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Report of the independent expert on the situation of human rights in the Sudan, Mohamed Chande Othman

Summary

The present report is submitted by the independent expert on the situation of human rights in the Sudan pursuant to Human Rights Council resolution 15/27, in which the Council decided to extend the mandate of the independent expert, in accordance with Commission on Human Rights resolution 2005/82, Council resolutions 6/34, 6/35, 7/16, 9/17 and Council decision 14/117. The present report covers the period from September 2010 to June 2011.

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I. Introduction

1. In its resolution 11/10, the Human Rights Council decided to establish the mandate of the independent expert on the situation of human rights in the Sudan. It also decided that the independent expert would assume the mandate and responsibilities of the Special Rapporteur on the situation of human rights in the Sudan, as previously set out in Council resolutions 6/34, 6/35, 7/16 and 9/17. In its resolution 15/27, the Council extended the mandate of the independent expert for a period of one year and requested him to report to the Council at its eighteenth session.

2. The present report covers the period from 1 September 2010 to 30 June 2011. In compliance with the code of conduct for special procedures mandate holders of the Human Rights Council,¹ a draft of the report has been shared with the Government of the Sudan and the Government of South Sudan in order to provide them with an opportunity to comment on the observations and findings of the independent expert.

3. The present report is based on information made available to the independent expert during his visits to the Sudan, from 6 to 13 March 2011, and from 31 May to 8 June 2011, as well as from information provided by the Government of the Sudan, the United Nations Mission in Sudan (UNMIS), the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and other sources, including United Nations agencies, funds and programmes with operational competence in the Sudan.

4. The independent expert wishes to thank the Government of the Sudan and the Government of South Sudan, UNMIS, UNAMID, the United Nations agencies in the Sudan, the diplomatic corps and members of civil society organizations for their cooperation and invaluable assistance.

¹ Human Rights Council resolution 5/2, annex.

II. Key developments in the Sudan

5. In accordance with the Comprehensive Peace Agreement, the historic referendum on the self-determination for South Sudan was held as scheduled on 9 January 2011. In the lead-up to the referendum, a number of inflammatory remarks were made by State officials concerning the fate of southerners in the North should the vote be in favour of secession. As a result, thousands of southerners were compelled to relocate to the South for fear of being targeted. A week before the referendum, however, the Government pledged to respect the outcome of the referendum and to continue to contribute to the development of southern Sudan as a new nation if it opted for separation.

6. On 2 February 2011, the South Sudan Referendum Commission announced the official results of the referendum, confirming that more than 98 per cent of electors had voted in favour of secession. On the same day, the President of the Sudan signed a decree confirming his Government's acceptance of the results. In spite of the outbreak of violence in the border areas during the voting period, the overall process proceeded peacefully and was acknowledged by the international community as free and credible, and a true reflection of the will of the people of southern Sudan.

7. Following the referendum, the wave of public discontent with a number of Governments in the Middle East and North Africa emboldened students, political activists and human rights actors to demand political reforms and the formation of a broad-based Government in Khartoum. The demonstrations were quelled by the Sudanese police and the security forces. More than 70 people, including journalists and members of political opposition groups, were arrested, some of them injured in the process. Many were released shortly after their arrest without being charged. However, an unknown number were held in custody long after the riots. According to United Nations reports, some of the detainees were subjected to torture and other forms of ill-treatment while in custody.

8. While the referendum was a milestone in the implementation of the Comprehensive Peace Agreement, very little progress was made by either party to the Agreement to resolve the remaining issues of it, including the Abyei referendum, border demarcation, arrangements for citizenship, the sharing of wealth and debt between the two parties and security arrangements. A separate referendum for the disputed region of Abyei was scheduled to be held simultaneously with the southern Sudan referendum to decide whether the region would join the new South or remain with the North. The referendum was cancelled owing to the failure of the parties to the Comprehensive Peace Agreement to agree on key issues, such as voter eligibility and the composition of the referendum commission. The delay in the holding of the referendum led to an escalation in violence between the different ethnic groups in the region, as well as between the Sudan Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA), which culminated in the seizure and occupation of Abyei by the SAF in May and the displacement of the town's entire population.

