from the People's Republic of China dated 26 April 2011.

⁷ Official correspondence to the Panel from the People's Republic of China dated 27 June 2011.

⁸ Official correspondence to the Panel from the People's Republic of China dated 26 April 2011 and 27 June 2011.

⁹ Official correspondence to the Panel from the Government of the Republic of the Sudan dated 19 June 2011.

¹⁰ S/2011/111, paragraphs 61 to 65.

¹¹ Official correspondence from the Panel to the Government of the Republic of the Sudan dated 3 March 2011 (S/AC.47/2011/PE/OC.3) and 15 April 2011 (S/AC.47/2011/PE/OC.72); meetings with Government focal point, Khartoum, 2 May 2011, 19 June 2011.

armed groups, the Members of the Panel cannot conclude that this ammunition was illegally transferred into Darfur by armed movements, as suggested by the Sudanese Government¹².

55. The Members of the Panel do not suggest that the Government of the People's Republic of China authorized exports of ammunition to the Government of the Sudan or any other actors with the deliberate intention of this materiel being retransferred into Darfur in violation of the arms embargo; but that ample evidence now exists that such ammunition is indeed being subsequently retransferred into Darfur. In conclusion, the Members of the Panel reiterate the analysis already elaborated in the paragraph 59 of the S/2011/111 report, and acknowledge the possible existence of multiple pathways along which post-embargo-produced ammunition may have entered Darfur; including, for example, captures from Government stockpiles and subsequent trafficking into and within Darfur. Nonetheless, based on the evidence of ammunition in the possession of Sudanese security agencies in the Shangal Tobay area in May 2011, it appears that at least one such pathway has been deliveries of small calibre ammunition to SAF and other Sudanese security agencies contingents in Darfur, which appear to have taken place since the start of 2010.

56. Finally, the Members of the Panel deeply regret that the Government of the People's Republic of China and the Government of the Republic of the Sudan did not provide detailed information concerning the ammunition samples observed in Darfur in 2010 and 2011, despite several repeated formal requests. Such a limited level of cooperation from these Member States critically undermines the possibilities of the Panel's Members to comprehensively fulfil their mandate and for the Committee to be provided with the fully-documented conclusions requested by Member States themselves.

2) 30mm High-Explosive Incendiary Ammunition

57. During their visit to Tukumare village and its surrounding area on 20 and 21 May 2011, the Members of the Panel inspected ordnance remnants from a military confrontation that occurred in late January 2011 between SAF troops and elements of SLA-Karabino who had previously been based in the vicinity of Tukumare. In addition to a number of post-embargo-produced small calibre cartridges – discussed in the previous section – the Members of the Panel also collected several 30x165mm HEI (High-Explosive Incendiary) cartridges. These cartridges are compatible with the weapons systems of the SAF Mi-24 attack helicopters and Su-25 ground attack aircraft observed by the Panel in Darfur.¹³ Numerous civilians displaced by fighting in the area since December 2010, as well as UNAMID and UN agencies observers, described the use of these aircraft in aerial attacks since December 2010 against both armed groups and civilian settlements. These accounts were corroborated by the Panel's own inspection of air strike locations (see section X for fuller details of these inspections).¹⁴ The Panel has not, during the present or previous mandates, observed any non-state actors in Darfur with 30mm cannon.

58. Two of these 30mm cartridges (Annex IX) carried marking codes denoting post-embargo-manufacture (year of manufacture 2010), and indicating that they have entered Darfur in clear violation of the arms embargo established pursuant to resolution 1591 (2005). Tracing requests submitted to the Republic of the Sudan and to possible exporting countries, including the People's Republic of China, remained unanswered at the time of the Members' resignation from the Panel of Experts. In the absence of information provided by relevant Member States, the Members of the Panel are not in a position to determine if this ammunition was delivered directly into Darfur by the exporting country, or first transferred elsewhere into the Republic of the Sudan and subsequently supplied to the Sudanese armed forces deployed in Darfur or first authorised for export to any other third Member State.

3) Air-to-Ground Unguided Rockets

59. As detailed in Section VIII on offensive military flights, during their presence in Darfur the Members of the Panel documented the frequent use of aerial assets of the Sudanese Air Force to conduct military operations and

¹² Written answers to Panel's questions to the Government of the Sudan (dated 19 June 2001) and S/2011/111 (paragraph 67).

¹³ SAF attack helicopters observed by the Panel in El Fasher and Nyala included Mi-24P variants carrying a side-mounted 30mm cannon (for example, SAF helicopter number 942 observed at El Fasher on 26 May 2011, 7 June 2011, 15 June 2011 and 18 June 2011). The Su-25 ground-attack aircraft operated by SAF in Darfur also carry a 30x165mm cannon as part of their standard armament.

¹⁴ Interviews with group of displaced civilians, location withheld, May 2011; UNAMID Shangal Tobay team site reports, various dates, December 2010-April 2011.

to launch air strikes against both armed movements and, in some cases, civilian targets (for instance, in Wadi Mura area and Um Esheshat village). In particular, the Members of the Panel had the opportunity to document the regular presence in and deployment from Darfur airports of Mi-24 type attack helicopters and Sukhoi-25 type ground attack aircraft, whose use was also described by numerous UNAMID and Sudanese witnesses in several locations in the Shangal Tobay area since December 2010. The use of ordnance compatible with the weapons systems mounted on these aircraft was directly documented by the Members of the Panel in several of these locations.

60. In several air strike locations the Members of the Panel were able to observe fragments of S5 (including S5SB-type and S5M-type) 57mm air-to-ground unguided rockets, and S8 (including S8DM-type) 80mm air-to-ground unguided rockets; and to observe unexploded rockets of these types; as shown in the photographs in Annexes X and XI. Preliminary analysis of these rockets and fragments indicates that they are of pre-embargo manufacture, likely to have originated from existing stockpiles either within or outside the Republic of the Sudan.

61. Both S5 and S8 rockets are aircraft-launched weapons. The Panel has observed both SAF Sukhoi-25 and SAF Mi-24 aircraft in Darfur mounted with air-to-ground rocket launchers. After consultations with relevant interlocutors, including the exporting Government of the Sukhoi-25 aircrafts observed in Darfur, the Members of the Panel have established that all the Sukhoi-25 combat aircraft operating in the three states of Darfur were delivered to the Republic of the Sudan mounted with rocket systems compatible for firing S8 rockets only. Due to the SAF refusal to allow the Members of the Panel to examine its military aircraft present in Darfur or elsewhere,¹⁵ it has not been possible to verify which rocket types were contained within the rocket launchers on SAF's Mi-24 attack helicopters.

62. The Members of the Panel have initiated tracing requests to various Member States in order to assist its efforts to determine the origin and chain-of-custody of the S5-type rockets observed.¹⁶ At the time of the Members' resignations, none of these tracing requests, including the one submitted to the Government of the Russian Federation, had been comprehensively answered. Likewise, the Panel's request for information regarding these rockets to the national authorities of the Republic of the Sudan also remained pending. As a direct consequence, it has not been possible to reach any definitive conclusion regarding the origin and the chain of custody of these rockets before their delivery and use in Darfur. The Government of the Republic of Belarus has, however, informed the Members of the Panel that it has not issued any export licences for S5-type rockets for the Republic of the Sudan in recent years.¹⁷

63. Following a similar methodology, the Members of the Panel likewise submitted tracing requests to potential manufacturers and exporters of S8-type rockets.¹⁸ While some of these requests remained pending at the end of the Members of the Panel assignment in the Panel of Experts, the Government of Belarus confirmed the recent delivery of S8-type rockets to the Military Industrial Corporation (MIC) of the Republic of the Sudan, on the basis of an End-User Certificate (EUC) signed by the Managing Director of the MIC on 11 November 2010, for the delivery of 4,000 rockets (Annex XII). This EUC states that the exported goods "*are intended for exclusive use within the Sudanese Army and will not be used for the purpose that contradict to the provisions of the resolutions of the UN Security Council adopted because of unsettled conflict in Darfur*".

64. As indicated by the delivery certificate dated 18 April 2011 obtained by the Members of the Panel (Annex Arms XIII): 3,998 S8-type rockets (1,250 S8KO type and 2,748 S8DM type) were delivered to Khartoum by air in three shipments on the basis of three separate air waybills 000-1238 4481, 000-1238 4341 and 000-1238 4971 dated 24 January 2011, 28 January 2011 and 2 February 2011 respectively. At the time of drafting, the Members of the Panel were not in a position to determine whether the S8-type rockets collected or observed in Darfur in May 2011 formed part of these deliveries, undertaken from the Republic of Belarus a few months earlier.

¹⁵ Written response of the Sudanese Armed Forces to the requests of the United Nations Panel of Experts of the Committee established pursuant to Security Council resolution 1591 (2005), received 19 June 2011.

¹⁶ Official correspondence from the Panel to the Government of Belarus dated 9 August 2011, and material provided in meetings with Belarussian government officials, Minsk, 5-9 September 2011; official correspondence from the Panel to the Government of the Russian Federation dated 15 August 2011; official correspondence from the Panel to the focal point of the Government of the Sudan dated 17 August 2011.

¹⁷ Meeting with Belarussian government officials, 7 September 2011.

¹⁸ Official correspondence from the Panel to the Government of Belarus dated 9 August 2011, and material provided in meetings with Belarussian government officials, Minsk, 5-9 September 2011; official correspondence from the Panel to the Government of the Russian Federation dated 15 August 2011; official correspondence from the Panel to the focal point of the Government of the Sudan dated 17 August 2011.

65. It is nevertheless relevant to note that:

- the extensive and sometimes disproportionate use of these rocket types documented in Darfur suggests the existence, for SAF, of readily available and significant volumes of stocks of these specific rocket types;
- this extensive use suggests also that despite the provisions established by the Security Council on military equipment supplies to Darfur, the supply chain for this equipment into Darfur appears relatively unhindered;
- the fact that new supplies of S8-type rockets were delivered to the Republic of the Sudan in early 2011 will have served at the very least to liberate possible pre-existing stocks of similar equipment, including for their use in the three states of Darfur.

66. Finally, the Members of the Panel underline that the transfer of S8-type rockets from the Republic of Belarus to Khartoum does not represent a violation of the arms embargo on Darfur by the Belarussian authorities, whether or not this equipment has been used by the Sudanese Armed Forces in Darfur. As fully illustrated by the end-user and delivery verification documents presented in this section and its annexes, the transfer authorised by the Belarussian authorities appears to be in conformity with Member States' obligations regarding end-user assurances required for exports of arms and related materiel to the Sudan established by paragraph 10 of resolution 1945 (2010).

4) SAF Sukhoi-25 Ground-Attack Aircraft Operating in Darfur

67. As discussed in the section VII(2) below, the Members of the Panel documented the regular presence of five SAF Sukhoi-25 ground attack aircraft (tail numbers 201, 204, 205, 207 and 212) in El Fasher and Nyala airports during May, June and August 2011. Annex XIV contains photographs documenting the presence of these aircraft at Darfur's airports during this period. No Sukhoi aircraft were observed in El Geneina during the visit of the Panel Members in late May 2011.

68. The Members of the Panel sought to document the original supply and the chain of custody of these aircraft, to establish whether the presence in Darfur of these Su-25s represents a violation of the arms embargo. The Government of the Republic of Belarus confirmed to the Members of the Panel confirmed that all five of the aircraft observed in El Fasher and Nyala were part of a larger supply of fifteen Sukhoi aircraft (twelve Su-25 and three SU-25UB) to the Republic of the Sudan from the Republic of Belarus, undertaken between 2008 and 2010, as reported to the UN Register of Conventional Arms.¹⁹ They also confirmed that the five Su-25 aircraft observed by the Panel during its previous 2010 mandate whose presence is mentioned in the Panel of Experts' report²⁰ – tail numbers 203, 206, 209, 210 and 211 – were part of the same supply.

69. In the course of the dialogue with the Government of the Republic of Belarus, the Members of the Panel were provided copies of the End User Certificate (EUC) submitted in December 2006 by the Ministry of Defence of the Republic of the Sudan for the acquisition of these aircraft (Annex XV), a copy of the Letter of Guarantee requested by the Republic of Belarus from its Sudanese counterpart (see Annex XVI) and the list of the manufacturing numbers and respective tail numbers - as painted on each aircraft in Belarus prior to delivery - of each delivered aircraft (see Annex XVII).

70. The EUC does not include any explicit reference to the arms embargo and related provisions adopted by the UN Security Council on Darfur, and refers simply to the fact that *"the work, services and properties are intended exclusively for the need of the Armed Forces of the Republic of the Sudan"* and *"will not be sold exchanged or re-exported to any third countries without a written approval of the (...) Republic of Belarus"*. However, in the Letter of Guarantee requested by the Republic of Belarus from the Government of Sudan before delivering the first set of Sukhoi aircraft, dated 16 April 2008, the Sudanese authorities state that the equipment (aircraft and services) *"is delivered exclusively to the legal Government of the Republic of the Sudan and will not be used for the purposes, not contradicting to the resolutions of UN Security Council"*.

71. Belarusian authorities explained to the Members of the Panel that this additional guarantee was requested since national export control mechanisms for transfers of military equipment to the Republic of the Sudan have

¹⁹ Meetings with governmental officials in Minsk, 4-9 September 2011

²⁰ Report S/2011/111, paragraph 82 and 83.

been altered since 2005 in order to increase the number of guarantees and commitments on the legitimate use of the exported items, in conformity with Member States' obligations and Security Council requests. As discussed in section V(5) below, the wording included in the most recent EUCs requested by Belarusian authorities from their Sudanese counterparts include more explicit language on the obligations generated by the UN Security Council's resolutions on Darfur.

72. The Members of the Panel were likewise informed that while the contract for the sale of the fifteen aircraft did not include clauses on post-delivery verification by the Belarusian authorities, nonetheless Belarusian technicians did perform periodic technical inspections of the delivered aircraft, in accordance with a clause of the sale contract. All technical inspections had so far been performed in Khartoum, where all delivered aircraft were located during the presence of the Belarusian technicians. Belarusian authorities also informed the Members of the Panel that no requests for such services or maintenance had been made by the Sudanese Government since the expiration of the contract's post-sale assistance clause in May 2011.

73. The Belarusian authorities further informed the Panel that according to Belarusian national legislation on military equipment transfers, a verification commission can be established in cases where the Belarusian authorities have reason to believe that clauses contained in End-User certificates have been violated. However, no action had been taken regarding the possible contravention of the Sudanese Government's Letter of Guarantee, as they considered that the description contained in the Panel's report dated 8 March 2011²¹ of the presence in Darfur in 2010 of Su-25s of possible Belarusian origin did not constitute sufficient evidence, and no photographic or documentary evidence was provided in the report.

74. In conclusion: the Members of the Panel consider the presence of the Sukhoi aircraft observed in Darfur in May, June and August 2011, and their transfer from Khartoum to Darfur, which has not been approved in advance by the Sanctions Committee, to be a clear violation of the arms embargo established pursuant to resolutions 1556 (2004) and 1591 (2005).

75. It is relevant to underline that the export of the Su-25s from the Republic of Belarus to the Republic of the Sudan did not in itself represent any violation of international obligations, or any other provision established by the Security Council. This case, however, illustrates well the difficulty for exporting Member States to ensure the full implementation of the provisions related to the arms embargo on Darfur and to accurately assess the risk that their exports to the Republic of the Sudan may be used in contravention of prohibitions established by resolutions 1556 (2004) and 1591 (2005), even when such transfers are made conditional upon the necessary end user documentation and specific guarantees from the Government of the Sudan, as set out in paragraph 10 of Resolution 1945 (2010).

IV. Equipment used by Armed Movements

76. The Members of the Panel sought to investigate the military equipment possessed and used by Darfurian armed movements, in order to document its origin and previous chain of custody. In this context, the Members of the Panel liaised with representatives of several armed movements (including JEM, LJM, SLA-AW, SLA-MM, and various other smaller factions) in Darfur, Khartoum, neighbouring countries (Chad, Ethiopia, Kenya and Uganda) and Qatar. The Members of the Panel also engaged in consultations on this matter with GoS representatives including all relevant security agencies, officials from UNAMID and other UN agencies, local and traditional leaders, local politicians, IDPs and the civilian population in all the localities of the three States of Darfur visited by the Members of the Panel.

77. Despite a significant number of reports and oral testimonies, the Members of the Panel could not verify the information gathered with physical or documentary evidence, nor observe a sufficiently representative sample of armed groups' materiel, because of the restrictions imposed upon their movements in the Sudan and in Darfur, which prevented them from undertaking extensive visits to territory controlled by armed movements. The Government of the Sudan likewise declined to show the Panel any materiel captured from Darfur armed groups.

78. The vast majority of statements collected from armed movements' commanders and representatives indicated that ambushes and military clashes with SAF troops and related groups remain an important mean of supply for militarily active armed movements. Descriptions of the equipment made during these interviews suggest that this assertion is at least in some measure accurate. UNAMID security reports during the Panel's current mandate – in

²¹ S/2011/111, para. 82

some cases confirmed by SAF or GoS representatives – and testimonies collected in Darfur partially corroborate these statements, referring to instances where armed movements seized military equipment and ammunition during military confrontations with SAF and other GoS security agencies.

79. Multiple representatives of Darfurian and Chadian armed movements also reported to the Members of the Panel that an undetermined number – likely close to a few dozen - of the technical vehicles used by Chadian armed opposition groups based in Darfur, supposed to be relinquished in El Fasher as part of disarmament agreed under the auspices of the N'Djaména agreement between the two governments, have ended up under the control of two Darfurian armed movements (SLA-MM and LJM). Representatives of Chadian opposition groups in Khartoum in May and August 2011, LJM members met in Doha in May 2011 and individuals close to SLA-MM interviewed in Khartoum in August 2011 all consistently confirmed this supply mechanism.

80. Four SLA-MM representatives met separately by the Members of the Panel also stated that shortly before leaving the Government in December 2010, SLA-MM requested a supply of fuel from the Transitional Darfur Regional Authority, claiming that it was to be used to assemble SLA-MM troops before disarmament. They stated that the head of the TDRA Security Arrangements, General Muhammad Ahmed Mustafa al-Dabi, finally authorised the supply to the movement of several dozen barrels of fuel and some cash²².

