UNHCR's Position on the International Protection Needs of Individuals from Darfur

General Human Rights and Security Situation in Darfur

- 1. While the security situation in certain areas of Darfur is reported to have improved following the Government's announcement of a ceasefire in 2016, the UN Secretary-General reports that "the overall human rights situation remained precarious", including as a result of the proliferation of arms, the continued presence of militia groups and weak law enforcement and justice institutions. The UN Secretary-General notes that civilians, including internally displaced persons (IDPs), continued to face physical violence, including killings, sexual violence and harassment, land occupation and looting of property, and general insecurity.
- 2. A report by the UN Human Rights Office and the African Union-UN Hybrid Operation in Darfur (UNAMID) published in November 2017 noted that, "despite a ceasefire between the Government and various armed opposition groups which has largely held since June 2016, violence against internally displaced people (IDPs) continues to be widespread and impunity for human rights violations persists." The report noted that "the inadequate presence and, in some cases, outright absence of law enforcement and judicial institutions in areas where IDPs have settled has led to serious human rights abuses and violations of international humanitarian law". The report also noted that ethnic tensions in Darfur persisted and often erupted into violence, triggering further displacement. In addition, the report expressed concern about the vulnerability of displaced people, with UNAMID continuing to document cases of random shootings at night, acts of criminality and

¹ UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 25 April 2018, S/2018/389, https://unamid.unmissions.org/sites/default/files/s-2018-389.pdf. As recently as May 2018, renewed clashes broke out between the Government of Sudan forces and SLA/AW, resulting in displacement and the burning of villages such as Gobbo, Kawara, Kimingtong in South Darfur as well as other villages in the Rokero locality in Central Darfur. UNAMID, UNAMID JSR Visits Golo and Expresses Concern over Reports of Recent Clashes and Displacement in Jebel Marra, 20 May 2018, https://unamid.unmissions.org/unamid-jsr-visits-golo-and-expresses-concern-over-reports-recent-clashes-and-displacement-jebel. In March 2018 the ceasefire was extended for a further three months, until the end of June 2018. Reuters, Sudan Extends Ceasefire with Rebels to June - State News, 28 March 2018, https://uk.reuters.com/article/uk-sudan-ceasefire/sudan-extends-ceasefire-with-rebels-to-june-state-news-idUKKBN1H42PB.

² UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 25 April 2018, S/2018/389, https://unamid.unmissions.org/sites/default/files/s-2018-389.pdf; UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 27 December 2017, S/2017/1113, https://unamid.unmissions.org/sites/default/files/n1745340.pdf; UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 27 October 2017, S/2017/907, https://www.refworld.org/docid/5a097ce14.html. See also, OHCHR, Press Statement of the UN Independent Expert on the Situation of Human Rights in the Sudan, Mr. Aristide Nononsi, 21 May 2017, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21650&LangID=E.

³ OHCHR and UNAMID, *UN Report Urges Sudan to Act over Plight of Displaced People in Darfur*, 21 November 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22422&LangID=E; OHCHR and UNAMID, *The Human Rights Situation of Internally Displaced Persons in Darfur 2014–2016*, November 2017, http://www.ohchr.org/Documents/Countries/SD/UNAMID OHCHR situation Darfur2017.docx.

http://www.ohchr.org/Documents/Countries/SD/UNAMID OHCHR situation Darfur2017.docx.