9. Violence also broke out in the key border State of Southern Kordofan between the SAF and the Sudan People's Liberation Movement, Northern Branch (SPLM-North) following a disputed State election early in May 2011. The situation deteriorated significantly amidst aerial bombardment by the SAF of SPLA positions in areas around the State capital of Kadugli. The hostilities caused the displacement of more than 73,000 people. Humanitarian access to the areas affected by the violence continues to be denied by the SAF, citing security concerns.

10. Since the referendum, hundreds of civilians have been killed as a result of inter-communal violence in South Sudan. In addition, fighting has also intensified between the SPLA and rebel militia groups in the States of Jonglei, Unity and Upper Nile, causing the death of several hundred people and leading to the displacement of more than 30,000 civilians. The threats to civilians remain substantial and are likely to increase.

11. Since December 2010, the security situation in Darfur has continued to deteriorate as a result of intense fighting between Government forces and armed movements. Many civilians have been displaced as a result of the fighting. UNAMID was unable to have access to many areas affected by the fighting despite its mandate to protect civilians under imminent threat of physical violence. Both Government and rebel authorities repeatedly blocked peacekeepers and humanitarian agencies at various times from providing assistance to vulnerable groups.

12. The Sudan was reviewed within the context of the universal periodic review mechanism of the Human Rights Council in May 2011. Some of the positive developments noted in the presentation of the Government² included the implementation of key aspects of the 2005 Comprehensive Peace Agreement, such as the holding of general elections in 2010 and the successful conduct of the South Sudan referendum. In spite of these achievements, a number of concerns and issues were raised by delegations during the review, including continuing discriminatory laws against women, sexual and gender-based violence, (prevalent in the conflict areas of Darfur and southern Sudan), media censorship and the arbitrary arrest of human rights defenders and journalists. More than 160 recommendations ranging from the establishment of a national human rights commission compliant with the Paris Principles to the reform of the State national security apparatus were proposed for adoption by the Government of the Sudan.³

13. The Government of the Sudan suspended the operation of the Khartoum and Darfur human rights forums, which had served as a useful mechanism for the exchange of information and dialogue on human rights concerns among the Government, the United Nations and international partners. The forums have not met since the previous report of the independent expert to the Human Rights Council in September 2010. The Government has stated that it is evaluating the effectiveness of the forums as a means of constructive

² A/HRC/WG.6/11/SDN/1.

³ A/HRC/18/16.

dialogue, and hopes to resume them shortly. In Darfur, while the establishment of human rights subforums in North and West Darfur was welcomed as a positive step towards cooperation between UNAMID and local authorities, only the West Darfur subforum has operated successfully. The subforum in North Darfur has been repeatedly postponed.

14. On 19 October 2010, the United Nations, in conjunction with the Government of South Sudan, the diplomatic community and civil society, launched the Southern Sudan Human Rights Forum. The Forum will identify strategies to address human rights challenges in Southern Sudan, including advocacy and support for capacity-building activities. In its resolution 10/11, in which the Human Rights Council established the mandate of the independent expert, the Council requested the mandate holder to engage with the human rights forums in the Sudan.

III. Northern Sudan

15. The Sudan has made some noteworthy progress in human rights promotion and protection, including upholding political rights and freedoms during the South Sudan self-determination referendum. Although the pre-registration period was marked by threatening political rhetoric and provocative statements made by officials of the ruling National Congress Party against southerners living in the North, the overall referendum process was hailed by the international community as a major achievement. Both the Government of the Sudan and the Government of Southern Sudan made tremendous efforts to ensure a peaceful and credible referendum process, the results of which were readily accepted. The Government of the Sudan is also more engaged with the United Nations human rights institutions, and participated effectively in the universal periodic review in May 2011.

16. In spite of the above-mentioned achievements, the Sudan continues to face daunting human rights challenges in terms of securing basic fundamental rights, in particular the right to liberty and security of person and the right to freedom of expression, and the effective administration of justice. The Government has remained adamant that it will open

up more political space for the full realization of human rights. In spite of the goodwill engendered by the successful conduct of the South Sudan referendum, there remains a lack of meaningful and regular dialogue between the Government and civil society organizations for the promotion and protection of human rights.