81. The Members of the Panel also received several unconfirmed reports – including from GoS representatives, diplomatic sources in Khartoum, and UNAMID officials – that Darfurian armed movements, in particular JEM and SLA-MM, took advantage of the recent crisis in Libya to procure military equipment from Libyan stocks. The Members of the Panel regret not to have been in a position to further verify these allegations with documentary evidence or on-site inspection of materiel, in particular because of the refusal from GoS to facilitate any field visit in the border areas.

V. Cooperation from Member States and Compliance with Paragraph 10 of Resolution 1945 (2010)

82. In accordance with the Panel's mandate and paragraph 10 of resolution 1945 (2010), the Members of the Panel sought to examine the delivery of military equipment to the Republic of the Sudan not prohibited by resolutions 1556 (2004) and 1591 (2005), to determine whether they complied with paragraph 10, with respect to terms, conditions and guarantees contained in the necessary end user documentation. The fulfilment of this part of the mandate is critically dependent upon cooperation from relevant Member States. In general terms, these efforts have been hindered by the limited level of cooperation received from Member States and other relevant interlocutors. To provide a generic, quantitative overview: at the end of March 2011, the Panel had submitted 25 requests of information to individual Member States on the national measures adopted to implement international obligations contained in resolutions 1556 (2004), 1591 (2005) and 1945 (2010). By early October 2011, only six responses had been received.

83. The following section reviews the level of cooperation and information received from five Member States: the Republic of the Sudan, the People's Republic of China, the Russian Federation, the Republic of Ukraine and the Republic of Belarus. Information and cooperation was requested from some of these Member States in particular due to the existence of strong military cooperation and arms trade relationships between them and the Republic of the Sudan.

1) Republic of the Sudan

84. None of the requests for information submitted by the Members of the Panel in accordance with paragraph 10 of resolution 1945 (2010) on the military equipment legitimately acquired by the Republic of the Sudan received substantive answers. GoS and SAF representatives with whom the Members of the Panel met in Khartoum in May, June and August 2011 refused to address these requests substantively, underlining '*national sovereignty and security considerations*'.²³

²² Separate interviews made in Khartoum in August 2011 and Southern Sudan after the date of resignation.

²³ Meetings with representatives of the Sudanese government and armed forces on 2 May, 19 June, 2 August 2011 ; written response from the Sudanese Armed Forces to a written questionnaire from the Panel, dated 19 June 2011 (UN Secretariat translation from Arabic)

85. In particular, GoS representatives refused to recognize such questions as relevant to the Panel's mandate. When requested to confirm the receipt of weapons and military goods since the adoption of resolution 1945 (2010), SAF officials stated that *'the Sudan has received many weapons, needed to maintain the authority of the State and the law and to defend national sovereignty. Because of national security considerations, a State cannot disclose arms deals to any party. This request has nothing to do with the task of the Panel, the mandate of which is limited to the Darfur States'*; and that *'These request is outside of the scope of the Panel's mandate. Under the terms of the Security Council resolution 1591 (2005), the arms embargo is limited to the Darfur region and does not apply to all regions of the Sudan'*.²⁴

86. In the course of their mandate, the Members of the Panel were also subject to severe restrictions of movement by the Sudanese authorities. The Panel's requests for entry to Sudan were all denied from 18 February to 13 April 2011. While they were able to visit different locations in the three states of Darfur in May and June 2011, they were prohibited from visiting any location in Sudan outside Khartoum and Darfur, in spite of the provisions of paragraph 10 of resolution 1945 (2010) which pertain to the whole of Sudan. The Members of the Panel were subsequently denied a Darfur Travel Permit for a lengthy period in July 2011, and were forced to spend more than a month in Khartoum before being finally authorized to travel to El Fasher.

87. In the course of their dialogue with the Sudanese authorities in Khartoum, the Members of the Panel received oral and written reports on the security situation in Darfur, on arms movements, and on possible channels of support for Darfurian armed movements from within the Sudan and neighbouring countries. These reports did not include documentary or other substantive evidence to support their assertions. The Members of the Panel regret that they could not independently verify the veracity of this information, since they were not authorised to travel to the relevant locations, nor to access the available evidence. As a result, and to comply with the report's methodology, these elements could not be included in this report, although they are included in the archive of the Panel and stored at the United Nations Secretariat.

2) People's Republic of China

88. The level of accurate information provided by the Government of the People's Republic of China in response to the Panel's requests was also generally poor, limiting the ability of the Panel to fulfil their mandate with respect to assessing possible violations of paragraphs 7 and 8 of resolution 1591 (2005) and paragraph 10 of resolution 1945 (2010). 89. The Chinese Government refused to substantively address the Panel's enquiries regarding military trade and cooperation with the Republic of the Sudan, stating that *'it's not convenient for China to provide detailed information as requested (...), since the information is related to the bilateral relations between China and relevant countries'*.²⁵

90. With regard to the compliance of the People's Republic of China with the end-user documentation requirements established by paragraph 10 of resolution 1945 (2010), the Chinese authorities informed the Members of the Panel that *"China always requires the Sudanese Government to provide certificates of end-user which contain explicit commitments that those arms imported from China should neither be used in Darfur, nor be transferred to any third party"*.²⁶ Despite repeated requests, however, the Members of the Panel were not provided with the wording contained in end user certificates requested by the Chinese authorities from their Sudanese counterparts, or copies of those certificates themselves.

91. The Panel was however provided by the Chinese Government with a *"model of end user certificate contained in contracts of military trade between China and relevant countries"* (Annex XVIII).²⁷ This generic end-user certificate that was presented by the Chinese Government as the *"end user certificates [that] applies to all military trade contracts signed between China and all foreign governments, including the Government of the Sudan"*, and *"it also applies to all arms and related military equipments for export"*, nonetheless contains a specific reference to Darfur.²⁸

92. In light of these omissions and discrepancies, the Members of the Panel have been unable to verify that the model end user certificate provided by the Chinese Government reflects the current format of those used for

²⁴ Written response from the Sudanese Armed Forces to a written questionnaire from the Panel, dated 19 June 2011 (UN Secretariat translation from Arabic)

²⁵ Official correspondence from the People's Republic of China, dated 26 April 2011

²⁶ Official correspondence from the People's Republic of China, dated 16 April 2011

²⁷ Official correspondence from the People's Republic of China, dated 26 April 2011

²⁸ Official correspondence from the People's Republic of China, dated 27 June 2011

arms transfers from the People's Republic of China to the Republic of the Sudan, making it impossible for the Panel to verify the compliance of the People's Republic of China with paragraph 10 of resolution 1945 (2010). Conversely, considering the explicit reference to Darfur contained in the end user certificate, it appears highly unlikely that this model certificate is used by Chinese licensing authorities for Member States other than the Republic of the Sudan.

93. Finally, the Members of the Panel note that their request to schedule an official visit to China, in order to further discuss relevant questions and exchange information was repeatedly reviewed by the Chinese Government, but never approved. In addition, the Panel's official requests to meet with the Chinese diplomatic missions in both Addis Ababa and Khartoum received no positive response.

3) Russian Federation

94. The Members of the Panel repeatedly liaised with the Government of the Russian Federation, in particular to request additional information regarding the Mi-24 attack helicopters supplied to the Republic of the Sudan in 2007, 2008 and 2009 – as reported to the UN Register of Conventional Arms – in order to determine whether any of those observed in Darfur were amongst those supplied to the Sudan since 2005. In addition, the Members of the Panel requested further information regarding the conditions and commitments included in the end user certificates requested from the Republic of the Sudan for these military supplies; the existence of possible cases of non-compliance with such undertakings; and submitted a tracing request for some of the military equipment observed in use in Darfur.

95. The Members of the Panel regret that, up to their departure from the Panel, only fragmentary answers were provided by the Russian Government. With respect to questions regarding the Mi-24 helicopters, the only information shared with the Panel was that *"in accordance with the Russian law, before the decision of the President and the Government on delivering the afore mentioned aircraft to Sudan [between 2007 and 2009] were taken, the end-user certificate had been received from the Sudanese Ministry of Defense in which the Ministry took the obligation to use the helicopters exclusively for the national defense"*²⁹, thus indicating that no specific reference to the embargo on Darfur was contained in the relevant end use documentation. This also appears to be a step down from previous Sudanese end use declarations reported by the Russian government, which in October 2007 stated to the Panel that Mi-17 and Mi-24 helicopters supplied to Sudan between 2001 and 2006 were exported subject to a *"Declaration from the Sudanese side that these supplies would not be used in the states of North Darfur, West Darfur or South Darfur"*.³⁰

96. Russian authorities also stated that they *"don't have any information on violation of the [end use] certificate by the Republic of the Sudan"*.³¹ It remains unclear whether the various sections of previous Panels' reports documenting the presence and use of SAF Mi-24 helicopters in Darfur generated any post-delivery verification by the Russian government to determine whether Sudanese end use declarations or resolution 1591 (2005) had been violated with regard to Russian-supplied Mi-24 helicopters.

97. The Russian Federation further stated that *"It is impossible to provide the Group of experts with the detailed information [requested] on all tires, spare parts, equipment, instruments, simulators, ammunition and other accessories belonging to the [afore-mentioned] aircraft as well as any information on training or technical assistance rendered to Sudan by the Russian Federation"*. This raises concerns regarding the ability of the Russian Federation to verify that Russian-supplied equipment falling within the scope of the arms embargo imposed by resolution 1591 (2005) is not being transferred to Darfur in contravention of the embargo.

98. A tracing request regarding air-to-ground rockets, 30mm ammunition and helicopter spare parts submitted to the attention of the Government of the Russian Federation on 16 August 2011 remained unanswered at the time of the authors' departure from the Panel.

4) Ukraine

99. The Members of the Panel undertook an official mission to the Republic of Ukraine between 28 August and 4 September 2011, and liaised extensively with Ukrainian authorities during the course of the mandate. During this mission the Ukrainian government provided the Members of the Panel with detailed information on the

²⁹ Official correspondence from the government of the Russian Federation dated 19 May 2011

³⁰ Official correspondence from the government of the Russian Federation dated 5 October 2007

³¹ Official correspondence from the government of the Russian Federation dated 19 May 2011

export conditions imposed on the transfer of T-55 and T-72 tanks, and BTR-3 armoured vehicles, supplied to the Republic of the Sudan in 2010 by Ukrainian company Spetsstehtoekeksport (a subsidiary of the Ukrainian state arms export company Ukrspetsseksport), as reported to the UN Register on Conventional Arms;³² and regarding technical and maintenance services provided to Antonov aircraft operated by the Sudanese Government.

100. The Ukrainian Government stated that a Letter of Guarantee was requested from the Sudanese authorities before the signature of contracts related to equipment delivered in 2010; although the Ukrainian Government did not authorise the Panel Members to view copies of the relevant documentation due to confidentiality concerns.³³ This letter reportedly contained an explicit reference to the equipment being used in complete compliance with the terms and provisions of resolution 1591 (2005). In addition, the terms of the contract also reportedly included the prerogative for the exporting company to inspect the equipment in Sudan on a regular basis, and at least once every six months. Some post-delivery verifications had reportedly already been undertaken.³⁴

101. The Ukrainian Government also stated that in addition to the Letter of Guarantee, the end-user certificates provided by the Republic of the Sudan for the acquisition of the equipment delivered in 2010 also contained a clause referring to the obligation for SAF to use the imported equipment only in full compliance with resolutions 1556 (2004) and 1591 (2005). The same end-user certificates reportedly impose a prohibition on the Sudanese authorities to move the equipment into Darfur, and establish an obligation for the tanks and armoured vehicles imported from Ukraine to be stored in Khartoum. All end user certificates provided for Ukrainian arms transfers to the Sudan are reportedly required to stipulate that the exported goods cannot be transferred to Darfur without the prior authorisation of the Sanctions Committee, this clause having been required since the adoption of resolution 1591 (2005) and transferred to Ukrainian national law through a decree adopted on 18 January 2006.³⁵

102. The exporting company also reported that, in case of proved non-compliance with the terms of the contract, the implementation of the terms and conditions of the contract, including the provision of maintenance services and supplies of relevant parts and components, should be immediately ceased; and that not a single case of non-compliance had been reported in the past. The Ukrainian Government equally confirmed that, during 2011, licences were granted only for spare parts and components for the armoured vehicles exported previously.

5) Republic of Belarus

103. As indicated in section III(4) above, the Members of the Panel received full cooperation from the Government of the Republic of Belarus. In the course of their mission to Minsk from 4 to 8 September 2011, they could comprehensively discuss the supply of Sukhoi-25, of S-8 type rockets and of armoured vehicles - between February and May 2011 - to the Republic of the Sudan.

104. Belarusian authorities provided copies of a number of relevant documents relating to the authorisation, export, transportation and delivery of Sukhoi-25 aircraft between 2008 and 2010 and S8 rockets for those aircraft during 2011, as well as the supply of armoured vehicles to the Republic of the Sudan, transported by air cargo company Transaviaexport during 2011, as reported to the UN Register on Conventional Arms.³⁶

105. Panel Members were also permitted to view a number of end user certificates and undertakings relating to these arms transfers, verifying the evolution of the wording included in the end user certificates requested from the Government of the Sudan and the presence of more explicit references to the obligation not to use the imported equipment in Darfur. As stated in the previous section referring to exports from the Republic of Belarus, the Members of the Panel reached the conclusion that – despite the observed presence of Belarusian-supplied equipment in Darfur – all transfers from the Republic of Belarus to the Republic of the Sudan from 2006 onwards were in compliance with resolutions 1556 (2004), 1591 (2005) and 1945 (2010).

6) Concluding Remarks

106. In light of these enquiries and their direct observations in Darfur, the Members of the Panel consider that the existing arms embargo on Darfur, as established pursuant resolutions 1591 (2005) and 1556 (2004), and related arms transfer obligations for exporting Member States established by paragraph 10 of resolution 1945

³² Official correspondence from the government of Ukraine, dated 14 April 2011

³³ Meeting with Ukrainian government officials, Kiev, 30 August 2011

³⁴ Meeting with Ukrainian government officials, Kiev, 30 August 2011

³⁵ Meeting with Ukrainian government officials, Kiev, 30 August 2011

³⁶ Relevant documents have been filed in the Panel's archives at the United Nations.

(2010), do not represent a sufficient set of guarantees to prevent the supply of weapons and ammunition to Darfur. The case elaborated in the previous section regarding the presence and use of post-embargo-delivered SAF Sukhoi-25 in Darfur – where the exporting country conditioned the supply upon a comprehensive set of provisions, including those requested by the relevant Security Council resolutions – well illustrates the weakness of the current sanctions regime.

107. The Members of the Panel also deeply regret the weak level of cooperation received from several Member States regarding the provision of information and assistance in tracing the origin, supply and chain of custody of military equipment observed in Darfur, and consider this to be a major obstacle to the execution of the mandate of the Panel in a comprehensive, balanced and fully independent manner. Should cooperation from Member States not increase in the future, the very existence of the Panel – due to the impossibility to fully perform its mission and to contribute to the Committee's work – should be seriously reconsidered.

VI. Deployment of SAF Troops to North Darfur Without Prior Approval of the Sanctions Committee

108. As underlined previously in this report, the Members of the Panel were only permitted to establish a limited dialogue with SAF representatives in Khartoum, and were not authorised to extensively liaise with SAF officers in Darfur. As a result, the information gathered with regard to the deployment of armed forces and GoS security agencies, and potential deployment of troops into Darfur by the Government of the Sudan, is severely limited.

109. SAF representatives refused to provide any requested information regarding the deployment or presence of SAF and other GoS security agencies in Darfur, stating that such information was '*of utmost sensitivity*', and that '*the Panel has previously been informed about the presence of three divisions, and that they were originally transferred from the South by all available means of transportation*'. No details were provided regarding the composition, location or dates of transfer of these divisions. In addition, SAF representatives stated that, in the course of the Panel's current mandate '*there has been no new movement or deployment of the Armed Forces in Darfur*' and that '*any movement was connected with humanitarian, international or commercial convoys for which the Armed Forces was providing security*'.³⁷

110. In contradiction to these statements, while visiting Malha area (North Darfur) in early June, the Members of the Panel received consistent, separate, independent reports from UN/AU personnel (military and police UNAMID personnel and another UN agency, all interviewed separately), local authorities, and members of an armed group affiliated to SLA/AW, regarding the transit via Malha town of SAF troops - estimated between 1500 and 2000 personnel - deployed from Khartoum.³⁸ This SAF contingent reportedly arrived in Malha town on 14 March 2011, in a large convoy of trucks and technical vehicles.

111. According to local UN observers and local authorities, these troops remained in Malha town for a period of one month, before moving northwards.³⁹ Statements issued by local authorities to UNAMID representatives when introducing the arrival of troops, and reports collected by the Members of the Panel from individuals who directly interacted with the newly arrived SAF personnel, confirmed that the contingent was deployed directly from Khartoum and transited through El Fasher, before reaching Malha.⁴⁰

112. Several separate, independent accounts received from UN and local sources who interacted with these troops indicated that they had stated that they were deployed to provide security to an oil exploration mission north of El-Hara region (Oil Block 12-A).⁴¹ Local residents and armed group members also claimed that this

³⁷ Written responses from the Sudanese Armed Forces to Panel's written questionnaire dated 19 June 2011 (UN Secretariat translation from Arabic).

³⁸ Interview with UNAMID military source, El Fasher, 12 May 2011 ; interview with UN source, Malha area, 9 June 2011 ; interview with second UN source who interacted with the newly deployed SAF force, Malha area, 10 June 2011 ; interview with Sudanese local authorities, North Darfur, date withheld ; interview with SLA/AW personnel, North Darfur, June 2011 ; interview with UN agency staff, 13 June 2011

³⁹ Interview with UN source, Malha area, 9 June 2011 ; interview with second UN source who interacted with the newly deployed SAF force, Malha area, 10 June 2011 ; interview with Sudanese local authorities, North Darfur, date withheld ; interview with UN agency staff, 13 June 2011

⁴⁰ Interview with UNAMID military source, El Fasher, 12 May 2011 ; interview with UN source, Malha area, 9 June 2011 ; interview with second UN source who interacted with the newly deployed SAF force, Malha area, 10 June 2011.