- harassment of displaced persons and sexual violence, including rape, within and around the 66 IDP camps and farmlands. According to the report, the victims of these attacks cited the absence of police stations, lack of confidence in the authorities, social stigma and fear of reprisals as reasons for not reporting the attacks.⁵
- 3. By the end of 2017, around two million Sudanese remained displaced inside the country, while more than 650,000 Sudanese refugees are located in neighbouring countries including Chad, Ethiopia and South Sudan.6

Voluntary Repatriation to Darfur

- 4. In May 2017, UNHCR and the Governments of Sudan and Chad signed a tripartite agreement concerning the voluntary repatriation of Sudanese refugees currently residing in Chad. The legal framework provided by the Tripartite Agreement is designed to facilitate voluntary returns of refugees in conjunction with specific monitoring mechanisms. It should be noted that UNHCR currently neither promotes nor encourages return to Darfur at this time given the persistent insecurity and attacks on civilians in much of the territory. The tripartite agreement governing voluntary returns from Chad to Sudan does not affect the assessment of international protection needs of asylum-seekers from Darfur. As with other countries, the fact that some Sudanese may choose to return despite the less than ideal circumstances does not change the fact that many Sudanese continue to flee in search of international protection, either for 1951 Convention reasons or for reasons that may bring them within the scope of broader refugee definitions contained in regional instruments or other forms of international protection.⁸
- 5. Any assistance provided by UNHCR for return to Sudan aims at supporting individuals who, being fully informed of the situation in their places of origin, choose voluntarily to return. Any future role of UNHCR in the facilitation of organized voluntary repatriation movements to Sudan and any future involvement by UNHCR in efforts aimed at sustainable reintegration for returnees and IDPs in Sudan should not be construed as implying an assessment on the part of UNHCR that Sudan is safe for every individual, regardless of personal profile or personal circumstances. It should be noted in this regard that voluntary repatriation and forced return are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved.
- 6. In April 2018, UNHCR provided assistance for the return of 53 Darfuri refugees from Chad. However, on 27 May 2018 a group of 250 displaced families in North Darfur were

⁵ *Ibid*.

⁶ UNHCR, UNHCR Launches Air Operation to Bring Darfur Refugees Home, 15 December 2017, http://www.unhcr.org/news/briefing/2017/12/5a3398b54/unhcr-launches-air-operation-bring-darfur-refugeeshome.html.

⁷ UNHCR, First Darfur Refugee Returns from Chad, 20 April 2018, http://www.unhcr.org/5ad9a4604. Some 300,000 refugees from Darfur are currently living in 12 UNHCR and government run camps in eastern Chad.

⁸ Compare for example Afghanistan; a country which has signed tripartite return agreements with UNHCR and a number of

countries, including for example with Pakistan; and Somalia, which has signed a tripartite return agreement with the Government of Kenya and with UNHCR.

⁹ UNHCR, First Darfur Refugee Returns from Chad, 20 April 2018, http://www.unhcr.org/5ad9a4604. Some 300,000 refugees from Darfur are currently living in 12 UNHCR and government run camps in eastern Chad.

- forced back into IDP camps after mediation attempts with new settlers in their home villages failed. Among this group were returnees from Chad. 10
- 7. In December 2017, UNHCR assisted with the return of some 1,500 refugees who had fled from Dafag, South Darfur in 2007 to refugee camps in the Central African Republic. This was made possible following Sudan's pledge to implement international standards governing refugee returns including the benefit of amnesties, as well as UNHCR's role in monitoring the returns.¹¹

Eligibility for International Protection: Risk Profiles

- 8. All applications for international protection need to be considered on their merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information.
- 9. UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. However, the profiles listed here are not necessarily exhaustive; they are based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here.

Depending on the specific circumstances of the case, family members or other members of the households of individuals with these profiles may also be in need of international protection on the basis of their association with individuals at risk.

- i. Darfuris of non-Arab ethnicity who resided in Darfur prior to fleeing the country are likely to be in need of international refugee protection on account of their (imputed) political opinion, and/or for reason of race/ethnicity. 12 They are presumed not to have an internal flight alternative in Sudan. 13
- **ii.** Darfuris of non-Arab ethnicity whose established residence was in Khartoum or other locations in Sudan outside Darfur may be in need of international refugee protection depending on the individual circumstances of the case. They are reportedly presumed to support or be affiliated with armed rebel groups in Darfur and are therefore more susceptible to ill-treatment in connection with arrests in Khartoum. ¹⁴ Non-Arab Darfuri in Khartoum and other urban centres outside Darfur

¹¹ UNHCR, *UNHCR Launches Air Operation to Bring Darfur Refugees Home*, 15 December 2017, http://www.unhcr.org/news/briefing/2017/12/5a3398b54/unhcr-launches-air-operation-bring-darfur-refugees-home.html.