17. Cases of arbitrary arrest and detention by the National Security Service (NSS) remained a major concern during the reporting period. The body continues to arrest and detain people for prolonged periods without charge, and sometimes without the possibility of family visits. There were also allegations of incommunicado detention, torture and other forms of ill-treatment of detainees by the NSS. The independent expert's repeated requests to meet with the Director General of the NSS to discuss these concerns were declined during both of his visits to the Sudan during the reporting period.

18. Between late October and early November 2010, a group of human rights activists from Darfur affiliated with a radio station (Radio Dabanga) were arrested and held incommunicado by the NSS. The detainees were not charged, provided with counsel or given the opportunity to challenge the lawfulness of their detention. Nine of the activists were released between 13 and 21 January 2011, while five remained in custody. One of the released activists told human rights monitors that he had been beaten by NSS agents during interrogation sessions. On 13 February, four of the released activists were re-arrested. Six of them are currently standing trial for various offences under the Criminal Act 1991, three of which carry the death penalty.

19. Following the demonstration in January 2011 in Khartoum and other places in Northern Sudan, UNMIS documented more than 100 arrests made by the NSS. Most of the detainees were released the same day. More than 30, however, remained in detention until the end of February without being charged. Many of them reported having been mistreated while in NSS custody. During the same time, a number of targeted arrests of journalists and other persons working in the media were made. Six journalists working for local newspapers were arrested by the NSS and one foreign news media journalist was arrested

by the police. They were all released without charge. A second wave of arrests was made on 2 February, when the NSS detained eight journalists working with a newspaper affiliated with the Sudan Communist Party, together with nine employees of the newspaper. While all detainees were eventually released, some were kept for long periods without charge.

20. In mid-January 2011, Dr. Hassan al-Turabi, the leader of the opposition of the Popular Congress Party, together with nine members of the Party was arrested by the NSS. The arrests followed statements made by the Party leader that the Government could face a popular uprising similar to the ones witnessed in some Arab countries if it continued to resist calls for democratic reforms. All 10 men were released in May, but were never charged with any offence.

21. On 14 December 2010, the NSS arrested a 60-year old man for his role in planning a demonstration in Khartoum by a women's group calling for an end to the discriminatory use of public order laws. The man was held incommunicado and had no access to relatives or a lawyer prior to being released.

22. Freedom of expression and assembly were subjected to restrictions throughout the reporting period. A number of media organizations, non-governmental organizations and human rights defenders reported increasing harassment and censorship, particularly by the NSS. For example, on the night of 19 January 2011, NSS agents raided the premises of two Khartoum newspapers, *Ajrass Al Hurriya* and *Al Sahafa*, and ordered editors not to distribute their daily editions of the papers without NSS approval. The NSS intervention interrupted the operation of the newspapers for two days. Another Khartoum newspaper, the *Khartoum Monitor*, had its publication suspended on 22 and 23 December 2010 for having published an article on the subject "HIV and religion".

23. During his first visit to the Sudan in 2011 year, the independent expert was informed that a Special Prosecutor has been appointed by the Minister for Justice to monitor detentions made by the NSS. In spite of this, the independent expert remains concern about the wide discretionary powers granted to the NSS. He notes the lack of judicial oversight

over arrests and detention and the current legal framework under which the NSS operates, which does not fully encompass human rights principles and respect for the rule of law. The 2005 Interim National Constitution guarantees freedom of expression and freedom from arbitrary arrests and detention. In addition, the Comprehensive Peace Agreement explicitly states that the national security mandate “shall be advisory and focused on information gathering and analysis”.

25. On a positive note, more than 2,000 detainees convicted of minor crimes were released from the Khartoum State penitentiary in August 2010 to avoid overcrowding, pursuant to the recommendations made by the Human Rights Committee of the National Assembly. The Committee visited the prisons and concluded that the overcrowding was due to a large presence of prisoners convicted of minor crimes, including alcohol brewing. Most offenders were from the South and had been unfairly subjected to the application of sharia law, even though they were not Muslim.