⁴¹ Interview with second UN source who interacted with the newly deployed SAF force, Malha area, 10 June 2011 ; interview with UN agency staff, 13 June 2011

SAF contingent was also involved in military confrontations with Darfurian armed movement elements on their way to El Hara area, including in the vicinity of Jebel Issa.⁴² The Members of the Panel understand that this movement of troops into Darfur, likely with military equipment, was not notified to the Sanctions Committee.

113. Even if the main purpose of this troop movement into Darfur was to provide security to commercial companies, and did not aim to increase SAF military capacities in order to use them in the conflict in Darfur, the Members of the Panel consider that, due to the absence of notification from GoS and the lack of prior authorization from the Sanctions Committee, this movement of SAF troops into Darfur represents a violation of resolution 1591 (2005) by the Sudanese Government.

VII. Aviation

1) Military flights by cargo aircraft into and within Darfur

114. With regard to violations of the arms embargo and the prohibition on offensive military flights in Darfur established by resolution 1591 (2005), both direct observation and air traffic records obtained by the Members of the Panel indicate that during the period of the Panel's presence in Darfur, the SAF continued to operate regular flights with Ilyushin-76, Antonov-26 and Antonov-32 cargo aircraft between Khartoum and Darfur, and within Darfur itself. The table below shows those flights for April-June 2011 alone which the Members of the Panel were able to verify through documentary records.⁴³ This likely represents a small subset of the total number of military flights by transport aircraft into Darfur even during this short period.

Table 2: Military flights by Il-76, An-26 and An-32 transport aircraft between Khartoum and Darfur, and within Darfur, verified by the Panel, April-June 2011

| Date | Call-sign/ flight number | Aircraft Type | From | To |
|----------|-----------------------------|------------------|------------|----------------------------------|
| 08/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 11/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Fasher |
| 13/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Fasher |
| 14/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | Nyala |
| 16/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Fasher |
| 17/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 20/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 20/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 23/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 24/04/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 02/05/11 | GAD501 | Il-76 | Khartoum | El Geneina (arrived 06:30) |
| 02/05/11 | GAD501 | Il-76 | El Geneina | Khartoum |
| 04/05/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 05/05/11 | GAD187 | An-26 | Khartoum | El Geneina (arrived 06:43) |
| 09/05/11 | GAD186 | An-32 | El Fasher | El Geneina (arrived 10:15) |
| 09/05/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 12/05/11 | GAD178 | An-26 | Khartoum | El Geneina (arrived 07:50) |
| 12/05/11 | GAD178 | An-26 | El Geneina | Not known |

⁴² Interviews with armed group members and local residents, Jebel Issa, 12 June 2011; interview with UN agency staff, 13 June 2011

⁴³ Air traffic records obtained by the Panel from confidential source, on file; airway bills and cargo manifests for flights of EK-76592 (see below), on file.

| | | | | |
|----------|--|------------------|-----------------------------|----------------------------|
| | | | (departed 11:29) | |
| 12/05/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Geneina |
| 14/05/11 | GAD186 | An-32 | El Fasher | El Geneina (arrived 05:27) |
| 14/05/11 | GAD186 | An-32 | El Geneina (departed 06:13) | El Obeid |
| 25/05/11 | <i>[not known but leased during this period to Sudanese MOD]</i> | Il-76 (EK-76592) | Khartoum | El Fasher |
| 26/05/11 | <i>[not known but leased during this period to Sudanese MOD]</i> | Il-76 (EK-76592) | Khartoum | El Fasher |
| 06/06/11 | GAD101 | Il-76 (EK-76592) | Khartoum | El Fasher |
| 07/06/11 | GAD101 | Il-76 (EK-76592) | Khartoum | Nyala |

i) Antonov aircraft moved into Darfur by SAF

115. Military flights into or within Darfur do not necessarily violate the Security Council's prohibition of offensive military overflights in Darfur, or the embargo imposed by resolutions 1556 and 1591. However, documentary records obtained by the Members of the Panel indicate that in two instances during this two month period alone, on 5 May and 12 May 2011, Antonov transport aircraft were moved for or by the Sudanese Armed Forces (using military call signs GAD 187 and GAD 178) from Khartoum into Darfur.⁴⁴

116. In light of the well-documented and ongoing use of Antonov cargo aircraft by SAF to conduct offensive military flights in Darfur, including aerial bombardment and other aerial attacks (see section VIII below), the Members of the Panel consider that these SAF movements of An-26 and An-32 aircraft into Darfur, without the permission of the Committee, constitute violations of the embargo imposed by paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005).

ii) Private air logistics for the Sudanese Armed Forces in Darfur: the case of V-Berd Avia / EK-76592

117. Previous Panel reports have documented the role of private air operators and civilian-registered cargo aircraft in transporting arms and other embargoed material into Darfur. Cases documented by previous Panels have, however, all involved Sudanese-domiciled air operators, operating almost exclusively Sudanese-registered aircraft.⁴⁵ During its current mandate, the Members of the Panel have for the first time documented at least one foreign private air operator, V-Berd Avia, directly operating cargo flights for the Sudanese Armed Forces between Khartoum and Darfur. This internationalization of the Sudanese Armed Forces' logistics in Darfur is significant particularly in relation to the responsibilities of private sector actors in conflict-afflicted areas noted in paragraph 13 of Resolution 1945 (2010).

118. The Members of the Panel have established through interviews and contract documentation that from April to June 2011 an Ilyushin-76 cargo aircraft with the Armenian civilian registration EK-76592 was leased to the Sudanese Ministry of Defence, and operated in Sudan with a military ('Gadir') call-sign. The Members of the Panel directly observed EK-76592 on several occasions during the course of its the Panel's mandate, both in Darfur and on the military apron at Khartoum Airport (HSSS), as illustrated in Annex XIX.⁴⁶

119. The Members of the Panel have established that during this period EK-76592 was operated by V-Berd Avia, a company based in Sharjah, UAE, operating on the basis of an Armenian-issued Air Operator Certificate (AOC). The general director of V-Berd Avia and its sister company South Airlines (based in the same offices in Sharjah, also on an Armenian AOC), informed Members of the Panel that the aircraft was wet-leased to the Sudanese air operator Azza Transport.⁴⁷ However, contract documentation subsequently provided to the

⁴⁴ Air traffic records obtained by the Panel from confidential source, on file

⁴⁵ Two exceptions are (i) an Ilyushin-76 aircraft with a Burkinabé registration, XT-FCB, documented as operated by the Sudanese company Azza Transport in 2007; (ii) an Ilyushin-76 aircraft purchased by the Sudanese company Trans Attico, wet-leased to Azza Transport, and temporarily operated under its previous Armenian registration EK-76705 before being re-registered with the Sudanese registration ST-ATH. See S/2007/584 paras. 102, 104.

⁴⁶ Direct observation on 9 May and 12 May (Khartoum); 25 May and 26 May (El Fasher). Photographs on file with the Panel.

⁴⁷ Meeting at South Airlines, Sharjah, UAE, 11 July 2011

Members of the Panel (Annex XX) clearly states that the lessee of the aircraft was the Sudanese Ministry of Defence.⁴⁸ Under the terms of this \$300,000 contract, signed on 22 March 2011 by "Coordinator Brig Daf Alla Khamiss" for the Ministry of Defence,⁴⁹ V-Berd Avia provided the Ministry of Defence with the services of the aircraft, a four-person flight crew and two ground personnel, to be based in Khartoum for an initial two months.⁵⁰

120. According to cargo documentation and partial air traffic records obtained by the Members of the Panel, EK-76592 made at least 17 flights from Khartoum to Darfur (El Fasher, Nyala and El Geneina) between 5th April and 10th June,⁵¹ operating under the call-sign GAD101, a 'Gadir' military call-sign of the Sudanese Armed Forces.⁵² Cargo manifests and airway bills for 15 of these flights, provided to the Members of the Panel by South Airlines, indicate that the consignor and consignee of all the cargo carried was the Ministry of Defence.

121. The Members of the Panel have been unable directly to observe cargoes being transferred to and from EK-76592.⁵³ Eye-witnesses in Nyala informed the Members of the Panel that the aircraft was loaded and off-loaded by military personnel, and that it offloaded both personnel and vehicles in Nyala.⁵⁴ The general director of V-Berd Avia assured the Members of the Panel that EK-76592 was not involved in transporting any military goods during its period of operation in Sudan, but only general cargo.⁵⁵ While the Members of the Panel have been unable to confirm whether embargoed material has been transported to Darfur on this aircraft, inconsistencies and omissions in the documentation provided to the Members of the Panel by South Airlines raise serious concerns regarding its accuracy.

122. First, the cargo manifests and airway bills provided by South Airlines for EK-76592's flights within Sudan were in the name of an ostensibly unrelated Sudanese air operator, Attico Airlines (formerly Trans-Attico), as shown in Annex XXI. To explain the use of this company's cargo documentation, South Airlines subsequently stated that the lessee had "made an agreement with Attico Airlines".⁵⁶ By contrast, representatives of Attico Airlines insisted to the Members of the Panel that their company had had nothing to do with these flights, and that the airway bills provided by South Airlines were falsified documents (although a sample airway bill they provided to the Members of the Panel appears to match the format and appearance of those supplied to the Panel for EK-76592's flights).⁵⁷ Attico's representatives also insisted that their company does not work with or subcontract from Azza Transport.⁵⁸

123. Secondly, all of the cargo manifests and airway bills provided by South Airlines for EK-76592's flights to Darfur bear identical cargo descriptions - 'F[ood] stuff' - in identical quantities (35,000kg) on each flight (with

⁴⁸ Lease Agreement between V-Berd Avia and the Ministry of Defence, No. SA/AZ/KRT/2, dated 22 March 2011.

⁴⁹ This individual has previously been identified in association with the purchase of aviation equipment by Azza Transport: in 2008 the Russian government informed the Panel that aircraft equipment procured in 2004 by Azza Transport from a Russian company was paid for from the Russian bank account of Sudanese national "Dafalla Khamis ALKhamis" (official correspondence from the Panel to the Permanent Mission of the Russian Federation to the United Nations, reference S/AC.47/2008/PE/OC.23 dated 7 July 2008; official correspondence from the Permanent Mission of the Russian Federation to the United Nations to the Panel, dated 16 September 2008).

⁵⁰ Lease Agreement between V-Berd Avia and the Ministry of Defence, No. SA/AZ/KRT/2, dated 22 March 2011.

⁵¹ Flight documentation for flights to El Fasher on 11 April, 13 April, 16 April, 25 May, 26 May, 6 June; flight documentation for flights to Nyala on 14 April and 7 June; flight documentation for flights to El Geneina on 8 April, 17 April, 20 April (2 flights), 23 April, 24 April, 4 May, 9 May, 12 May.

⁵² Flight number 'GAD101' on cargo manifests for EK-76592 provided to Panel by South Airlines; matching the dates of 'GAD101' flights by an Il-67 aircraft recorded on Darfur airport flight records seen by the Panel. For the use of 'Gadir' call-signs by SAF, see S/2007/584 para. 95.

⁵³ The Panel requested access to the tarmac at Khartoum, El Fasher and Nyala airports in order to verify whether the activities of civilian and military aircraft there were compliant with the Security Council's embargo on Darfur and its prohibition on offensive military overflights. Although the Sudanese Civil Aviation Authority initially stated that such access would be granted (meeting with SCAA, Khartoum, 12 May 2011), the Panel's written request in follow-up (official correspondence to SCAA, 17 May 2011) received no response, and all the Panel's subsequent requests for tarmac access were refused by SCAA officials (meeting with airport authorities and NISS personnel, El Fasher airport, 14 June 2011; meeting with airport authorities and NISS personnel, Nyala airport, 16 June 2011). Likewise the Government of Sudan refused to grant the Panel permission to view or inspect any military aircraft operating in El Fasher, Nyala or El Geneina, on the grounds of national sovereignty and security considerations (GOS written response to Panel questionnaire, 19 June 2011).

⁵⁴ Interview with confidential eye-witnesses, Nyala, 17 June 2011

⁵⁵ Meeting at South Airlines, Sharjah, UAE, 11 July 2011

⁵⁶ Email correspondence, 25 July 2011

⁵⁷ Interview with Attico Airlines, Khartoum, 1 August 2011; sample Attico Airways airway bill, on file with Panel.

⁵⁸ Interview with Attico Airlines, Khartoum, 1 August 2011

one exception).⁵⁹ This does not match the cargo descriptions provided to the Members of the Panel by eyewitnesses. In addition, the Members of the Panel have confirmed through air traffic and transponder records that EK-76592 made three flights for which South Airlines has not provided any cargo or flight documentation despite further requests: two from Khartoum to El Geneina on 4 May and 12 May,⁶⁰ and one from Khartoum to an unidentified destination on 23 May.⁶¹

124. Thirdly, air traffic records obtained by the Members of the Panel (Annex XXII) indicate that the aircraft transported a total of 415 passengers on three rotations between Khartoum and El Geneina on 4th, 9th and 12th May, operating as usual under military call-sign GAD101.⁶² Cargo documentation provided by South Airlines for 9 May (Annex XXIII) describes the aircraft's cargo to El Geneina as 35,000kg of 'food stuff', and does not mention any passengers; while air traffic records state that the aircraft carried 160 passengers on that date.⁶³ Documentation was not provided by South Airlines for 4 and 12 May, despite further requests. Air traffic records obtained by the Members of the Panel do not clarify whether these passengers were carried to or from El Geneina, nor whether they were military or civilian personnel.

125. These inconsistencies and omissions in the flight and cargo documentation provided by South Airlines need urgently to be clarified to the Committee by South Airlines or the Sudanese Ministry of Defence (the lessee, consignee and consignor of these cargo flights). The Sudanese Ministry of Defence should also clarify to the Committee whether the 415 people carried on military-call-sign flights between Khartoum and El Geneina on 4, 9 and 12 May were military or paramilitary personnel; their status in Darfur; and their direction of travel.

126. This case also raises concerns regarding the responsibilities of private actors in conflict-affected areas, highlighted by paragraph 13 of Resolution 1945. When Members of the Panel met with the managing director of South Airlines / V Berd Avia in Sharjah, he stated that the company did not have routine access to cargo or flight documentation relating to the activities of EK-76592 during the period of its lease in the Sudan, but only received verbal updates from his crew by telephone.⁶⁴ The company's apparent lack of detailed knowledge about the activities and movements of its own aircraft makes it impossible for the company to ensure that the aircraft, its crew and its lessee do not violate the measures imposed by resolutions 1556 (2004), 1591 (2005) and 1945 (2010); or indeed the terms of the lease contract itself.⁶⁵

127. After meeting the Members of the Panel, South Airlines stated that it would request cargo and flight documentation in person from the lessee in Sudan, and has subsequently provided some documentation of this kind. This cooperation was extremely useful to the Panel's work. However, as discussed above, the company has not provided any documentation for at least three flights between Khartoum and Darfur which the Members of the Panel have established took place during May 2011.

2) Other military and paramilitary aviation assets in Darfur

i) SAF military aircraft

128. Although the Panel Members' observations cannot constitute a comprehensive survey of Darfur-based aviation assets, nonetheless a decreased number of SAF aviation assets based at Darfur's three main airports

⁵⁹ An airway bill for a flight by EK-76592 from Khartoum to El Fasher on 26 May 2011 states that the aircraft carried 4000kg of "F[ood] Stuff". It is not possible to determine whether this was the total cargo carried on this flight, since a full manifest was not provided for this date. South Airlines also provided manifests and waybills stating that EK-76592 flew from Khartoum to El Obeid for the Ministry of Defence on 5 April 2011, describing the same cargo of 35,000kg of foodstuff; and from Khartoum to El Obeid on 10 June 2011, carrying 35,000kg of "general cargo". According to its manufacturer the maximum cargo payload of an Il-76TD aircraft is 50,000kg, so the recurrence of '35,000kg' as a cargo quantity on the flight documentation is not attributable simply to maximum loading.

⁶⁰ Air traffic records obtained by the Panel from confidential source, on file.

⁶¹ Transponder records obtained by the Panel, on file, registering movement of EK-76592 at Khartoum at 08:31 and 15:18.

⁶² Air traffic records obtained by the Panel from confidential source, on file.

⁶³ Airway bill no. 9609 dated 9 May 2011, on file with Panel. No cargo manifest for the entire aircraft was provided to the Panel for this date.

⁶⁴ Meeting at South Airlines, Sharjah, UAE, 11 July 2011

⁶⁵ For example, the lease agreement for EK-76592 states that the lessee may not use the aircraft "to execute flights...in areas of hostility", despite it being flown on behalf of the Sudanese Ministry of Defence into all three states of Darfur during a period of ongoing hostilities between the Sudanese Armed Forces and rebel groups. The lease agreement also states that the lessee may not use the aircraft to carry "weapons, explosive substances and other hazardous materials". Lease Agreement between V-Berd Avia and Ministry of Defence, No. SA/AZ/KRT/2, dated 22 March 2011, clause 2.6.

have been observed in 2011 in comparison to 2010.⁶⁶ During May, June and August 2011 the Members of the Panel documented the presence in Darfur of:

- Five Sukhoi-25 (Su-25) ground attack aircraft (tail numbers 201, 204, 205, 207, 212);
- Three Mi-17 military transport helicopters (tail numbers 525, 540, 543);
- Nine Mi-24 attack helicopters (tail numbers 928, 937, 938, 939, 942, 943, 947, 948 stationed at El Fasher and Nyala, and an additional Mi-24 which crashed near El Fasher on 18 April 2011⁶⁷). Satellite imagery indicates that two attack helicopters were also present near Kutum, North Darfur in April 2011; and three at El Geneina in February 2011;⁶⁸ but the Members of the Panel have not determined whether these were introduced from outside Darfur in addition to those listed above, or moved from within Darfur.⁶⁹

129. During 2011 the Members of the Panel have obtained no evidence of the presence or operation in Darfur of MIG-29 fighter aircraft, Fantan A-5 ground attack aircraft, or unmanned aerial vehicles, all three of which have been reported or observed by the Panel during previous mandates. However, Members of the Panel did observe three SAF aircraft not previously seen by the Panel in Darfur (see photographs in Annex XIV):

- Su-25 number 204, present in Nyala during June 2011;⁷⁰
- Su-25 number 205, which arrived in El Fasher between 14 May 2011 and 30 May 2011,⁷¹ replacing Su-25 number 212 which malfunctioned on landing at El Fasher during April 2011 and remains non-functional;⁷²
- Mi-17 number 543, observed in El Fasher on 22 August 2011 painted in a green/tan camouflage scheme not previously observed on SAF aircraft.