¹⁰ UNHCR, *Dozens of Displaced Families Forced Back to Camps in North Darfur*, 31 May 2018, http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=5b10dc473.

¹² See, European Court of Human Rights, *A.F. v France* (no. 80086/13, 15 January 2015, http://www.refworld.org/cases,ECHR,54b93b014.html), para. 50: "La Cour relève, en outre, que la lecture des rapports internationaux (voir, en particulier, paragraphe 27) démontre que la seule appartenance d'un individu à une ethnie non arabe du Darfour entraîne pour ce dernier un risque de persécutions et qu'il n'existe aucune possibilité de relocalisation dans le pays." See also, European Court of Human Rights, A.A. c. France, (no 18039/11, 15 January 2015, http://www.refworld.org/cases,ECHR,54b93a154.html; European Court of Human Rights, *A.A. v. Switzerland* (no. 58802/12, 7 January 2014, http://hudoc.echr.coe.int/eng?i=001-139903), para. 43. http://hudoc.echr.coe.int/eng?i=001-139903), para. 43. https://hudoc.echr.coe.int/eng?i=001-139903), para. 43. https://hudoc.echr.coe.int/eng?i=001-139903), para. 43.

¹⁴ A report by the Swedish Migration Agency states that persons belonging to non-Arabic groups are presumed to support or be affiliated with armed rebel groups in Darfur and are more susceptible to ill treatment in connection with arrests in Khartoum. The report also indicates discrimination against them based on ethnicity. Sweden, Lifos,

are in general easily identifiable as such due to their language and accent. In addition to the risk of arrest and abuse in detention, they are reported to be subjected to socio-economic discrimination, including with respect to access to essential services, education and employment. It should be assessed whether the discrimination suffered amounts to persecution in a given case, taking into account any cumulative impact and the broader context of unfavourable treatment on the particular individual. Reports over several years consistently document discrimination and marginalization of non-Arab Darfuri in Khartoum and other urban centres, leading to extreme poverty and poor health conditions. ¹⁵

Darfuris of other profiles may also be in need of international refugee protection on account of their (imputed) political opinion, their race/ethnicity, their religion and/or their membership of a particular social group, including:

- iii. Supporters and perceived supporters of political opposition parties or groups;¹⁶
- iv. Political activists, civil society actors, student activists and human rights workers: 17
- v. Journalists and other media professionals; 18

Sudan – En sammanfattande analys av säkerhetssituationen I Darfur, rättsväsendet samt civilas situation, version 1.0, 6 December 2016, https://lifos.migrationsverket.se/dokument?documentAttachmentId=44175.

¹⁵ International Refugee Rights Initiative (IRRI), *The Disappearance of Sudan? Life in Khartoum for Citizens Without Rights*, May 2013, Citizenship and Displacement in the Great Lakes Region - Working Paper 9, http://www.refworld.org/docid/53b3d8994.html; Middle East Institute, *Facing the Unknown: The Continuing Challenge of Assisting the Protracted Displaced in Darfur and Eastern Chad*, 30 March 2011; Abdel Raouf Suleiman Bello et al., "Coping strategies of Darfurians Displaced Women in Khartoum", *Journal of Agricultural Extension and Rural Development*, Vol. 6(5), pp. 168-174 (2014), http://www.academicjournals.org/article/article1400084785_Bello%20et%20al..pdf. See also the information cited in UK Home Office, *Country Policy and Information Note*, *Sudan: Non-Arab Darfuris*, August 2017 (version1.0)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635559/Sudan _- Non_Arab_Darfuris_ - CPIN_ - v1.0_ August_2017_.pdf, Chapters 5 and 6.