IV. Transitional areas

A. Abyei

26. The future status of Abyei remains the greatest challenge to the implementation of the Comprehensive Peace Agreement. In accordance with the Agreement, the small oil-rich territory of Abyei straddling the North-South border was scheduled to hold a referendum on the same date as the referendum on South Sudan. Owing to disputes over voter eligibility and the composition of the Abyei Referendum Commission, the Commission was never formed and the vote was never held. The Agreement stipulates that voting rights should be given to the Ngok Dinka and other “Sudanese residing in the area”. The Government in the North demanded that members of the Misseriya nomadic tribe, who spend up to six months of the year in Abyei, should be considered residents. During his second visit, the independent expert met with leaders of the Misseriya community in Khartoum regarding

their grievances over migration rights in the Abyei territory. The SPLM, on the other hand, holds the view that the Misseriya are only in Abyei for a short period of the year, and should not be allowed to vote in the referendum.

27. Tensions began rising when it became clear that the Abyei referendum would not be held as scheduled, and both the SAF and the SPLA increased their presence in the region in anticipation of future clashes. In the run-up to the South Sudan referendum, fighting erupted between Misseriya militias and the Abyei police in several locations in the region, which resulted in casualties on both sides and the displacement of a large number of civilians. Dialogue mediated by the United Nations resulted in the signing of two agreements, in Kadugli on 13 and 17 January. The agreement provided for the disarming of the feuding parties and allowed southerners returning from the North free movement through Abyei, while guaranteeing the Misseriya limited grazing rights through the Abyei corridor. The agreement also provided for the withdrawal of the Abyei police unit to be replaced by two new battalions of joint integrated units composed of SPLA and SAF troops. While the parties committed to demilitarization, extensive military build-up by both sides continued on the ground, leading to further clashes, including an attack on a SAF convoy on 1 May, which reportedly killed 11 SAF soldiers.

28. On 19 May, a United Nations convoy escorting SAF joint integrated units was ambushed by the SPLA in violation of the Kadugli agreement. Sudanese authorities reported that at least 22 of its soldiers were killed in the attack. On 21 May, the SAF retaliated by launching a full-scale aerial and ground offensive that culminated in the seizure and occupation of Abyei. The attack involved the use of heavy artillery, tanks and aircraft and the bombing of several villages in the area. Two UNMIS peacekeepers were injured when several shells fired by the SAF landed at the Mission compound. Most town residents managed to flee before the attack. An estimated 110,000 Abyei residents are believed to have fled southwards to various parts of South Sudan, including Agok and Turalei and other villages in Northern and Western Bahr el Ghazal, Unity and Warrap

States. The Government of the Sudan unilaterally dissolved the regional administrative council and removed the head of the Abyei administration. It is alleged that Misseriya tribesmen, with the support of SAF troops, invaded Abyei and burned and looted the town.

29. The attack on Abyei was accompanied by large-scale looting and burning of property, including of assets of humanitarian agencies, and there were reports of widespread human rights violations committed by the Misseriya and the Government's Popular Defense Forces (PDF), including killings, rape and other forms of inhumane and degrading treatment. Owing to limited access, however, UNMIS was not able to verify most of the reports. During his second visit to the Sudan in 2011, the independent expert was able to visit the region, but his request to visit Abyei town itself was declined. He did, however, manage to interview a group of Abyei residents, some of whom reported that they had been severely beaten by PDF and Misseriya militia after being captured and placed in SAF custody. Abyei town is now completely emptied of all its inhabitants, and all the humanitarian organizations have pulled out.

30. On 20 June, the Government of the Sudan and the SPLM signed an agreement on temporary arrangements for the administration and security of Abyei. The agreement provides for the withdrawal of SAF and SPLA forces from Abyei and for the immediate deployment of an interim security force composed of Ethiopian troops. The Security Council endorsed the agreement and adopted resolution 1990 (2011), in which it established the United Nations Interim Security Force for Abyei (UNISFA) for a period of six months. The mission is expected to monitor and verify the redeployment of armed groups from the Abyei area, to protect civilians under imminent threat of physical violence and to facilitate humanitarian access.