130. Despite smaller numbers of military aircraft based at Darfur's main airports in 2011 than during 2010, they have nonetheless continued to conduct frequent flights within Darfur.⁷³ During May and June 2011 alone, the Members of the Panel were able to verify directly 15 such flights (by Su-25 aircraft, Mi-17 transport helicopters and Mi-24 attack helicopters) through flight records or direct observation. These flights took place to and from all three of Darfur's state capitals. Given the Panel Members' lack of official access to Sudanese air traffic records,⁷⁴ and their presence in only a small area of Darfur at any one time, this likely represents a small subset of the total number of military flights in Darfur even during this short period.

⁶⁶ During 2010 the Panel noted the presence in Darfur of 8 Su-25 aircraft, 15 Mi-24 attack helicopters and 2 Mi-17 transport helicopters. S/2011/111 paras. 81, 82, 86, 87.

⁶⁷ UNAMID Situation Report, 18 April 2011; UNAMID internal incident summary on crash of SAF Mi-24 aircraft 5km southwest of El Fasher airport, dated 18 April 2011, on file. This crash was directly verified by UNAMID personnel, who assisted in the transportation of the crew's bodies. Since this was prior to the Panel's 2011 arrival in Darfur, it can be ascertained that this Mi-24 aircraft must have been additional to those observed by the Panel.

⁶⁸ Satellite imagery dated 14 February 2011 [get coordinates], on file. The Members of the Panel observed no military helicopters or fixed-wing aircraft present at El Geneina when they visited between 30 May and 7 June 2011, but has established that SAF Mi-24 attack helicopters flew from El Geneina during May 2011.

⁶⁹ Satellite imagery dated 12 April 2011, at location 014°14'15"N, 024°38'00"E, on file.

⁷⁰ Direct observations and photographs. Nyala, 15, 16, 18 June 2011

⁷¹ Direct observations, El Fasher, various dates 14 May 2011 to 30 May 2011.

⁷² Interview with aviation source, El Fasher, 16 May 2011; direct observation, El Fasher, various dates May and June 2011; official statement by Sudanese Armed Forces to Sudan News Agency, 'Military Plane Veers in Al-Fasher Airport, Pilot Unhurt', 25 April 2011.

⁷³ Air traffic records obtained by Members of the Panel from confidential source, on file; interview with aviation source in El Fasher, 16 May 2011; interview with two aviation sources in El Geneina, 31 May 2011; interview with UN source in Nyala, 16 June 2011; interview with aviation source in Nyala, 17 June 2011; direct observations by Members of the Panel at various dates and locations in Darfur, May-June 2011.

⁷⁴ The Panel has requested access to air traffic records to/from Darfur's major airports, without success, since 2008. During the current mandate Members of the Panel were informed by airport authorities in Nyala (HSNN), El Fasher (HSFS) and El Geneina (HSGN) that daily flight records were available only from the Sudanese Civil Aviation Authority (SCAA) in Khartoum. At Nyala airport, Members of the Panel were permitted to view captains' declarations for humanitarian, UN and some commercial aircraft operators for various periods during 2010 and 2011, but not for aircraft operated for the Sudanese government or armed forces, nor the airport's daily flight logs which the Members of the Panel nonetheless observed were in fact present in the airport's control tower. The Panel's request to the SCAA in Khartoum to view flight records, submitted orally on 12 May 2011, in writing on 17 May 2011, and reiterated in writing on 2 August 2011, remains unanswered at the present time: as do all other requests for information which the Panel has submitted in writing to the SCAA.

Table 3: military flights by Su-25, Mi-17 and Mi-24 aircraft within Darfur verified by the Members of the Panel, May-June 2011

| Date | Call-sign/flight number ⁷⁵ | Aircraft Type | From | Departed | To | Arrived | Source |
|----------|---------------------------------------|---------------|------------------|------------------|------------------|------------------|--|
| 07/05/11 | SHK202 | Mi-17 | El Fasher | <i>Not known</i> | El Geneina | 09:20 | Air traffic records obtained by Members of the Panel |
| 07/05/11 | SHK202 | Mi-17 | El Geneina | 13:45 | El Fasher | <i>Not known</i> | |
| 08/05/11 | SHK239 | Mi-24 | El Geneina | 06:55 | El Geneina | 08:15 | |
| 09/05/11 | SHK194 | Mi-17 | El Geneina | 14:51 | Nyala | <i>Not known</i> | |
| 10/05/11 | SHK239 | Mi-24 | El Geneina | 06:34 | El Geneina | 08:02 | |
| 12/05/11 | SHK239 | Mi-24 | El Geneina | 06:15 | El Geneina | 07:15 | |
| 12/05/11 | SHK216 | Mi-24 | El Geneina | 06:06 | El Geneina | 06:55 | |
| 15/05/11 | <i>Not known</i> | Mi-24 | <i>Not known</i> | <i>Not known</i> | El Fasher | 18:00 | Direct observation / photographs |
| 17/05/11 | <i>Not known</i> | Mi-17 | <i>Not known</i> | <i>Not known</i> | El Fasher | 16:20 | |
| 24/05/11 | <i>Not known</i> | Su-25 (x2) | El Fasher | 09:20 | <i>Not known</i> | <i>Not known</i> | |
| 29/05/11 | <i>Not known</i> | Mi-17 | El Fasher | 09:10 | <i>Not known</i> | <i>Not known</i> | |
| 29/05/11 | <i>Not known</i> | Mi-17 | El Fasher | 09:50 | <i>Not known</i> | <i>Not known</i> | |
| 09/06/11 | <i>Not known</i> | Su-25 | El Fasher | 11:30 | <i>Not known</i> | <i>Not known</i> | |
| 14/06/11 | <i>Not known</i> | Su-25 | El Fasher | 12:00 | <i>Not known</i> | <i>Not known</i> | |
| 14/06/11 | <i>Not known</i> | Su-25 | El Fasher | 12:30 | <i>Not known</i> | <i>Not known</i> | |

Figure 1: SAF Mi-24 attack helicopter arriving at El Fasher airport, 15 May 2011



ii) Police Air Wing helicopter

131. The Sudanese Police Air Wing currently operates at least two Mi-8 transport helicopters (tail numbers 100 and 101) and a fixed-wing An-72 transport aircraft marked with both a tactical and a civilian registration (203 / ST-PAW).⁷⁶ During May 2011, Members of the Panel documented the movement into Darfur of Mi-8 helicopter number 101: this aircraft was observed outside the Police Air Wing hangar at Khartoum airport on 14 May 2011, and subsequently flying around El Fasher on 25, 26 and 29 May 2011 (see Annex XXIV).

132. Given the paramilitary role of various Sudanese police forces in Darfur, and the status of Police Air Wing aircraft as paramilitary items, the Committee may consider that the movement into Darfur of this aircraft without prior permission from the Committee constitutes a further violation of the embargo imposed by resolution 1591 (2005), which prohibits inter alia the supply of all "paramilitary equipment".

⁷⁵ Air traffic records gathered by Members of the Panel during the present mandate and in 2007 indicate that SAF helicopters operate under 'Shukran' (SHK) call-signs/flight numbers.

⁷⁶ Panel observations at Police Air Wing hangar, Khartoum airport, 14 May 2011 (photographs on file).

iii) SAF Antonov aircraft

133. Preambular Paragraph 7 of Resolution 1841 (2008) “[demands] *that there should be no aerial bombings nor the use in Darfur, by any party of the conflict, of white aircraft or aircraft with markings resembling those on United Nations aircraft*”. As during previous mandates, the Members of the Panel have on numerous occasions (detailed below) observed white Antonov-26 and Antonov-32 aircraft on the military aprons at both El Fasher and Nyala airports, marked with small military (numerical) registrations, operated by military personnel, and in El Fasher surrounded by visible aircraft bombs.

134. The Members of the Panel have received credible, corroborating reports that SAF continue to use Antonov-type aircraft for aerial bombardment. Multiple corroborating eyewitnesses, and UNAMID aviation incident reporting, confirm that bombs are regularly loaded onto these aircraft at Darfur’s major airports.⁷⁷ UNAMID personnel and Sudanese residents in Darfur have also provided the Members of the Panel with multiple, corroborating eyewitness statements reporting direct observation of white Antonov-type aircraft dropping bombs in Darfur during 2011.⁷⁸

135. In light of SAF’s continued use of white Antonov aircraft in violation of preambular paragraph 7 of resolution 1841 (2008), and their continued use in aerial bombardments and other military activities which violate the prohibition on offensive military flights in Darfur established by paragraph 6 of resolution 1591 (2005), the Members of the Panel have sought to trace the procurement chain of SAF Antonov aircraft observed in Darfur. This investigation has been undertaken both to establish possible violations of the embargo established by resolution 1591 (2005), and in light of the responsibilities of private-sector actors in conflict-affected areas noted by paragraph 13 of resolution 1945 (2010).

136. This investigation is not complete at the time of drafting, but has already indicated that SAF procured at least two more Antonov-26 aircraft in 2010, including one observed by Members of the Panel in Darfur during 2011.

a) An-26 number 7715

137. An Antonov-26 aircraft carrying the military registration 7715 was repeatedly observed by the Members of the Panel on the military apron at El Fasher airport during May and June 2011, parked next to openly visible aircraft bombs.⁷⁹ (see Annex XXV) An almost visually-identical An-26 carrying the military registration 7716 was also observed by the Members of the Panel arriving on the military apron at Khartoum International Airport at Khartoum on 12 May 2011.⁸⁰

138. Through records maintained by the aircraft’s original manufacturer, Antonov ASTC, the government of Ukraine confirmed to the Members of the Panel that the two An-26 aircraft currently being operated in the Sudan as numbers 7715 and 7716 (serial numbers 133-07 and 134-05 respectively) arrived in Kiev from Bucharest in 2009 for renovation, received temporary Ukrainian civilian registrations during their renovation (UR-CFZ and UR-CGA respectively), and were inspected by Antonov ASTC technicians near Kiev.⁸¹ This information accords with photographs of aircraft at Zhulyany airport near Kiev during late 2009 and early 2010 marked with their serial numbers (‘133-07’ and ‘134-05’) and subsequently with their Ukrainian registrations (‘UR-CFZ’ and ‘UR-

⁷⁷ Interview with UN eyewitnesses, El Fasher, 16 May 2011; interview with foreign diplomatic eyewitness, Khartoum, 9 May 2011; United Nations Safety Programme, *Observed Hazard Report* [regarding loading of 250lb aircraft bombs onto An-32 aircraft ST-EIB] dated 21 September 2009, and interview with UN eyewitness to this incident, El Fasher, 16 May 2011.

⁷⁸ UNAMID incident report of observed Antonov bombing of Umm Dul, 14 November 2011; UNAMID incident report of observed Antonov bombing near Sortony, 25 March 2011: multiple separate interviews with eyewitnesses in north Darfur, 22 May 2011, describing aerial bombardment near Umm Sheyshay (sp?) village on 17 March 2011, Umm Habilla village on 23 March 2011, Taradona village on 15 March 2011; interviews with eyewitnesses in Malha district, 12 June 2011. In addition to these and other direct eyewitness observations of bombing by Antonov-type aircraft, the Members of the Panel also received numerous, closely corroborated reports from both UNAMID and Sudanese sources of visual sightings of Antonov-type aircraft followed by sounds of bombing from the direction of flight of the aircraft.

⁷⁹ Direct observations, various dates May-June 2011, including photographs on file taken at El Fasher on 14 May 2011, 18 May 2011, 27 May 2011.

⁸⁰ Direct observation, 12 May 2011; photograph on file.

⁸¹ Interview with Ukrainian State Aviation Authority and Antonov ASTC, Kiev, 30 August 2011. These aircraft received Ukrainian registration certificates numbered RP3481, RP3481/1, RP3482, RP3482/1, and Ukrainian airworthiness certificates numbered PK0577, PK0582, PK0654 and PK0659.

CGA').⁸² The Ukrainian government informed the Members of the Panel that these two aircraft subsequently left Ukraine for Sudan, flying via Istanbul to Khartoum.⁸³ Eurocontrol data confirms that Antonov-26 aircraft with registrations UR-CFZ and UR-CGA flew on 12 November 2009 and 23 February 2010 respectively from Zhulyany airport in Ukraine to Istanbul and Jordan (at which point they left Eurocontrol-observed airspace), flightpaths which correspond with their reported transfer from Kiev to Khartoum.

Table 4: Flights by UR-CFZ and UR-CGA through Eurocontrol airspace, 2009-10

| Aircraft registration | Departure airport | Departure date/time | Arrival airport | Arrival date/time | Flight number |
|-----------------------|-------------------|---------------------------|-----------------|---------------------------|---------------|
| UR-CFZ | Zhulyany (UKKK) | 12 November 2009 19:43:00 | Istanbul (LTAI) | 13 November 2009 00:22:50 | MEM4010 |
| | Istanbul (LTAI) | 13 November 2009 03:04:00 | Amman (OJAI) | 13 November 2009 06:09:30 | MEM4010 |
| UR-CGA | Zhulyany (UKKK) | 23 February 2010 17:54:00 | Istanbul (LTAI) | 23 February 2010 22:00:10 | MEM4012 |
| | Istanbul (LTAI) | 23 February 2010 23:26:00 | Aqaba (OJAQ) | 24 February 2010 02:33:00 | MEM4012 |

139. Further corroboration of this chain of transfer is provided by an aviation industry eyewitness who informed the Members of the Panel that Antonov-26 aircraft '7716' was present at Khartoum airport during March 2010 marked with dual Ukrainian (civilian) and Sudanese (military) registrations (UR-CGA / 7716), corresponding to a photograph on file with the Panel of '7716' at Khartoum airport on 31 March 2011.⁸⁴

140. The Ukrainian government informed the Members of the Panel that both on arrival in Ukraine from Bucharest, and on departure from Ukraine to Khartoum, the two aircraft were operated by the Ukrainian air operator Meridian; and were owned by a Greek-registered company, Asterias Commercial S.A., whose registered address is at 47 Odysseos Street, Voula, Athens.⁸⁵ Eurocontrol flight records show that they flew under Meridian's call sign ('MEM') on their respective flights out of Ukraine.⁸⁶

141. The Members of the Panel have been unable to determine whether these aircraft are now owned by SAF directly, or leased to SAF by another entity. According to the Ukrainian government, a current maintenance contract for An-26 serial number 134-05 is held between Antonov ATSC and Meridian.⁸⁷ Meridian declined to meet with the Members of the Panel, and representatives of Asterios Commercial could not be located.

142. In light of the well-documented and ongoing use of Antonov cargo aircraft by the Sudanese Armed Forces to conduct offensive military flights in Darfur, including aerial bombardment (see section VIII below), the Members of the Panel consider that the movement of SAF Antonov aircraft 7715 from Khartoum into Darfur between March 2010 and May 2011, without the permission of the Committee, constitutes a violation of the embargo imposed by paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005).

b) An-26 number 7706

143. Another An-26 carrying the Sudanese military registration 7706 was observed by the Members of the Panel in Nyala in June 2011, attended by Sudanese military personnel (see Annex XXVI).⁸⁸

144. The Members of the Panel have not at the time of drafting been able to establish this aircraft's current ownership and historical ownership chain. According to the Ukrainian government, a current maintenance

⁸² Photographs dated 5 December 2009, 21 December 2009, 19 January 2010, 20 January 2010, 23 January 2010 (134-05); 25 May 2009, 12 June 2009, 23 June 2009, 27 August 2009 (133-07).

⁸³ Interview with Ukrainian State Aviation Authority and Antonov ASTC, Kiev, 30 August 2011.

⁸⁴ Photograph on file. Email correspondence with aviation industry eyewitness, 27 May 2011.

⁸⁵ Interview with Ukrainian State Aviation Authority and Antonov ASTC, Kiev, 30 August 2011. Asterias Commercial S.A. is registered in Greece, but previously advertised Ukrainian contact details: web archive of www.asterias.com.ua, a website which no longer exists, on file.

⁸⁶ Eurocontrol flight records for UR-CGA and UR-CFZ.

⁸⁷ Official correspondence to Panel from Permanent Mission of Ukraine to the United Nations in New York (ref: #4132/28-188/5-724), 14 April 2011.