¹⁶ US Department of State, 2017 Country Reports on Human Rights Practices: Sudan, 20 April 2018, https://www.state.gov/documents/organization/277295.pdf, refers to reports of individuals who have been detained due to their actual or assumed support of anti-government forces, such as the Sudan People's Liberation Movement-North (SPLM-N) and Darfur rebel movements. According to the Report, the government continued to arrest and/or detain opposition members.

¹⁷ The US Department of State, 2017 Country Reports on Human Rights Practices: Sudan, refers to numerous reports of violence against student activists in all campuses in Sudan by government forces, including raids, detention and torture and violence towards their family members. Also see references to the detention of human rights defender Tasmeen Taha. Human Rights Watch, World Report 2018, 18 January 2018, https://www.hrw.org/world-report/2018/country-chapters/sudan#5b498e, mentions the detention of a diaspora SCP member for seven weeks and of Nasreddin Mukhtar, former head of a Darfur Student Union, without charge in solitary confinement. In February 2018, Salih Mahmoud Osman - the Vice-President of the Darfur Bar Association, a member of the Darfur Lawyers Association, and a human rights lawyer was arrested. European Parliament, Sudan Must Release Sakharov Laureate Salih Mahmoud Osman, Insist EP Vice-President and DROI Chair, 9 February 2018, http://www.europarl.europa.eu/news/en/press-room/20180209IPR97509/sudan-mustrelease-sakharov-laureate-salih-mahmoud-osman. He was held incommunicado until April 2018. Amnesty International, More than *Fifty* Critics Released without Charge, 18 April https://www.amnestyusa.org/urgent-actions/urgent-action-victory-more-than-fifty-critics-released-withoutcharge-sudan-ua-35-18/.

¹⁸ US Department of State, 2017 Country Reports on Human Rights Practices: Sudan, 20 April 2018, https://www.state.gov/documents/organization/277295.pdf, refers to the kidnapping in December 2016 by

- vi. Women: survivors and those at risk of sexual and gender-based violence (SGBV);¹⁹
- vii. Children and youth at risk of forced recruitment;²⁰
- viii. Individuals of diverse sexual orientation and gender identities (LGBTI).²¹
- 10. **Israel as an Enemy State of Sudan.** Darfuris of each of the risk profiles i. viii. above may face additional risks of ill-treatment upon return to Sudan due to the fact that Israel is considered an enemy state of Sudan. Under Article 52 of the Sudanese Criminal Act of 1991, it is unlawful to be involved in any commercial or other transactions with an enemy state; the punishment for a violation of that Article is imprisonment for a term, not exceeding ten years, or with fine, or with both. The fact that the applicant entered and stayed in Israel is likely to be construed as having a transaction with an enemy state. Moreover, fleeing Sudan and taking refuge in an enemy state is likely to be viewed as treasonous. That a returning Sudanese had prior residence in Israel is easily discerned, either from the lack of an Egyptian exit stamp on travel documents and/or information taken from prior arrivals to Sudan from Israel. There have been several reported instances of ill-treatment against

security force members of freelance journalists Phil Cox and Daoud Hari in Darfur; they were detained for 40 days. In the past six months the National Intelligence and Security Services (NISS) has intensified its scrutiny of the press in Sudan in general. In January, journalists have been arrested for reporting demonstrations against rising prices, including two reporters for Reuters and AFP. Rick Gladstone, *Sudan Jails Journalists in New Sign of Repression*, 19 January 2018, https://www.nytimes.com/2018/01/19/world/africa/sudan-journalists-arrests.html; Committee to Protect Journalists, *Sudan detains local journalist, confiscates newspapers following reporting on protests*, 2 February 2018, https://cpj.org/2018/02/sudan-detains-local-journalist-confiscates-newspap.php. In March, four journalists were convicted of defamation for critical reporting on water supply and corruption in a land deal: Committee to Protect Journalist, *Sudan sentences 2 journalists for "false news," 2 others for defamation*, 30 March, 2018, https://cpj.org/2018/03/sudan-sentences-2-journalists-for-false-news-2-oth.php. Confiscation of newspapers have been carried out on a regular basis for reporting on events not sanctioned by NISS: Dabanga, https://www.dabangasudan.org/en/all-news/article/niss-confiscates-newspapers-covering-sudan-crises.