B. Southern Kordofan

31. Southern Kordofan is a border State between North and southern Sudan. It is populated largely by the Nuba, the Hawazma and Misseriya nomadic Arab tribes. Since the end of the war, many of the Nuba have become strong supporters of the SPLA.

32. Under the Comprehensive Peace Agreement, Southern Kordofan and neighbouring Blue Nile States were expected to hold popular consultations to determine whether the Agreement had met the aspirations of their citizens and to resolve any outstanding issues related to its implementation. The popular consultation did not accommodate a right to self-determination for the two States. Rather, it offered the local communities the opportunity to address their grievances and expectations for which they had taken up arms against the Government of the Sudan and which had not been met by the Agreement. The two States will remain part of the Sudan regardless of the consultation's outcome, but they may retain some autonomy. The Agreement left the popular consultation process relatively vague, both in terms of content and of the processes to be used to guarantee the implementation of outcomes. The popular consultation process was delayed in Southern Kordofan to allow the conduct of State elections, which were not held during the 2010 nationwide elections owing to disputes between the Agreement partners over census figures.

33. The Southern Kordofan gubernatorial and legislative elections were finally held from 2 to 4 May 2011. Despite the tensions preceding the elections, the polling was generally peaceful and was deemed credible by the Carter Center Observer Mission, the only foreign organization to monitor the elections. However, on 10 May, prior to the announcement of the results, the SPLM withdrew from the elections, citing irregularities and alleging that the elections had been rigged. The final results announced by the National Elections Commission on 15 May showed a narrow victory for the incumbent State Governor, Ahmed Haroun.

34. On 23 May, the President of the Sudan ordered the dismantling of the joint integrated units in Southern Kordofan and Blue Nile States, and informed the SPLA that its forces in the two States should either disarm or move south of the 1956 border.

35. On 5 June 2011, the SAF reportedly began blocking all major roads in and out of Kadugli. Fighting then broke out between the SAF and the SPLA, with the SAF claiming that the SPLA had instigated the fight by taking over a police station in an attempt to procure arms. The SPLA in turn accused the SAF of attempting to forcibly disarm the SPLA joint integrated units. On 8 June, the SAF began aerial bombardments and launched ground offensives against SPLA positions in and around Kadugli, Talodi and other neighbouring localities. The situation then deteriorated rapidly as the SAF intensified its ground assaults in several areas including Kadugli, Dilling, Rashad, Heiban, Kauda, Um Dorein and Talodi. Many of the civilians affected by the fighting took refuge in the Nuba Mountains. Wounded civilians made their way to hospitals around Kadugli. Civilian casualties were reported in Kadugli, Um Dorein, Um Serdeiba, Heiban, Kauda, Dilling and Salara. It was also reported that civilians were trapped in some of the localities as a result of roadblocks mounted by both the SAF and the SPLA.

36. The security situation has continued to deteriorate since 9 June 2011 as fighting spread from Kadugli to other localities and the SAF persisted with more aerial bombardments. Access to most of the areas affected by the violence has been virtually impossible. The conflict has led to the massive displacement of civilians. According to United Nations sources, at least 73,000 people have been displaced by the fighting. The Government of the Sudan has restricted access to the affected areas citing security reasons, and this has in turn prevented aid organizations from reaching those in need of assistance.

37. Since the fighting erupted, there have been allegations of serious human rights violations committed by both parties, including extra-judicial killings targeted at the Nuba people who are affiliated with the SPLA, house-to-house searches, arbitrary arrests and

detentions. Many of these allegations could not, however, be verified because of restricted access to most parts of the State.

38. It is reported that the daily aerial bombardments in several towns and villages populated by the Nuba continue to cause significant loss of life and destruction of property. The aerial bombardments are also reported to have affected the delivery of humanitarian assistance, as some of the airstrips used by aid organizations have been destroyed.