⁸⁸ Panel observations, Nyala airport, 15 June 2011 and 18 June 2011; photographs on file.

contract exists for An-26 number 7706 (serial number 104-04) between Antonov ASTC and a Sudanese company, Sudan Master Technology Engineering Company, based in Khartoum.⁸⁹ Maintenance contracts also exist with Sudan Master Technology Engineering Company for four other An-26 aircraft in Sudan with military registration numbers (7702, 7705, 7714 and 7777).⁹⁰

145. The acquisition of Antonov aircraft by SAF during 2010, including one observed repeatedly in Darfur during 2011, raises considerable concerns regarding the responsibilities of private sector actors in conflict-affected areas noted in paragraph 13 of resolution 1945. Antonov ASTC confirmed to the Panel that Antonov aircraft which leave Ukraine for the Republic of the Sudan are registered as civilian aircraft, and therefore require no export control authorisation or end user certification.⁹¹ Antonov ASTC also confirmed that it monitors the status of Antonov-manufactured aircraft on a two-year cycle, and in addition have contracts for the technical inspection of three aircraft maintenance facilities (run by Sudan Master Technology Engineering Company, Azza Transport and Safat Aviation Plant) where Antonov-manufactured aircraft are maintained within Sudan. Antonov ASTC further stated that these contracts include no specific clauses or conditions related to the Security Council resolutions or sanctions

146. To meet their due diligence responsibilities, private companies maintaining and certifying any aircraft with military registrations in Sudan should seek to determine from the aircraft's documentation and logs whether they have been moved into Darfur for or by armed actors without the permission of the Committee; or used for other activities contravening measures imposed by the Security Council. Likewise, private aircraft owners and operators supplying aircraft to Sudan should seek assurances prior to the sale or lease that the aircraft will not be moved into Darfur for or by armed actors, or used for other activities contravening measures imposed by the Security Council. Maintenance, certification or leasing of aircraft should be discontinued if evidence emerges of such unauthorized movement or use.

147. At a minimum, private companies should refuse to maintain, certify or lease any SAF Antonov aircraft observed in use in Darfur contrary to measures imposed by the Security Council, including Antonov-26s with serial numbers 144-04 and 133-07.

VIII. Offensive military flights

148. Paragraph 6 of resolution 1591 (2005) "*demands that the Government of Sudan, in accordance with its commitments under the 8 April 2004 N'djamena Ceasefire Agreement and the 9 November 2004 Abuja Security Protocol, immediately cease conducting offensive military flights in and over the Darfur region.*" During previous mandates, the Panel established a set of criteria to determine whether observed military flights constitute "offensive" military flights prohibited by paragraph 6 of resolution 1591 (2005).⁹² It has been the Panel's past practice to determine that any flight meeting one or more of these six criteria constitutes an offensive military flight:

- (a) Disproportionate use of aircraft beyond that which is required to neutralize a clear and imminent threat;
- (b) Unprovoked attack with aircraft, such as strafing or indiscriminate bombardment of civilian targets;
- (c) Use of aircraft in support of ground operations preparing for or engaging in an attack;
- (d) Retaliatory attack, i.e. action in response to a prior attack;
- (e) Flights that deposit troops for participation in an attack;
- (f) Operation of aircraft in such a manner to intimidate, frighten or harass; for example, flying mock attack runs, circling over an area for a considerable period of time, destroying buildings with rotor wash, or generating sonic booms.

⁸⁹ Official correspondence to Panel from Permanent Mission of Ukraine to the United Nations in New York (ref: #4132/28-188/5-724), 14 April 2011

⁹⁰ Official correspondence to Panel from Permanent Mission of Ukraine to the United Nations in New York (ref: #4132/28-188/5-724), 14 April 2011

⁹¹ Interview with Ukrainian State Aviation Authority and Antonov ASTC, Kiev, 30 August 2011.

⁹² S/2008/647 para. 95

1) Reported and verified offensive military flights

149. The Members of the Panel have collated over 100 reports from UNAMID observers and verification missions, civil society, media and Sudanese civilians, covering 74 separate alleged incidents of offensive military flights in North, South and West Darfur between September 2010 and September 2011.⁹³ These included reports of aerial bombardments with aircraft bombs dropped from Antonov-type aircraft, other reported aerial attacks using armed helicopters and jet aircraft, the reported use of military aircraft in support of ground forces, and UNAMID reports of intimidating flight operations over UNAMID Team Sites in South Darfur.⁹⁴ Since observers (including UNAMID personnel) are spread thinly throughout Darfur, this dataset likely represents only a subset of possible offensive military flights in Darfur during this period.

150. Within available time and resources, the Members of the Panel were able to directly verify only a small number of reported incidents in this dataset. They were able to conduct on-site verification of six instances of aerial attack during the present mandate, all located in Shangal Tobay area. Five of these were confirmed as instances of aerial attack; additionally, at least three of these met criteria (b), (c) and (d).

i) Tukumare village, North Darfur⁹⁵

151. Following direct UNAMID observations of aerial bombardments and movements of SAF troops between Shangal Tobay and Tabit between 25 and 31 January 2011,⁹⁶ the UNAMID Team Site in Shangal Tobay sent verification patrols on 5 February and 13 March to Tukumare, a village located in an area between Shangal Tobay and Tabit formerly held by SLA-Minni Minnawi.⁹⁷ The patrols were told by civilians and SLA members that the village had been attacked by air and ground forces on 25 January, and entirely burnt; and that there had been further aerial bombardment in the area during the week preceding 13 March 2011.⁹⁸

152. The Members of the Panel visited Tukumare village on 20 May 2011. They found the village entirely burnt and deserted. Approximately 500m northwest from the main village the Panel Members observed a set of fifteen unexploded and partially-exploded 57mm, unguided S5SB air-to-ground rockets, carrying flechettes, of a calibre capable of being fired by Mi-24 attack helicopters. The rockets appeared to have been fired in a single attack run in a south-westerly direction, each 8-10 meters apart (see Annex XXVII).

ii) Wadi Mura water point, North Darfur⁹⁹

153. Personnel based at the UNAMID TS at Shangal Tobay reported observing the movement of troops and military aircraft in the vicinity of Wadi Mura on 16 and 18 February 2011, and in particular of "02 SAF Anti NOVA [sic] [flying] in the Northern Direction" from the Shangal Tobay TS on 16 February 2011,¹⁰⁰ and "SAF Antonov aircraft and helicopters flying over the Wadi Mura area" on 18 February.¹⁰¹ UNAMID personnel were reportedly informed by both local SLA members and local NISS personnel that a SAF convoy had been ambushed at Wadi Mura on 15 February,¹⁰² and that air-to-ground operations by SAF had commenced in the area thereafter.¹⁰³ A UNAMID patrol to Wadi Mura on 22 March reportedly found the village deserted, and were reportedly told by "the only villager" that the village had been deserted since the fighting there on 15 February 2011.¹⁰⁴

154. The Members of the Panel visited Wadi Mura on 22 May 2011. Approximately 200m from the water point, the Panel Members located seven S-8-type, unguided, air-to-ground rockets – some exploded and some partially

⁹³ Dataset of offensive military flight reports, on file.

⁹⁴ UNAMID Sector South JOC, *Sector South Operational Brief for United Nations Security Council [Panel] Delegation* (UNAMID/SECTOR SOUTH/G3/6), 16 June 2011, detailing excessively low and intimidating flights with a military helicopter over UNAMID's Ed El Fursan team site on 1 March 2011 around 11:00; UNAMID Sector South JOC, *Sector South [SOFA] Infraction Records from Month of June 2010 to June 2011*, describing excessively low and intimidating flights with fighter jets over various other South Darfur UNAMID team sites using fighter jets during May 2011.

⁹⁵ Coordinates N 13°16'51" E 25°00'57"

⁹⁶ UNAMID Shangal Tobay TS flash reports, 25 January 2011, 7 February 2011, on file.

⁹⁷ UNAMID patrol report extracts, 5th February 2011, 13 March 2011, on file.

⁹⁸ UNAMID patrol report extracts, 5th February 2011, 13 March 2011, on file.

⁹⁹ Coordinates N 13°11'11" E 25°10'03"

¹⁰⁰ UNAMID TS flash report, 16 February 2011, on file.

¹⁰¹ UNAMID TS report, 18 February 2011, on file.

¹⁰² UNAMID TS flash report, 16 February 2011, on file; UNAMID report, 18 February 2011, on file.

¹⁰³ UNAMID TS flash report, 16 February 2011, on file; UNAMID report, 18 February 2011, on file.

¹⁰⁴ UNAMID Patrol report, 22 March 2011, on file.

exploded – which appeared to have been fired in a single south-westerly attack run. They found the village deserted, but the water point still in use by residents from nearby villages.

iii) Um Esheshat village, North Darfur¹⁰⁵

155. On 22 May 2011 the Members of the Panel interviewed two former residents of Um Esheshat village (just north of Wadi Mura), now resident in a North Darfur IDP camp, who described the bombing of their village by helicopters approximately 4 months previously, and stated – as the Panel subsequently found – that some shells remained in the village. Both residents were Zaghawa, and informed the Members of the Panel that Um Esheshat had been a predominantly Zaghawa village. They insisted that there were no rebels in the village at the time of the attack; and that no villagers or livestock were killed in the attack.¹⁰⁶

156. Residents of a neighbouring (non-Zaghawa) village confirmed to the Members of the Panel that Um Esheshat had been primarily a Zaghawa village, and further stated that around 17 March there had been fighting in both Wadi Mura and Esheshat, involving a military engagement between SAF and rebel movements 2km east of Um Eshesh.¹⁰⁷ Around 17:00, according to these witnesses, after SAF forces had left the area, six aircraft (two “Antonov”, presumably designating larger fixed-wing aircraft; two “MIG”, presumably designating fixed-wing combat aircraft; and two “Hababill”, denoting helicopters) had arrived in the area and attacked Taradona and Um Esheshat villages, as well as reportedly firing at villagers fleeing (north) towards Abu Zerega, whom the witnesses assumed the pilots believed were rebel forces.

157. Later, on 22 May 2011, the Members of the Panel visited Um Esheshat village itself. They found no inhabitants although a small number of livestock still present, and numerous S8-type unguided air-to-ground rockets (a type which can be fired by both Su-25 ground attack aircraft and Mi-24 attack helicopters), both exploded and partially exploded. These were located both within the village itself - including one unexploded rocket and a further rocket fuze in the middle of the village amongst its grain stores - and lying along the road between the village and Abu Zerega. A group of three houses had been burnt on the southwest corner of the village, with an exploded rocket and crater approximately 20m from this group of houses (see Annex XXVIII). Significantly, the Members of the Panel found no cartridge cases or other evidence of ground fighting. While the possibility cannot be excluded that cartridge cases and ordnance may have been moved or removed since the attack, their absence contrasts with other airstrike locations inspected by the Members of the Panel (such as Tukumare), and may support residents’ testimonies that rebel forces were not located or engaged in the village during the attack.

iv) Tangarara village, North Darfur¹⁰⁸

158. Tangarara village (located between Shangal Tobay and Tabit) appears to have been the location of several waves of armed presence and fighting since December 2010. At around 04:00 on 27 January 2011, the UNAMID team site at Shangal Tobay reportedly received around 60 civilians displaced from Tangarara, the majority women and children who reported that they had fled attacks separately from the male inhabitants of the village.¹⁰⁹ A UNAMID patrol on 11 April reportedly observed around 100 SAF vehicles close to Tangarara; and a subsequent UNAMID verification patrol to Tangarara on 1st May was reportedly told by residents that on 24 April, as part of an armed confrontation between SAF and ‘SLA’ forces, helicopter gunships had attacked the village and dropped around 17 ‘bombs’,¹¹⁰ leading to the burning of over 50 houses but no casualties, and the fleeing of all residents except around 3 families.¹¹¹

159. The Members of the Panel visited Tangarara on 20 May 2011. They found the village entirely burnt and deserted, with no houses left intact and grain remaining in storage pits, suggesting the rapid departure of residents. The visit was inconclusive with regard to verifying aerial attack: while the Members of the Panel found small arms cartridge cases and an ammunition box, they located no intact or clearly identifiable air-to-ground ordnance, although they did locate within the village (at N 13°16'51.65" E 25°00' 57.06") shrapnel possibly consistent with an aircraft bomb or air-to-ground rocket.

¹⁰⁵ Coordinates N 13°12'24" E 25°12'38"

¹⁰⁶ Panel interviews with displaced residents of Um Shershay, place and date of interview withheld.

¹⁰⁷ Panel interviews with residents of neighbouring village, names and exact location withheld.

¹⁰⁸ Coordinates N 13°12'03" E 25°06'26"

¹⁰⁹ UNAMID TS report, 27 January 2011, on file.

¹¹⁰ This word appears to be used both in UNAMID reports and witness testimonies to describe both aircraft bombs and air-to-ground rockets.

¹¹¹ UNAMID verification patrol report, 1 May 2011, on file.

v) Field beside Shangal Tobay-Tabit road¹¹²

160. On 20 May 2011, the Members of the Panel located the site of an apparent armed clash beside the road between Shangal Tobay and Tabit, around 30km north-north-west of Shangal Tobay, and approximately 1km from the nearest inhabited civilian settlement. In addition to small arms ammunition, the Panel identified at least three exploded S8-type unguided air-to-ground rockets (a type useable by Su-25 ground attack aircraft and Mi-24 attack helicopters), including at least one S8DM rocket, a fuel-air/thermobaric variant according to available literature.¹¹³ The Panel was not able to identify witnesses to verify the precise date and circumstances of this aerial attack.

161. The Members of the Panel have not been able to trace the provenance and entry into Darfur of the rockets found in this or other locations; but note that S8DM rockets were amongst those delivered to the Republic of Sudan from Belarus in January-February 2011 (see Section III(3) above).

vi) Attack on fuel tanker on Abu Zerega-Shangal Tobay road near Nyortik village¹¹⁴

162. On 22 May 2011 the Members of the Panel located an aerial attack site on the Abu Zerega-Shangal Tobay road. According to UNAMID observers, a Sudanese Armed Forces' fuel tanker (burnt and still present at the site) was hijacked on 15 March 2011, and fired upon by air by pursuing SAF aircraft.¹¹⁵ The Members of the Panel were unable to locate other witnesses to corroborate the date and circumstances of this aerial attack, but remaining physical evidence appeared consistent with this account: numerous craters consistent with air-to-ground rockets, and parts of at least four exploded S5-type unguided air-to-ground rockets (of a type suitable for use by Mi-24 attack helicopters), including one S5M variant. These appeared to have been fired along the road in a single attack run following the northern trajectory of the tanker, as if in pursuit; the tanker was also surrounded by small arms cartridge cases. The Members of the Panel note that if UNAMID's account is correct, while the alleged theft of military assets may be a criminal act, the use of unguided high-explosive air-to-ground rockets against an act of criminality is unlikely to be consistent with the proportionate use of force required by Article 5 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

vii) Conclusion

163. Despite the Security Council's prohibition of offensive military overflights in Darfur, aerial attacks (using only unguided air-to-ground weapons) appear to have been widespread within the Shangal Tobay area during the period between January and May 2011. The five instances directly verified by the Members of the Panel have included:

- retaliatory attacks (in incidents (iii) and (iv));
- air attacks in support of ground operations (in incidents (ii) and (iv));
- aerial strafing in or very near civilian targets, including the Wadi Mura water point (incident (ii)) and Um Esheshat village (incident (iv)).

The ordnance types and methods of attack evident in these verified cases also match many of the other consistent and credible reports of offensive military overflights which the Panel has received.

164. As the Panel has reported during all of its previous mandates,¹¹⁶ SAF continues to conduct offensive military overflights in Darfur. These operations continue to constitute a blatant contravention of paragraph 6 of resolution 1591 (2005).

2) Safety consequences of offensive military flights from Darfur's airports

165. In addition to its negative humanitarian and human rights impacts, the use of Darfur's major airports as bases for offensive military flights – including aerial bombardment and the delivery of arms by air – poses a serious safety threat to the UN/AU personnel, humanitarian workers and Sudanese civilians who have to use these airports in close proximity to SAF aircraft operations. El Fasher, Nyala and El Geneina airports appear to

¹¹² Coordinates N 13°16'26" E 25°05'01"

¹¹³ See IHS Jane's Information Group, *Janes' Air Launched Weapons Issue 58* (2011), pp. 644-645

¹¹⁴ Coordinates N 13°10'49" E 25° 12' 53"

¹¹⁵ Interview with UNAMID Shangal Tobay TS personnel, 22 May 2011

¹¹⁶ S/2011/111 paras. 91-94; S/2009/562 paras. 311-316; S/2008/647 paras. 95-118; S/2007/584 paras. 161-170; S/2006/795 paras. 201-214; S/2006/250 paras. 165-166; S/2006/65 paras. 264-269.

contain no secure storage for SAF weapons and ammunition.¹¹⁷ At both El Fasher and Nyala, the Members of the Panel observed aircraft bombs, aircraft rocket pods and green military crates stored in the open air on the tarmac beside SAF aircraft.¹¹⁸ One eyewitness noted that SAF personnel sometimes convey aircraft bombs to SAF Antonov aircraft at El Fasher airport using ordinary airport luggage trolleys.¹¹⁹

166. The Members of the Panel have documented at least two serious aviation safety incidents threatening UN and civilian personnel due to the movement and deployment of weapons through El Fasher airport:

- On 12 January 2009, UN/AU eyewitnesses reported observing SAF soldiers offloading boxes of ammunition from an Ilyushin-76 aircraft on the main civilian apron at El Fasher airport into a military truck. During offloading, an ammunition box was reportedly dropped, causing an explosion on the airport tarmac which killed two SAF soldiers and wounded four others.¹²⁰ According to observers, the incident took place “approx[imately] 100-200M away from the area where the UNAMID MD-83 and LJ-60 [passenger] aircraft are usually parked”.¹²¹
- On 21 September 2009, UN/AU eyewitnesses reported observing 250lb aircraft bombs being loaded onto a white/blue-painted Antonov-32 (An-32) aircraft (registration ST-EIB), less than 20 meters away from UNAMID’s MD-83 passenger aircraft.¹²² According to eyewitnesses and a subsequent UN report, one of these bombs was dislodged by the An-32’s rotor draught and fell from the vehicle being used to carry the bombs across the tarmac.¹²³ Fortunately it did not detonate, since its detonation would certainly have damaged UNAMID’s passenger aircraft, and would very likely have injured or killed UNAMID staff who were boarding the UNAMID aircraft at the time.¹²⁴

167. Not only does the carriage, loading and offloading of bombs and ammunition on SAF aircraft operating in Darfur present evidence of violations of the Security Council’s prohibition on offensive military flights in Darfur; it is also conducted with disregard for the safety of UN/AU personnel and others using Darfur’s airports. While Sudanese Civil Aviation Authority (SCAA) representatives reportedly apologized to UNAMID for the 21 September 2009 incident and insisted that they would tighten aviation safety measures regarding military operations,¹²⁵ it appears that SCAA has neither the mandate nor the inclination to do so. The Sudanese Civil Aviation Authority was reportedly denied the mandate to investigate the 12 January 2009 incident, which was dealt with instead by GoS Military Intelligence, according to UNAMID’s report of the incident.¹²⁶ When asked by the Members of the Panel about the January 2009 incident, El Fasher airport authorities comprehensively denied that any explosions had ever taken place in relation to GoS military operations at the airport, despite the eyewitness statements and written incident reports obtained by the Panel; and stated that any questions relating to military aviation were the purview of SAF.¹²⁷ Airport authorities at Nyala denied to the Members of the Panel that any military equipment was stored at the airport at all, despite the fact that green military crates, surrounding attack helicopters and other combat aircraft, were plainly visible on the airport’s apron in front of the Members of the Panel and the airport authorities during this conversation.¹²⁸

¹¹⁷ Panel observations at El Fasher, 14 May 2011; El Geneina, 30 May 2011; Nyala, 15 June 2011.