¹⁹ In 2017, UNAMID documented 117 cases involving 156 female survivors of sexual violence including conflictrelated sexual violence. UN Security Council, Report of the Secretary-General on the African Union United **Nations** Hybrid Operation in Darfur, 23 March 2017, S/2017/250, para. 47. https://unamid.unmissions.org/sites/default/files/sg_report_-_march_2017.pdf; UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 14 June 2017, S/2017/503, para. 43 available at: http://www.refworld.org/docid/59490ca54.html; UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 30 August 2017, S/2017/746,para.10,https://unamid.unmissions.org/sites/default/files/report of the sg on unamid august 2017 _2.pdf; UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in Darfur, 27 October 2017, S/2017/907, para. 11, http://www.refworld.org/docid/5a097ce14.html; UN Security Council, Report of the Secretary-General on the African Union United Nations Hybrid Operation in December 2017, S/2017/1113, Darfur, para. https://unamid.unmissions.org/sites/default/files/n1745340.pdf; See also, Special Representative of the Secretary-General on Sexual Violence in Conflict Ms. Pramila Patten Concludes Visit to Sudan and Calls for End to Culture of Denial for Conflict-Related Sexual Violence, 27 February 2018, https://reliefweb.int/report/sudan/specialrepresentative-secretary-general-sexual-violence-conflict-ms-pramila-patten; OHCHR, Sudan: UN Expert Raises about Violence Against Women, Calls for Legal Reform, 24 Concerns http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22984&LangID=E.

²⁰ According to UNAMID, the potential use of children in ethnic clashes remained a major concern. UN Security Council, *Report of the Secretary-General on the African Union/United Nations Hybrid Operation in Darfur*, 27 September 2016, S/2016/812, http://www.refworld.org/docid/57ee5e304.html, para. 63.

²¹ See sources quoted in Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Darfur - COI Compilation*, September 2017, http://www.refworld.org/docid/59ce00bb4.html, pp. 147-149.

Sudanese nationals who (were) returned to Sudan from Israel.²² A 2014 report by Human Rights Watch included testimonies by three returnees alleging torture and solitary confinement. One man was charged with treason for traveling to Israel and one returnee's relative said his brother disappeared on return to Khartoum. The US Department of State 2016 report on Sudan stated that in November 2016 a returnee from Israel died in custody, allegedly from falling out of a window, although the building had sealed windows. According to a 2016 joint report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi, individuals returning from Israel are generally treated with greater suspicion than those returning from other countries, citing reports by several sources regarding the return of a large group of Sudanese from Israel and Jordan in December 2015, some of whom may have experienced prolonged detention or physical mistreatment, in some cases including torture. The United Kingdom Home Office cites a report by Waging Peace from January 2017 on the ill-treatment of five returnees, one from Israel. In November 2016, the Sudanese media reported on the issuance of arrest warrants for 3,300 Sudanese returnees from Israel, which allowed the authorities to limit the returnees' freedom of movement, from detention to imposing reporting restrictions. The fact that a list of returned asylum-seekers from Israel was compiled suggests that the authorities had an interest in them and the intention to monitor their movements.