39. There have also been allegations of abductions or the disappearance of civilians targeting people along ethnic lines, and extrajudicial killings targeting the Nuba people, as well as suspected supporters and affiliates of the SPLM/A, most of whom are from the Nuba communities. Precise figures are unknown and unverified. It is also alleged that the SAF has been engaged in arbitrary arrests and detention of persons suspected of being supporters and affiliates of the SPLM/A.

40. Both the SPLA and the SAF are alleged to have laid anti-personnel land mines in Kadugli and its surrounding areas, which have resulted in the death of civilians. A preliminary report by the United Nations indicates that more than one third of Kadugli town is riddled with either landmines or unexploded ordnance.

41. Throughout the conflict in Southern Kordofan, the SAF, the PDF and the Central Reserve Police Forces have disregarded the UNMIS privileges and immunities set forth and contained in the Status of Forces Agreement with the Government of the Sudan, as well as international conventions on the status of the United Nations, its staff and assets to which the Sudan is a signatory. On 7 June, an UNMIS national staff member fleeing the conflict was reportedly shot in the leg by suspected PDF elements on his way to an UNMIS team site. Seven UNMIS national staff members were arrested and detained immediately after the outbreak of violence. .

42. The independent expert notes that, like in the case of Abyei, it has been difficult to verify independently many of the allegations of human rights atrocities committed in Southern Kordofan owing to restricted access to the State. The situation in Abyei and

Southern Kordofan require thorough investigation, and the Government must grant access to human rights monitors and humanitarian workers.

V. Southern Sudan

43. On 9 July 2011, South Sudan became a new State. Undoubtedly, it will be confronted with enormous challenges, such as consolidating political stability, through the continuation of democratic governance reforms and the promotion and protection of human rights. The Government will have to address many outstanding human rights issues, including enhancing accountability and ending the pervasive culture of impunity and violence in the region. There are also major concerns linked to the general lack of trained security forces and law enforcement authorities, the persistence of inter-communal violence and the weakness of State structures that underpins the persistent human rights abuses.

44. Inter-communal violence continues to cause loss of life and property across southern Sudan. On 22 May 2011, a cattle raid by unidentified armed elements in Lafon County in Eastern Equatoria State killed 17 children. On 2 May, UNMIS investigated allegations of human rights violations following fighting between Dinka Gok and Dinka Agar tribes in Rumbek, Lake State. A total of nine people, including four women, were reportedly killed in the fighting. In Jonglei State, the traditional rivalry between Lou Nuer and Murle tribes intensified in late April in Pibor County, claiming more lives. The County reported that more than 60 people were killed when fighting broke out between the feuding tribes between 18 and 20 April. An unverified number of children were reported missing after the fighting. According to figures released by the State Security Committee, more than 1,000 lives were lost in the State through communal violence in the first three months of 2011. Impunity and lack of accountability continues to fuel the cycle of violence. To date, the Government has been unable to bring to justice any of the perpetrators of the numerous crimes committed.

45. Hundreds of civilians, including women and children, were killed in fighting between the SPLA and rebel militia groups. Since the referendum in January 2011, UNMIS has documented massive human rights violations committed in the context of this fighting. The violence can be traced to events following the April 2010 elections, when several former SPLA generals fell out with the movement over allegations of vote-rigging, formed militia groups and launched armed rebellions against the SPLA. While a majority of the casualties were soldiers on both sides, a substantial number of civilians has been targeted and killed on suspicion of being affiliated with rebel militia groups. The SPLA and other militia groups have committed human rights abuses, including the deliberate burning of villages and indiscriminate killing of civilians, including women and children, looting and rape and sexual violence against women. Between January and April 2011, UNMIS reported that more than 1,000 people, including hundreds of civilians, were killed in the fighting concentrated in the Greater Upper Nile region of Jonglei, Upper Nile and Unity State. Tens of thousands of civilians have been forced to flee their villages and many of them remain inaccessible to humanitarian actors.