¹¹⁸ Panel observations at El Fasher, 14 May 2011; El Geneina, 30 May 2011; Nyala, 15 June 2011.

¹¹⁹ Interview with UN eyewitnesses to the incident, El Fasher, 16 May 2011.

¹²⁰ UNAMID incident report dated 23 January 2009, on file. Interview with UN eyewitnesses to the incident, El Fasher, 16 May 2011.

¹²¹ UNAMID incident report dated 23 January 2009, on file.

¹²² Captain’s Observed Hazard Report to UNDSS, 21 September 2009, on file; email account by participant of subsequent meeting with El Fasher airport authorities, 23 September 2009, on file; interview with UN eyewitnesses to the incident, El Fasher, 16 May 2011.

¹²³ Captain’s Observed Hazard Report to UNDSS, 21 September 2009, on file; email account by participant of subsequent meeting with El Fasher airport authorities, 23 September 2009, on file; interview with UN eyewitnesses to the incident, El Fasher, 16 May 2011.

¹²⁴ Email account by participant of subsequent meeting with El Fasher airport authorities, 23 September 2009, on file; interview with UN eyewitnesses to the incident, El Fasher, 16 May 2011.

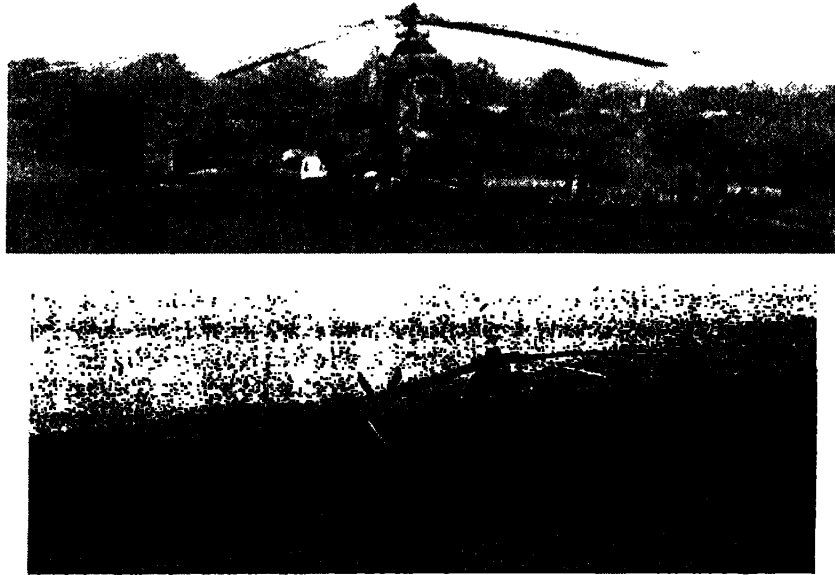
¹²⁵ Email account by participant of subsequent meeting with El Fasher airport authorities, 23 September 2009, on file.

¹²⁶ UNAMID incident report dated 23 January 2009, on file.

¹²⁷ Meeting with airport authorities and NISS personnel, El Fasher airport, 14 June 2011.

¹²⁸ Meeting with airport authorities and NISS personnel, Nyala airport, 16 June 2011.

Figure 2: Pictures of Mi-24 SAF Helicopter showing the movement of military equipment and ammunition in proximity of SAF aircrafts in the airport (also used by UN and private commercial and passengers flights). Pictures taken in Nyala airport on 15 and 18 June 2011, respectively.



IX. Implementation of the Travel Ban

1) Incorrect Personal Data and Limited Follow-Up

168. During its work on the sanctions imposed upon four individuals by resolution 1672 (2006), the Members of the Panel determined that there had been few recent updates in former Panel reports either on the implementation of the sanctions; or on their usefulness in altering the behaviour of activities of the sanctioned individuals, on their applicability, and on the question whether they remain appropriate. Members of the Panel found limited consistent findings on these issues in previous Panel reports and archives.

169. In particular, Members of the Panel found that few data were available on the four sanctioned individuals' identifying details, and that many were inaccurate. The Members of the Panel herewith present corrections and additional data as follows :

(i) the individual listed as "SHANT, Adam Yacub" in the sanctions list¹²⁹ is named Adam Yaqub Sharif Fadl. His name appears as such in Arabic on his Sudanese passport n° P00182993 issued on 19 July 2010 and valid until 19 July 2015, as well as on his ID of the rebel faction called Sudan Liberation Movement (SLM)-Field Command, valid until 1 May 2015.¹³⁰ His date of birth is not "circa 1976", as stated in the sanction list, but 1970, as stated by the individual himself and by the two identity documents listed above (the Sudanese passport refers to a birthdate of 1 January 1970). The source of the name "SHANT" for the individual remains unclear. The individual himself and other sources personally acquainted with him informed the Members of the Panel that this was never a name or a nickname for him, nor for anyone else known to them in Darfur. Members of the Panel believe it may be an acronym mistakenly included from documents of the African Union Mission in Sudan (AMIS), on which "SHANT" was frequently used to denote "Shangal Tobay", the city and the area where Adam Yaqub was a rebel commander.

(ii) The individual listed as "BADRI, Gabril Abdul Kareem" or "General Gibril Abdul Kareem Barey" in the sanctions list is named Jibril Abdelkarim Bari, aka "Tek". He informed the Members of the Panel that

¹²⁹ http://www.un.org/sc/committees/1591/pdf/Sudan_list.pdf

¹³⁰ Copies obtained by Members of the Panel, on file.

he was born in 1965 in Eastern Chad, in the border area with Sudan, and defined his nationality as Chadian, although he currently has no valid passports or identity document either from Chad or from Sudan (he previously had a Sudanese passport in the early 1980s). Members of the Panel believe he could present himself as a double citizen of Chad and Sudan. According to the individual's own testimony, as well as testimonies from various sources knowing him well, after having participated in the operation which brought Chadian president Idriss Déby to power in 1990, he occupied various officer positions in the Chadian Armed Forces (including the elite troops of the *Garde républicaine* and the *Garde spéciale présidentielle*), participating to Chadian operations abroad (in particular in the DRC) and reaching the rank of colonel before joining the Darfur rebellion in 2003.

170. Members of the Panel also found no evidence from the Panel's archives that the Panel had met with any sanctioned individuals to check facts with them and provide a right of reply, except General Jaffar Mohamed El-Hassan. The Members of the Panel understand that since the adoption of the sanctions in 2006, none of the other sanctioned individuals have been met. Both Musa Hilal and Adam Yaqub told Members of the Panel that they had heard about the sanctions through the Sudanese media, but that they never received a notification of the sanctions from the UN. Musa Hilal stated he didn't "*really know much about the sanctions*". Members of the Panel believe he was somehow confusing them with an unpublished list of 51 individuals named in January 2005 as suspects in relation to crimes allegedly committed in Darfur, by the International Commission of Inquiry on Darfur (ICID) established by the Security Council, but whose listing did not carry the consequence of sanctions.¹³¹ Jibril "Tek" also stated that he had not been informed by the UN, nor by the Chadian government, with which he claimed to continue enjoying close relations even after he left the Chadian army in 2003, a fact confirmed by various Chadian government officials met by Members of the Panel).

171. Members of the Panel were able to meet three of the four individuals (Musa Hilal, Adam Yaqub and Jibril "Tek") in the course of their mandate, some on more than on occasion. Members of the Panel repeatedly requested the possibility to meet the fourth sanctioned individual, retired General Jaffar (or Gaffar) Mohamed El-Hassan, through the Panel's focal point in the Government of Sudan, but this request was repeatedly rejected. Members of the Panel were informed that the sanctioned individual did not wish to meet them for personal reasons. Both GoS and SAF focal points stated to the Panel that sanctions against general Jaffar were "*unfair*", since he "*had been retired for four years and had not even been to Darfur since then*"; adding however that the sanctions did not "*bother him much*", since he does not possess assets outside Sudan and never travels outside the country, even he expressed his wish to travel to Saudi Arabia, for the Hajj pilgrimage.

2) Violations of the travel ban

172. The three sanctioned individuals met by Members of the Panel have all travelled, in spite of the sanctions, to various countries in the region, including Chad, Egypt, Qatar, Uganda and the new State of South Sudan.

i) Musa Hilal

173. Musa Hilal informed Members of the Panel that in May or June 2009 he travelled to Egypt, with the authorisation of the Egyptian Government. He stated that during this trip he met Omar Suleiman, who was then head of the General Intelligence Directorate (Egyptian Intelligence Services). Hilal told Members of the Panel that he spent four days in Cairo, and was not granted any visa prior to the trip but received one at Cairo airport. The main objective of his trip, he stated, was to meet with Khalil Ibrahim, the late JEM chairman.

174. On 19 February 2011, Musa Hilal also travelled to Chad, as a member of a Sudanese (Darfuri) delegation that spent one day in N'Djaména, in order to present Chadian President Idriss Déby with their condolences, a week after his mother passed away. Hilal explained to Members of the Panel that the main reason for his presence in this delegation was his good personal relationship with President Déby, based notably on old family links. Members of the Panel obtained the list of the delegation, which included 85 persons from various Darfuri tribes, with the name of "Musa Hilal" in the sixth position. Members of the Panel spoke to some 12 members of the delegation, including its head and the individual who organized the trip. All confirmed the presence of Musa Hilal, who was one of the three persons who delivered a speech at the occasion. According to the head of the delegation, a special flight was chartered through a private Sudanese airline, that operated a return flight from Khartoum on 19 February.

¹³¹ UN Doc. S/2005/60 (2005).

175. This was not Musa Hilal's first visit to Chad, but it appears that his last visit was in 2005, prior to the imposition of sanctions. In that year, according to UNAMID's profile of Musa Hilal dated 15 April 2010, "*he went [to Chad] and met with Idriss Déby the President of Chad and asked him for a meeting with Khalil Ibrahim of JEM & Mini Arko of SLM/M to explain to them the initiative of tribal reconciliation that he was leading [...] in Darfur. [...] Another effort to reconcile with Zaghawa tribe was made in another meeting in Dubai attended by Adouma Abderhaman [Abderahman] Hussien [Hussein] (Hilal second in command) and Mr. Hafiz Ali from Hilal's side and Dr. Gibril Ibrahim and others from Khalil's side.*"¹³²

176. Musa Hilal did not participate to the meeting in Dubai, nor did he travel again to Chad in 2006 for further negotiations with Darfur rebels: for both meetings, he sent close associates. Thus in May 2006, just after the signature of the Abuja agreement, Musa Hilal sent to N'Djaména, Mohamed Abderahman Husein, the brother of Adouma Abderahman Husein cited above, and his own nephew Mohamed Hassan Hilal. Those met Idriss Déby and under his auspices, signed in N'Djaména on 20 May 2006, a "non-aggression pact" with Dr. Khalil Ibrahim. according to a JEM leader interviewed in 2007, Musa Hilal phoned Dr Khalil in May 2006 to apologize not to have been able to come to negotiate himself, stating that he feared that the Government of Sudan would learn about talks behind its back.¹³³

177. However, Musa Hilal himself insisted to Members of the Panel that he had sent the two representatives to Chad instead of travelling himself not because he was afraid of the UN sanctions, but because of the Government of Sudan: "*The reason I was not there myself is because of the Government of Sudan*".

ii) Adam Yaqub

178. Adam Yaqub also travelled to Chad. He informed Members of the Panel that he had "*crossed many times, unofficially*" the Chad-Sudan border after the imposition of a travel ban against him.

179. Adam Yaqub stated that in 2008 he also travelled to Libya, to participate in negotiations for the unity of the Darfur rebels held under the auspices of the Libyan government and the United Nations mediation led by Mr Jan Eliasson. Adam Yaqub told Members of the Panel that he received a call from from a United Nations representative he could not identify, inviting him to Libya. He claimed that the United Nations gave his name to the Libyan authorities so that he could cross safely the border between Darfur and Libya, and that in March 2008 he and other Darfur rebels drove from Ammaray in North Darfur, reaching Koufra in Libya at the beginning of April 2008. From there, he stated that he travelled by plane to Tripoli where the negotiations took place.

180. In October 2008, since the negotiations remained unsuccessful, Adam Yaqub was charged to bring more rebels as well as civilian representatives (traditional leaders) from the rebel-held area for another conference to take place in Koufra. He stated that he led three trips by land from Koufra, with vehicles provided by the Libyan government, and accompanied by Libyan Intelligence officers. A first trip back and forth to Urshi in North Darfur reportedly took place at the end of October 2008, and a second one in November 2008. On the third trip, when coming from Libya, Adam Yaqub's convoy was reportedly stopped in Wadi Howar, north of Malam-al-Hosh, at the northern edge of Darfur, by JEM, a group which was not participating in the Libyan-supported talks. JEM reportedly sent the Libyan Intelligence officers back to Libya, and dropped Adam Yaqub in Eastern Jebel Marra: he did not go back to Libya and did not attend the conference in Koufra.

181. During his stays in Libya, Adam Yaqub stated that like other Darfur rebels, he received small amounts of money as per diems from the Libyan government, reportedly receiving a total amount of 1,000 Libyan dinars. He also stated that he was accommodated in Tripoli without charge - first in Qasr Libya or Libya Palace, then in Funduq al-Kebir or Grand Hotel, then in Matika Hotel. He also claimed that the Libyan government provided him with vehicles (Toyota landcruisers and trucks) to collect people in Darfur for the talks in Libya.

182. The Members of the Panel are unaware of any request by the UN mediation organizing the talks in Libya to the Committee of the Sanctions for permission to invite Adam Yaqub to Libya, which otherwise constituted a violation of the travel ban.

183. Between 29 July 2010 and 11 November 2010, Adam Yaqub also travelled to Egypt. He took commercial flights between Khartoum and Cairo using his Sudanese passport which details were mentioned above. His

¹³² Confidential document obtained by Members of the Panel.

¹³³ Jérôme Tubiana, "*Seule une tortue peut mordre une tortue*": accords entre groupes rebelles et communautés arabes au Darfour," *Politique Africaine* 118 (June 2010): 205-24.

passport, a photocopy of which was obtained by the Members of the Panel, bears a gratis multiple entry visa (No 11690) valid for six months, obtained on 26 July 2010 from the Embassy of the Arab Republic of Egypt in Khartoum. The passport also carries a departure stamp from Khartoum on 28 July 2010, an arrival stamp in Cairo on 29 July 2010, a departure stamp from Cairo on 11 November 2010 and an arrival stamp in Khartoum on 11 November 2010. Members of the Panel also obtained a plane ticket at the name of Adam Yagoub Shareef on a Sun Air flight from Khartoum to Cairo, on 28 July 2010.

184. This trip to Egypt was undertaken for medical care. Adam Yaqub told Members of the Panel he had been suffering notably since he had been hit by a bullet during a battle against government militias in Malam, South Darfur, in December 2004. He informed the Panel that, while in Cairo, he had been treated in Ibn Sinna Hospital. Addressed by the Panel through an official request of information dated 26 July 2011, the Egyptian authorities replied to the Panel underlining that « *the concerned Immigration Authorities stated no evidence of such visits [of Mr Adam Yaqub to Egypt] was found* »¹³⁴.

185. After their resignation from the Panel, Members of the Panel were further informed by several sources acquainted with Adam Yaqub that he had travelled again to Chad, by land, in late September-early October 2011. From N'Djaména, he reportedly flew to Kampala, Uganda, and then in November 2011 to Juba, South Sudan, where, he told ex-Members of the Panel by telephone during this period, he stayed until 4 December 2011. During the Members of the Panel's first meeting with Adam Yaqub on 7 May 2011, he stated that the sanctions "didn't make any problem" for him, pointing out his trip to Egypt as evidence.

iii) Jibril "Tek"

186. Jibril "Tek" informed the Members of the Panel that, since the imposition of the travel ban, he had travelled regularly and unofficially, by land, between Chad and Darfur rebel controlled areas in Sudan. His most recent stay in Chad, following acquainted sources, was in late July 2011 (after which he returned to Sudan) and previously in early 2010, when the Chadian president Idriss Déby himself reportedly tried to reconcile him with JEM chairman Dr Khalil Ibrahim in N'Djaména.¹³⁵

The Members of the Panel do not regard this as a violation of the travel ban since "Tek" is a Chadian national, and should be permitted to enter the Chadian national territory.

187. Between early August 2010 and late July 2011, Jibril "Tek" also spent almost one year in Doha, Qatar, where he was invited as a member of the delegation of the Liberation and Justice Movement (LJM) to the Darfur negotiations, held in the Qatari capital under the auspices of Qatar and of the United Nations-African Union joint mediation. Members of the Panel met him on multiple occasions during their stays in Qatar in April and May 2011. This included his attendance at a meeting between the Panel and members of the LJM delegation on 21 April 2011 where, as with most LJM delegates, he was accommodated by the Qatar government. Members of the Panel interviewed him at length on 20 April 2011 and 30 May 2011.