Internal Flight Alternative (IFA):

- 11. A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA) is contained in the UNHCR Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees.²³
- 12. Where a claimant has a well-founded fear of persecution at the hands of the State (or, in the case of Darfur, the many agents operating at the instigation of or with the consent or acquiescence of the authorities) there is a presumption that IFA is not a relevant consideration.²⁴ As noted above, for Darfuris of non-Arab ethnicity, an IFA is presumed not to be available.²⁵

²² UNHCR notes that there is in general a lack of independently verified information about the treatment of civilians in Sudan. As a result, the scarcity of reports about individual incidents of ill-treatment of returnees to Sudan is not in itself a reliable indicator of the absence of such incidents. See for example BBC, *Sudan Profile: Media*, 23 May 2016, http://www.bbc.com/news/world-africa-14095119. Reporters Without Borders ranks Sudan 174 out of 180 countries for freedom of the press: RSF, *World Press Freedom Index 2018*, https://rsf.org/en/ranking. See also, International Center for Not-For-Profit Law, *Civic Freedom Monitor: Sudan*, 3 March 2018, https://www.icnl.org/research/monitor/sudan.html.

²³ UNHCR, Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23 July 2003, HCR/GIP/03/04, http://www.refworld.org/docid/3f2791a44.html.

²⁴ UNHCR, Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23 July 2003, HCR/GIP/03/04, http://www.refworld.org/docid/3f2791a44.html, para. 13: "The need for an analysis of internal relocation only arises where the fear of being persecuted is limited to a specific part of the country, outside of which the feared harm cannot materialise. In practical terms, this normally excludes cases where the feared persecution emanates from or is condoned or tolerated by State agents, including the official party in one party States, as these are presumed to exercise authority in all parts of the country".

States, as these are presumed to exercise authority in all parts of the country".

See, European Court of Human Rights, *A.F. v France* (no. 80086/13, 15 January 2015, http://www.refworld.org/cases,ECHR,54b93b014.html), para. 50: "La Cour relève, en outre, que la lecture des rapports internationaux (voir, en particulier, paragraphe 27) démontre que la seule appartenance d'un individu à

13. For Darfuris of Arab ethnicity determined to be at risk in Darfur, an individual assessment is required of both the relevance and the reasonableness of the proposed place of relocation. The relevance assessment would need to include an assessment of whether the applicant would face a risk of persecution in the proposed place of relocation, whether for the same reasons or for different reasons as the risk in Darfur, including the reasons listed under 9.iii to 9.viii above. In relation to large urban centres, such as Khartoum or Omdurman, the relevance and reasonableness of an IFA would need to be assessed taking into account the threat of arbitrary arrest on the basis of ethnicity and imputed political opinion as well as the available reports of widespread discrimination, political and economic marginalization, and denial of access to public services.²⁷

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une ethnie non arabe du Darfour entraîne pour ce dernier un risque de persécutions et qu'il n'existe aucune possibilité de relocalisation dans le pays." See also, European Court of Human Rights, A.A. c. France, (no 18039/11, 15 January 2015, http://www.refworld.org/cases,ECHR,54b93a154.html.

²⁶ The reasonableness test examines whether the individual, in the context of the country concerned, could lead a relatively normal life without facing undue hardship. GIP 4, paras 22-30. Any assessments should take into consideration the individual circumstances of the individual, including vulnerabilities, family situation, past experiences as well as the objective conditions, primarily the human rights and economic situation in the area.

²⁷ Australian Government, Department of Foreign Affairs and Trade (DFAT), *DFAT Country Information Report* – *Sudan*, 27 April 2016, http://dfat.gov.au/aboutus/publications/Documents/country-information-report-sudan.pdf, para. 5.34: "Livelihood challenges would likely hamper opportunities for internal relocation in Sudan. The informal nature of the economy (particularly outside of Khartoum), the significant reliance on humanitarian assistance in conflict-affected areas and reduction in informal and low-skilled employment opportunities due to the influx of refugees from neighbouring countries means that individuals would likely face economic hardship if relocating. In addition, the Government does not recognise internally displaced people in Khartoum, meaning that individuals relocating from conflict affected areas do not have access to humanitarian assistance in Khartoum."