188. Jibril "Tek" was invited by the mediation to attend the negotiations on military/security issues together with some 40 LJM field commanders. At the conclusion of the talks, "Tek" extended his stay in Doha for medical care, which was his secondary reason to travel to Qatar. The transportation of these commanders, including Jibril "Tek", from Darfur to Doha was approved by the Government of Sudan: Members of the Panel obtained a copy of the letter from the Sudanese Ministry of Foreign Affairs dated 6 July 2010¹³⁶ by which the government approved the mediation's request. "Djibril Abdelkareem Bari" is the first on a list of 39 commanders attached to this letter.

189. On 26 July 2010, a UNAMID helicopter (UNO-773) collected Jibril "Tek" and two other commanders in Tukumare, east of Jebel Marra, in North Darfur. UN and LJM witnesses to this journey informed Members of the Panel that shortly afterwards, the aircraft landed in a nearby location intending to collect other commanders, but due to mistaken coordinates landed very close to a camp of government-sponsored *Haras el-Hodud* (Border Guard) militias, who captured the crew and the passengers. "Tek" himself was badly beaten in the incident, but the hostages were finally released on 27 July 2010 thanks to the fact that the chief of the militia was an ex-rebel

¹³⁴ Official correspondence dated 17 August 2011.

¹³⁵ "Tek" had been the first JEM chief of staff before leaving the movement to form the splinter National Movement for Reform and Development

Cf. Jérôme Tubiana, *Renouncing the Rebels : Local and Regional Dimensions of Chad-Sudan Rapprochement*, HSBA Working Paper No 25, Small Arms Survey, 2011. <http://www.smallarmssurveysudan.org/pdfs/HSBA-SWP-25-Local-and-Regional-Dimensions-Chad-Sudan-Rapprochement.pdf>

¹³⁶ Ref: MFA/PHD/23/4/5/1/2010

who knew "Tek". "Tek" was flown to Nyala, where he spent some three weeks in a UNAMID camp and was treated in hospital before being flown, again by UNAMID, to N'Djaména, Chad.¹³⁷ He flew to Doha after several days.

190. Members of the Panel also obtained a copy of the travel document Jibril "Tek" used to enter Qatar: a *Laissez passer* (ref. JMST-LP-141) issued on 20 July 2010 by the United Nations-African Union Joint Mediation Support Team (JMST) and signed by the deputy chief of staff of the team. The Members of the Panel are unaware of any request from the JMST or from UNAMID to the Sanctions Committee for permission to issue this document or to authorise the travel of "Tek" by air to Qatar. While a relevant procedure for such exemptions exists, as established by paragraph 3(f) of resolution 1591 (2005), the Members of the Panel understand that it has not been followed and that Jibril "Tek"'s presence in Doha represent a case of violation of the sanctions regime. Approximately one week after the LJM signed the Doha Document for Peace in Darfur (DDPD) on 14 July 2011, "Tek", following various LJM leaders, was flown from Doha to N'Djaména, Chad, from where he returned by land to Darfur.

3) Accuracy of justifications for imposition of sanctions, and right of reply of sanctioned individuals

191. In attempting to verify the listed justifications for sanctioning the four individuals, Members of the Panel found that for three of the four individuals, several justifications given for the original sanctions could not be corroborated, and some others were found to be inaccurate, as follows.

i) General Jaffar Mohamed El-Hassan

192. Since Jaffar Mohamed El-Hassan was primarily sanctioned for command responsibility which he himself recognized in interviews with a former Panel. Since the Panel's GoS focal-point prevented Members of the Panel from meeting the sanctioned individual, Members of the Panel are not in a position to comment on his particular case.

ii) Musa Hilal

193. The published list of sanctioned individuals¹³⁸ gives the following justification for sanctioning Musa Hilal: *"Report from Human Rights Watch states they have a memo dated 13 February 2004 from a local government office in North Darfur ordering 'security units in the locality' to 'allow the activities of the mujahideen and the volunteers under the command of the Sheikh Musa Hilal to proceed in the areas of [North Darfur] and to secure their vital needs'. On 28 September 2005, 400 Arab militia attacked the villages of Aro Sharrow (including its IDP camp), Acho, and Gozmena in West Darfur. We also believe that Musa Hilal was present during the attack on Aro Sharrow IDP camp: his son had been killed during the SLA attack on Shareia, so he was now involved in a personal blood feud. There are reasonable grounds to believe that as the Paramount Chief he had direct responsibility for these actions and is responsible for violations of international humanitarian and human rights law and other atrocities."*

194. Members of the Panel believe the Human Rights Watch report and quoted memo, without corroboration of the document (memo), constitute sufficient basis to sanction an individual pursuant to the methodology set out in S/2006/997.

195. It is equally surprising that Musa Hilal has been sanctioned on the basis of attacks in the western part of West Darfur, given that he is a "native administrator" (traditional leader), more precisely the *nazer* (paramount chief), of the Rizeigat Arabs from the Mahamid branch in North Darfur only (Mahamid groups in West Darfur have other paramount leaders); and since his role as a militia leader was limited to North Darfur, with only some incursions in Western Jebel Marra - administratively in West Darfur since 1994 but very close to Musa Hilal's base in Misteriha, north of Jebel Marra.¹³⁹ It is certainly well known that Musa Hilal has been, as a militia leader, responsible for and present during various attacks against civilians in North Darfur during the height of the war in 2003-4, for instance the attack of the town of Tawila, in February 2004, during which systematic rapes were

¹³⁷ UNAMID confidential report, 27 July 2010.

¹³⁸ http://www.un.org/sc/committees/1591/pdf/Sudan_list.pdf

¹³⁹ See for instance one of the rare testimonies of one of Musa Hilal's *agada* (war chiefs) in Jérôme Tubiana, 'Legal Limbo: How the International Criminal Court is freezing the conflict in Darfur', *Foreign Policy*, 23 February 2011. http://www.foreignpolicy.com/articles/2011/02/23/legal_limbo

reportedly committed.¹⁴⁰ These activities in North Darfur would appear to constitute a firmer basis for sanctioning rather than militia activities in western Darfur, where the militias were led by other leaders who have not been sanctioned, and where it is unproved and unlikely that Musa Hilal was responsible and/or present.

196. Interviewed by Members of the Panel on 31 July 2011, Musa Hilal denied having ever ordered attacks to be conducted in Aro Sharrow, Acho and Gozmena [Goz Mina]: *"These localities are not in my area. It is possible that Arabs of West Darfur were involved in these incidents, but not my troops. I cannot comment since I ignore the facts and Arabs of West Darfur are not under my responsibility and don't report to me."*

197. Members of the Panel also interviewed West Darfur leaders from Musa Hilal's Rizeigat Mahamid tribe (some close to the government and others close to the rebels, some in good terms with Musa Hilal and others not); all confirmed that Musa Hilal did not fight in this area. This was also confirmed by an international press correspondent who covered violence in north-western Darfur at this time and also interviewed Musa Hilal, and who told the Panel to believe Musa Hilal had never been in this area.

198. Members of the Panel are also surprised by the mention in the sanctions list that the attacks against Aro Sharrow, Acho and Gozmena [Goz Mina] constituted retaliatory attacks after Musa Hilal's son "had been killed during the SLA attack on Shareia." This statement could not be corroborated. Musa Hilal told Members of the Panel that none of his sons *"had ever been murdered in Darfur"* and that none of his close family *"ever visited She'eria [Shareia]"*. She'eria is located in the eastern part of South Darfur and is likewise not in the area under Musa Hilal's responsibility. Musa Hilal suggested to Members of the Panel that there might have been confusion with someone from the family of Mohamed Hamdan Dagolo "Hemmeti", the main Rizeigat Arab militia leader active south-west of She'eria. A rebel leader from Musa Hilal's Rizeigat Mahamid tribe also suggested to Members of the Panel that there could be a confusion with a nephew of Musa Hilal who might have been killed at this time, but not in She'eria. It is also unlikely that a murder in south-eastern Darfur would provoke a retaliation in the other extremity of the region.

199. A member of a Government delegation that visited She'eria and escaped the town just before the SLA attack in 2005 also confirmed to Members of the Panel that Musa Hilal did not lose any son in this attack, stating that he did not think Musa Hilal had any son in the area, and that neither Hilal nor his forces were there.

iii) Adam Yaqub

200. The published list of sanctioned individuals gives the following justification for sanctioning Adam Yaqub: *"SLA soldiers under the command of Adam Yacub Shant violated the cease-fire agreement by attacking a Government of Sudan military contingent that was escorting a convoy of trucks near Abu Hamra, Northern Darfur on July 23, 2005, killing three soldiers. After the attack Government military weapons and ammunition were looted. The Panel of Experts has information establishing that the attack by SLA soldiers took place and was clearly organized; consequently it was well planned. It is therefore reasonable to assume, as the Panel concluded, that Shant, as the confirmed SLA Commander in the area, must have had knowledge of and approved/or ordered the attack and meets the criteria for being listed."*

201. The Members of the Panel note that in 2005, Adam Yaqub was a commander for the Sudan Liberation Army (SLA, then the main Darfur rebel movement) in charge of the area of Shangal Tobay straddling the border between North Darfur and South Darfur, including the town of Shangal Tobay in North Darfur and, south-west of it, the village of Abu Hamra, located in South Darfur. Interviewed by Members of the Panel in May 2011 and July 2011, Adam Yaqub did not deny the attack of 23 July 2005. He stated that *"at that time [mid 2005], there was a lot of fighting in that area, I was a commander in the area and fought a lot of battles."* He also stated that Abu Hamra was a major SLA camp in the area, and was attacked on several occasions by SAF and government-backed "Janjaweed" militias, although he could not remember the exact dates of these attacks. As a reason why his troops might have attacked the government convoy in Abu Hamra on 23 July, he claimed that army convoys used to come from El Fasher to provide support to "Janjaweed" militias based south of Shangal Tobay. He also stated that the clash had resulted in deaths not only from the government side but also from the rebel side.

202. Finally, Adam Yaqub denied the sanctions list's assertion that SLA had planned in advance to attack the SAF convoy, but stated that his troops had only reacted to a *"sudden"* move of the convoy toward SLA positions in Abu Hamra. The absence of premeditation is also corroborated by the only INGO present in Shangal Tobay at that time, who was then managing the Shangal Tobay camp of 50,000 IDPs. In its North Darfur Situation Report

¹⁴⁰ Ibid.

for July 2005, the INGO stated that the 23 July incident appeared to be "accidental" and "not premeditated": *"Apparently, a GoS convoy accidentally encountered a SLA troop. The two commanders talked and while they were talking, two soldiers (one GoS and one SLA) started a fight. As a result of the fighting (which was not premeditated), the GoS commander was killed."*

203. To what extent this attack can then be considered as a violation of the ceasefire appears subject to debate. In an interview with the same INGO in late August 2005, Adam Yaqub explained that he had received orders, following the ceasefire, to leave the road between El Fasher and Nyala through Shangal Tobay open to GoS convoys, but that the army was using this provision to attack SLA positions in the vicinity. He stated that the GoS forces had attacked the area on five occasions in 2004, and on three occasions in the first half of 2005 (another attack followed in September).¹⁴¹

204. This is consistent with his account to Members of the Panel in May 2011: asserting that there were repeated government attacks against Shangal Tobay area, starting in May 2004, thus a few weeks after the signature of the cease-fire agreement in N'Djaména on 8 April, and mentioning four attacks in mid-2005. He claimed that the government was the first to attack and thus to violate the cease-fire.

205. Documents from the Panel's 2006 files indicate both the 23 July rebel attack, and a 24 July attack by government forces against civilians.¹⁴² One document in particular states that the July 23 attack *"provoked a retaliatory attack the next day - GoS soldiers attacked Abu Hamra and other neighboring villages."* A further document present in the Panel's archive (entitled "Select Incidents/Attacks Reported in Darfur Region, 29 March-17 August 2005", updated 17 August 2005) lists, on 24 July, not only a government attack on Abu Hamra and other villages, but also on the town of Shangal Tobay as well as neighbouring IDP camps. It thus appears from 2005-6 documentation that the 23 July attack took place in the context of other ceasefire violations that occurred both before and after the 23 July attack. The reporting of the INGO present in the area, obtained in 2011 by Members of the Panel, stated that there had been a *"Noticeable breach of cease fire by GoS in Shangal Tobay on 24 July [2005]"*, involving an *"an attack with mortars on the camp and the town of Shangal Tobay. Three dead and some injured."*

206. The Panel's archives clearly show that the listing of Adam Yaqub was based on much less direct, and possibly biased, sources. The file on "Select Incidents" and other similar documents are based on media sources who were not present on the ground in the area, like Reuters, IRIN, Sudan Tribune. The file "Supplementary Information" mentions that the accusations against Adam Yaqub are based on the testimonies of two officers from the African Union (AU) serving in Khor Abeshe, south-east of Shangal Tobay. Members of the Panel believe those sources alone should have not provided a sufficient ground to sanction Adam Yaqub. Finally, Adam Yaqub himself also informed Members of the Panel that AU representatives interviewed him three times after those incidents, underlining however that he felt *« they were on the government's side »*.

iv) Jibril "Tek"

207. The published list of sanctioned individuals gives the following justification for sanctioning Jibril "Tek": *"Badri (sic) is responsible for the kidnapping of African Union Mission in Sudan (AMIS) personnel in Darfur during October 2005. Badri openly attempts to thwart the AMIS mission through intimidation; for example he threatened to shoot down African Union (AU) helicopters in the Jebel Moon area in November 2005. Through such actions Badri has clearly violated SCR 1591 in constituting a threat to stability in Darfur and meets the criteria to be designated by the Committee to be subjected to sanctions."*

208. In addition, the 2006 Panel noted a phone call from NMRD (National Movement for Reform of Development, of which "Tek" was chief of staff) leader Khalil Abdallah during which he reportedly *"tacitly acknowledged the participation of the NMRD in the 9 October 2005 abduction of AMIS personnel."*¹⁴³

209. Interviewed by Members of the Panel on 20 April and 30 May 2011 in Qatar, Jibril "Tek" recognized NMRD had threatened to shoot AMIS helicopters but stated that this would be *"only if they would have kept coming to our area without asking first our authorization"*. He stated that up to November 2005, AMIS helicopters had come to Jebel Mun [Moon], the area where NMRD was based in West Darfur, without informing the rebel movement or asking its consent. "Tek" also complained that white helicopters similar to those used by

¹⁴¹ Confidential notes dated August and September 2005.

¹⁴² 'Supplementary Information on Specific Individuals', Panel document dated 29 March 2006.

¹⁴³ 'Supplementary Information on Specific Individuals', Panel document dated 29 March 2006.

AMIS were also used by the GoS to bombard the rebel area. He stated : "*Many times, we took government helicopters for those of AMIS. Thus we phoned AMIS and told them: 'because you come without authorization, the government comes as well. Next time you come without authorization, we will shoot you.'*" The threat was renewed in a meeting between NMRD and AU representatives in Paris (where NMRD chairman Khalil Abdallah was based) during the same period. "Tek" stated that "*After this warning, AMIS has respected the rules and has warned us by the phone before sending both helicopters and cars.*" Members of the Panel believe these explanations should have been known and taken into account before taking this threat, which did not lead to any actual shooting of an AMIS aircraft, as a basis for listing Jibril "Tek".

210. "Tek" strongly denied to the Members of the Panel the second accusation concerning his responsibility for the kidnapping of AMIS personnel in October 2005. At this time, after having splitted from JEM, "Tek" had become the chief of staff of the NMRD. He claimed that there might have been some confusion between him and Mohamed Saleh Harba, who had also left JEM to form the Field Revolutionary Command (FRC) in April 2005. In October 2005, according to AMIS own report of the incident, both Harba and himself were based in Wadi Seyra area, not far from the Nana area south of Tina, where the kidnapping took place.¹⁴⁴ "Tek" claimed to Members of the Panel that Mohamed Saleh Harba was responsible for the kidnapping, which he claimed lasted only "*a few hours*" as the FRC was immediately attacked by JEM troops who managed to release the 18 hostages the same day. According to "Tek", JEM intervened not only because of their hostility to Harba, but primarily to earn the trust of the international community.¹⁴⁵

211. This account is partially corroborated by AMIS' own report on the incident, which states that: "*On 09 Oct 05, a JEM Splinter Group led by one Mohammed Sale [i.e. Mohamed Saleh Harba] made good the group's threat of kidnapping AMIS personnel and ceasing [sic] its properties.*" The report goes on, however, to accuse NMRD troops (without mentioning any leader's name) of having then intervened to fight against the FRC and to kidnap AMIS' 'rescue team' sent to release the first hostages – an intervention that appears to have been quickly followed by JEM's intervention leading to the liberation of all AMIS personnel. The AMIS report states that the intervention of rival rebel groups in incidents that took place after a few hours only and "*added to the confusion*". Members of the Panel believe this report does not provide clear evidence of which troops were responsible for which acts, nor of the presence of NMRD troops and the responsibility of Jibril "Tek" himself.

212. Jibril "Tek"'s version was also corroborated, in interviews with Members of the Panel, by two ex-leaders of JEM who personally led the release of the hostages – Bahar Idris Abu Garda, who was then JEM secretary-general and splitted in 2007 to become in 2010 secretary-general of LJM ; and Gerdi Abdallah, who was then JEM deputy chief of staff and split to join the Chadian rebellion.¹⁴⁶

213. An international press correspondent who visited the area and met the hostages soon after their release also corroborated this account, telling Members of the Panel that: "*Tek had then troops in Tina area but wasn't present himself.*" The journalist also stated that the origin of the supposition of "Tek's" presence was that one of the hostages reported sitting next to a fighter named Jibril, but could not confirm it was Jibril "Tek".

214. Regarding the phone conversation with Khalil Abdallah given as a substantial evidence for the listing by the 2006 Panel, Members of the Panel question whether a "*tacit acknowledgement*" during a single phone conversation reportedly involving only one expert, without any further confirmation through direct interviews in presence of other experts (in conformity with the Panels of Experts methodological standards) and corroboration with multiple sources, is to be considered sufficient to list an individual for sanctioning.

¹⁴⁴ African Union, *Report on Abduction of AMIS personnel in the general area of Nana at Tine Sector 5 on 09 Oct 05* (AMIS/FHQ/INTSY/G/47), October 2005 (available in the Panel archives).

¹⁴⁵ Jibril « Tek » suspected JEM to have spread accusations against him as responsible for this kidnapping.

¹⁴⁶ Bahar Abu Garda also mentioned his role in the incident in a confidential letter to International Criminal Court Judge Akua Kuenyehia, Presiding Judge of Pre-Trial Chamber I (in front of which he succeeded to dismiss accusations of being responsible for the attack against AMIS camp in Haskanita in eastern Darfur in 2007): "*Immediately after receiving a call from, Commander in Chief of the African Mission in Sudan (AMIS), after general Okonkwo said that 39 hostages and 10 Vehicles were hijacked by a un-identified group, I and general Banda [JEM then chief of staff] promptly moved after indicating the position of the criminals. We secure the release of the 39 hostages unharmed and returned 8 vehicles out of 10 to AMIS. My personal protection force commander was martyred and many wounded.*" Letter from Bahar Idriss Abu Garda dated 30 January 2009, confidential document shown by the authors to the Members of the Panel.

4) Efficiency of Sanctions for the Peace Process

215. In the course of their investigations, and in conformity with paragraph 4 of resolution 1945 (2010), Members of the Panel sought to assess whether the sanctions against the four individuals had been useful for the peace process in Darfur and the establishment of peace and stability in the region; and whether they could be useful in the future.

i) Musa Hilal

216. The most interesting case in this regard is that of Musa Hilal. There is no doubt that Musa Hilal has been a paramount leader of the government-sponsored militias active in Darfur in 2003-4. He is also a government official: in early 2008, he was appointed by president Omar al-Bashir as an advisor on tribal and local affairs and in April 2010 he was elected a member of the Federal Parliament. However, he has for a long time, increasingly, proved autonomous and even critical of the Sudanese government and engaged in direct or indirect talks with the rebel movements, without the authorisation of the Sudanese government, in Darfur and outside Sudan, as early as 2005.

217. He equally maintained close ties with members of his militia and/or his tribe who, increasingly, have either defected to form their own anti-government armed group or join the rebel movements.¹⁴⁷ Musa Hilal has repeatedly indicated, including during his interview with Members of the Panel on 31 July 2010, that he and his people did not feel fully represented by the government in the peace negotiations and that he was keen to participate himself in any negotiations for peace in Darfur or any direct talks with the rebel movements. On the other side, members of all main rebel movements (including JEM, SLA-AW, SLA-MM and LJM) indicated to Members of the Panel that they had been already in touch with Musa Hilal, that they thought he could play a useful role in the peace process, and that they were keen to held direct talks with him outside Sudan, should the opportunity arise. This openness to dialogue on both sides constitute the main reason for Musa Hilal's 2009 trip to Egypt, as well as the May 2006 agreement signed between his emissaries and JEM in Chad, both mentioned above in the context of travel ban violations.

218. In addition to the 2006 talks in Chad, there have been other opportunities for talks between Musa Hilal and the rebels outside Sudan, to which Musa Hilal was willing to participate but did not, sometimes because of his inability to leave Sudan. In mid-2010, according to Musa Hilal himself as well as acquainted sources and JEM leaders, Eritrean President Issayas Afeworki invited Musa Hilal himself, JEM and SLA-AW leaders to meet in Asmara. Musa Hilal alleged to Members of the Panel that President Afeworki had obtained the agreement of President Bashir himself for those talks, but that they had failed because of interference by the National Intelligence and Security Services (NISS) as well as by Dr Ghazi Salah-al-Din Attabani and Dr Al-Amin Hassan Omar, then in charge of the Darfur file in Khartoum. *"The day before my departure to Asmara, NISS interfered again and refused me to go"*¹⁴⁸ Those facts were corroborated to Members of the Panel by several rebel leaders as well as a foreign diplomat in Khartoum and a government official. Both the latter two sources also expressed positive views on Hilal's possible role in the peace process.¹⁴⁹ UNAMID's "profile" of Musa Hilal confirms this project, and the failure of the meeting in Asmara, but does not specify the reason of the failure, citing only *"logistical difficulties"*.¹⁵⁰

219. In the first half of 2011, in particular before the All Darfur Stakeholders Conference (ADSC) of May 2011,¹⁵¹ there had also been discussions inside both UNAMID and the JMST concerning the possible attendance of Musa Hilal at the negotiations held in Doha, Qatar. . Rather than an official decision by UNAMID and the JMST, this appears to have been a personal initiative from a UNAMID high level officer who had been

¹⁴⁷ Sudan Tribune, 'Wikileaks: Janjaweed leader slams VP Taha & Nafie, blames NCP for Darfur crimes', 3 September 2011. <http://www.sudantribune.com/Wikileaks-Janjaweed-leader-slams-40033>; UNAMID Profile of Musa Hilal (*op. cit.*); Tubiana, *Politique africaine* (*op. cit.*); USAID (U.S. Agency for International Development), "The Emergence of Grassroots Security and Livelihood Agreements in Darfur" (unpublished report, 2010).

¹⁴⁸ In 2010, London-based *Al-Sharq Al-Awsat* newspaper mentioned that the government has also barred Hilal to travel to Jordan, « citing security reasons », this time not for talks related to Darfur but « to seek medical treatment ». Sudan Tribune (*op. cit.*).

¹⁴⁹ The government official also mentioned another failed opportunity of talks between Musa Hilal and representatives of the Fur community in Addis-Ababa, Ethiopia.

¹⁵⁰ UNAMID profile of Musa Hilal (*op. cit.*).

¹⁵¹ For a first-hand description of the ADSC, see the Mid-Term Report of the Panel.

personally in touch with Musa Hilal and expressed (including in interviews with Members of the Panel) strong convictions that he could play a positive role in the peace process. In August 2011, the Joint Chief Mediator (JCM) Djibril Ypène Bassolé stated to the Members of the Panel that discussions were held between this UNAMID officer and the JMST on the matter, and that he himself was in favour of Hilal's participation in Doha. The project also received support from a European Embassy in Khartoum, which was approached by Hilal through UNAMID Civil Affairs' recommendation to see whether it was possible to facilitate his involvement in the peace process.¹⁵²

220. Musa Hilal informed Members of the Panel that UNAMID had abandoned the idea of Hilal's participation at Doha because they were concerned about the sanctions, which he concluded clearly and regrettably impeded him from participating in the peace talks. Other participants and organisers of the peace negotiations informed the Panel, however, that the idea was not pursued by the JMST and UNAMID for fear that such a controversial figure in Doha would trigger conflict among Darfur civil society representatives and criticism from international players and media and to avoid to take an initiative that might have been perceived negatively by the Government of Sudan. UNAMID Civil Affairs also mentioned to Members of the Panel that Musa Hilal feared being prevented to travel to Qatar by the government, as reportedly happened in the case of the Eritrea talks. Members of the Panel did not see evidence that the JMST and UNAMID took the travel ban into account in arranging invitations to Doha, since it was evidently not a consideration when providing transport and travel documents to Doha for the participation of sanctioned individual Jibril "Tek".

221. Musa Hilal also informed Members of the Panel that he had been finally invited to travel to Doha by the Government of Sudan, to attend the ceremony of the signature of the Doha Document for Peace in Darfur (DDPD) on 14 July 2011. He reported that he had *"refused to attend, as I consider I cannot participate to the ceremony of endorsement of something I did not contribute to. I don't know what is in the document. I would only go if I had been invited before to the Doha conferences for the civil society."*

ii) Adam Yaqub

222. Adam Yaqub informed Members of the Panel that he had been also invited to attend the peace negotiations in Qatar as part of the delegation of LJM field commanders alongside Jibril "Tek" (at a time when his rebel faction, led by his kinsman Ali Mokhtar, was part of LJM)¹⁵³. At the end of July 2010, Adam Yaqub received a phone call proposing him to travel to Doha, from Ibrahim Mahajer, who had the position of LJM Secretary for Administration and Protocol, and was identified by the Panel as LJM's focal point with UNAMID, the JMST and the government of Qatar. During his interview with Members of the Panel, Adam Yaqub stated he then received another phonecall, from a Sudanese UNAMID staff member based in El Fasher, who proposed to fly him from Darfur to Doha via Chad. However, since Adam Yaqub had then arrived in Egypt for his medical treatment (see above) he was unable to return to Darfur at that time in order to travel to Doha.

223. With the exception of Musa Hilal's informal talks with JEM in Egypt, Members of the Panel found that while neither Musa Hilal nor Adam Yaqub had been able to participate in peace talks abroad, including the Doha negotiations, this was not due to the implementation of the travel ban, but to other reasons: notably, in the case of Musa Hilal, reported obstruction by the Sudanese government.

224. Nonetheless it is clear that if Hilal, "Tek" and Yaqub were not necessarily committed to peace in 2005, their situation had evolved since then, without reporting to the Sanctions Committee or updating of the sanctions list. During the peace talks in Doha in 2010 and early 2011, both "Tek" and Adam Yaqub were military leaders within LJM, the movement that finally signed the Doha Document for Peace in Darfur. Musa Hilal's commitment to peace negotiations and his wish to play a role in the peace process have been repeatedly stated by himself and welcomed by the rebel movements.

225. While it is impossible to assess the effect of strict enforcement of the sanctions regime on targeted individuals' commitment towards peace, Members of the Panel consider that individual sanctions did not generate any tangible and positive effect on their behaviours and political positions. Similarly, sanctions don't appear to have created any positive impact on the Darfur peace process. Would the sanctions have been strictly enforced, Members of the Panel believe they may have prevented the individuals under sanctions to attend peace initiatives abroad, which may have proved damaging for the political process.

¹⁵² Senior European diplomatic sources, Khartoum, date withheld.

¹⁵³ It finally left LJM in early 2011 to join SLA-MM.

iii) The case of Abdulwahid Mohamed Ahmed Nour

226. Members of the Panel were informed that the sanctioning of rebel leader Abdulwahid Mohamed Ahmed Nour, proposed by the 2010 Panel of Experts, had been delayed up until the present by at least one Sanctions Committee member.

227. The justification, given by the 2010 Panel of Experts, to propose the listing of Abdulwahid Mohamed Ahmed Nour is as follows: *"In its current and previous reports, the Panel has documented that Mr. Abdulwahid Mohamed Nour has consistently refused to participate without preconditions in the political process. In addition, Mr. Abulwahid [sic] Mohamed Nour has discouraged his military commanders and representatives of civil society, including internally displaced persons (IDPs) from participating in civil society consultations organized under the auspices of the African Union-United Nations Joint Mediation and Support Team. IDPs who participated in or expressed support for the Doha peace process have been threatened, attacked, and in some cases killed.*

While the Panel could not verify the authenticity of a document attributed to the Command Council of SLA/AW in the Kalma IDP camp in Nyala, South Darfur, ordering the killing of IDP participants in the Doha peace process and community leaders who has facilitated their travel to Doha, the Panel believes that individuals claiming to be acting on behalf of SLA/AW have carried out acts of violence against pro-Doha IDPs. In this context, actions by Mr. Abdulwahid Mohamed Nour have posed impediments to the peace process and further threatened the stability in Darfur and region.

*Furthermore, commanders acting under the command responsibility of Mr. Abdulwahid Mohamed Nour have repeatedly prevented access by humanitarian aid workers and peacekeepers to civilians in areas under the control of SLA/AW in Jebel Marra during the current mandate."*¹⁵⁴

228. Members of the Panel assess that the previous Panel's reticence to attest to the authenticity of the document (or letter) is well-founded. Even splinter elements from SLA/AW who have accused their ex-leader of ordering murders at distance (Abdulwahid has lived in exile since the beginning of the conflict, including in France) nonetheless insisted to Members of the Panel that Abdulwahid would never give such an order in a written document, and used to give his orders by phone.

229. The main *"acts of violence against pro-Doha IDPs"* in question happened in July 2010 in Kalma camp in South Darfur and Hamidiya camp in West Darfur. This was in the context of fighting between pro- and anti-Doha IDPs, the latter being also pro-SLA-AW, after delegations of IDPs from those camps had, for the first time, accepted to travel to Qatar to participate in the second conference of Darfur civil society there. The final document of the conference far from satisfied the IDPs' demands made at that conference, triggering anger in the camps against the IDPs returning from Doha¹⁵⁵. A UNAMID Civil Affairs official who closely followed the whole civil society process and the subsequent incidents also informed Members of the Panel that *"the IDPs had come back from Doha with a lot of gifts, which triggered much jealousy in the camps"*, and stated that *"we have absolutely no indication that Abdulwahid was involved"*. Cautious planning by JMST and UNAMID for the participation of IDPs from such sensitive camps in peace processes would have helped avoiding such incidents. In addition, it is unclear whether the simple *"belief"*, as stated by the 2010 Panel, *"that individuals claiming to be acting on behalf of SLA/AW have carried out acts of violence against pro-Doha IDPs"* is sufficient to list Abdulwahid, since such claims to act on behalf of SLA/AW could indeed be made without the movement's authorisation or that of its leader.

230. On the final accusation that *"commanders acting under the command responsibility of Mr. Abdulwahid Mohamed Nour have repeatedly prevented access by humanitarian aid workers and peacekeepers to civilians in areas under the control of SLA/AW in Jebel Marra"*, Members of the Panel observe that such responsibility is multifold: major NGOs present in this area have also been expelled by the government in reaction to the International Criminal Court (ICC) arrest warrant against President Bashir in 2009; and the last NGO present in Jebel Marra, Médecins du Monde, was expelled in February 2011 by the GoS.

231. Finally, the accusation *"that Mr. Abdulwahid Mohamed Nour has consistently refused to participate without preconditions in the political process"* is and remains accurate: Members of the Panel found that Abdulwahid continued to follow this line during their mandate. However, Members of the Panel believe a party to a conflict

¹⁵⁴ Confidential annex to the final report of the Panel of Experts on the Sudan established pursuant to Security Council resolution 1591 (2005) and most recently extended by resolution 1891 (2009).

¹⁵⁵ On the civil society process and those particular incidents, see *"Civil Society in Darfur: The Missing Peace"*, Making Sense of Sudan, SSRC Blog, 2010, <http://africanarguments.org/2010/09/30/civil-society-in-darfur-the-missing-peace/>

should have the right to accept or refuse to participate in particular peace negotiations, and to pose conditions for such participation. They also reiterate their belief, already stated in the Panel's mid-term report, that in the "context of competition between [several rival political] processes and uncertainty on their continuation, ... it [is] difficult to regard the refusal of some Darfur rebel movements to participate in the Doha process, as clear grounds for sanctions on the basis of impediment to the political process".¹⁵⁶

232. During the present mandate, as the Committee will be aware, UNAMID, the Government of the Sudan and other international actors have encouraged the Panel and the Committee to work towards the listing of Abdulwahid¹⁵⁷ as well as of other rebel leaders failing either to join the peace talks or to sign the DDPD, including former JEM leader Khalil Ibrahim.¹⁵⁸ In attempting to use the sanctions to coerce participation in a political negotiation, Members of the Panel believe this position might actually aggravate the widespread view among Darfurians from both the rebel movements and civil society that UN and AU bodies (in particular UNAMID and the JMST) and other international actors lack neutrality.

5) Conclusions and Recommendations

233. Members of the Panel found that:

- (i) at least three on the four individuals have repeatedly violated the travel ban, before, during and after the current mandate; in some of the most serious of these violations, travel and travel documents was provided by United Nations bodies themselves, in particular the case of the travel to Qatar of Jibril Abdekarim Bari "Tek" with a laissez-passer delivered by the United Nations-African Union Joint Mediation Support Team. Such violations appear quite unnecessary in light of the explicit provision in paragraph 3(f) of resolution 1591 (2005) of the possibility for the Committee to exempt travel deemed to further peace and stability in Sudan.
- (ii) for three of the four individuals, as well as the proposed sanctioning of Abdulwahid Mohamed Ahmed Nour, several justifications given for the sanctions could not be corroborated, and some others were found to be inaccurate;
- (iii) reporting to the Sanctions Committee regarding the four sanctioned individuals has not previously covered the evolution of the Darfur conflict, or the active involvement of some of these individuals in peace processes.

234. Considering these elements, Members of the Panel therefore recommend:

- (i) the delisting of Musa Hilal, Adam Yaqub Sherif and Jibril Abdelkarim Bari "Tek" unless the justifications for these listings can be corroborated fully, and set against the evolution of these individuals' behaviour and posture towards the political process;
- (ii) that Mr Abdulwahid Mohamed Ahmed Nour not be listed.

235. The Members of the Panel further note that the limited access to Darfur for the Panel represents a serious obstacle to the monitoring of the implementation of the sanctions targetting individuals and consider that listing of additional individuals for sanctions under resolution 1591 (2005) should be made contingent on sufficient access to Darfur for the Panel to adequately corroborate grounds for listing and monitor such listings' impact.

236. Should access to Darfur, and more generally cooperation from Member States, United Nations and African Union bodies working in or on Darfur, as well as the general ability of the Panel to provide accurate justifications for individual sanctions and monitor them, not increase in the future, the very existence of both the Panel and the sanctions mechanism should be seriously reconsidered.

¹⁵⁶ Mid-term report (*op. cit.*).

¹⁵⁷ See, for instance, statements made in Sanctions Committee joint meeting with Panel and UNAMID leadership and the Panel on 23 June 2011

¹⁵⁸ Finally killed during an air attack by the Government of Sudan in Kordofan, in December 2011.

Footnote # 28

All Africa, 'Sudan: UN Clash over Beijing Bullets Claim',
<<http://allafrica.com/stories/201204130634.html>>, last accessed on 10 July 2012, see
link 'Report of former members of the UNSC Panel of Experts on the Sudan January
2012', para. 77.

For document see tab 27/2

Footnote # 29

All Africa, 'Sudan: UN Clash over Beijing Bullets Claim',
<<http://allafrica.com/stories/201204130634.html>>, last accessed on 10 July 2012, see
link 'Report of former members of the UNSC Panel of Experts on the Sudan January
2012', para. ~~77~~. 81

For document see tab 27/2