46. Systematic human rights abuses continue in an environment of impunity, with the most frequent and worst abuses perpetrated by the security forces of Southern Sudan. There have been numerous reports of human rights abuses by the SPLA, including extrajudicial killings, arbitrary arrests, detentions and cases of sexual and gender-based violence. During the referendum, most of the human rights violations documented by UNMIS involved the SPLA. Like the SPLA, the Southern Sudanese Police Service (SSPS) commits serious human rights violations in its law enforcement operations. The SSPS remains ill-trained and under-equipped, and consists of many former militia and ex SPLA members, many of whom are illiterate and unqualified. In January 2011, an UNMIS investigation into the operations of the only training centre for police in Southern Sudan, at Rajaf, near Juba, uncovered allegations of serious human rights violations, including cases of extrajudicial killing, torture, rape and inhumane and degrading treatment meted out to trainees. The investigation also revealed a culture of training practices reflecting the guerrilla force

orientation of SPLA. On 8 April, the Government of Southern Sudan established a committee to conduct credible investigation into the allegations. It is imperative that the findings of the investigations be made public and the alleged perpetrators be brought swiftly to justice.

47. In addition to the generalized insecurity and continuing violence, South Sudan currently has very little capacity to dispense justice through the formal system. Weaknesses in its law enforcement capacity and the acute shortage of qualified staff in the justice sector have fuelled impunity for crimes. Illegal, prolonged and arbitrary detentions continue to be a major concern. Large numbers of people are put in prolonged detention without mandated legal warrants, very often in overcrowded and dilapidated cells. In Lake and Western Bahr el Ghazal, UNMIS observed that more than half of pretrial detainees had been held without the appropriate warrant extension. Despite the lack of due process, the criminal code of South Sudan allows the application of the death penalty; executions have indeed been carried out. In Malakal, Upper Nile, a prisoner was executed in October 2010 even though prison authorities had confirmed that he was illiterate and he did not receive legal representation during his trial. Of four prisoners executed in the State of Northern Bahr el Ghazal in September 2010, only one was reported to have benefited from legal aid.

48. Concerns also remain about continuing human rights violations linked to discrimination against women in South Sudan. Sexual and gender-based violence, forced marriages and abduction of women and children associated with inter-communal violence remain widespread. Serious crimes against women are sometimes settled through the traditional justice system, which very often applies discriminatory customary norms focused more on reconciliation than on ensuring accountability. In Western Equatoria, a man suspected of raping his two under-aged stepdaughters was released on bail after he agreed to compensate the victims' family. Another man suspected of murdering his wife was also released by the police after the families agreed to a settlement out of court.

VI. Darfur

49. Some eight years into the conflict in Darfur, the political dynamics have changed considerably and the overall violence associated with the insurgency and counter insurgency has abated considerably. Nonetheless, the human rights situation remains a cause of concern, with continuing fighting and breaches of human rights and international humanitarian law by the parties to the conflict. Hundreds of thousands of civilians continue to suffer the effects of the armed conflict through direct attacks, displacement and limited access to humanitarian assistance.

50. In December 2010, the security situation in Darfur deteriorated significantly as a result of renewed fighting between Government forces and the armed movements. The fighting followed strained relations between the Government and the Sudanese Liberation Army (SLA) Minni Minawi faction, the only rebel group to have signed a peace agreement with the Government. Fighting between the SAF and the SLA Minni Minawi in Shangil Tobaya and Dar el Salaam in North Darfur, and in Khor Abeche in South Darfur, began early in December and continued throughout January and February 2011. Fighting also broke out between the SAF and the Justice and Equality Movement around the same period in Dar el Salaam. It continued intermittently and involved ground attacks by soldiers, militia and rebels and aerial bombardments by the SAF.

51. Bombing of several villages in North Darfur, including in Um Shisha, Sortony and Wadi Mura, were reported in February 2011. While it did not appear that civilians were specifically targeted, close to 40,000 civilians were displaced from these clashes. More than 15,000 of them sought temporary shelter around a UNAMID team site in Khor Abeche, where the Mission was providing limited assistance. The rest migrated northwards to the Zamzam camp for internally displaced persons near El Fasher and to Tawila, north-west of El Fasher. Fleeing the armed clashes, civilians who relocated to the camps for the displaced continued to face insecurity, inadequate food and water supplies, and lack of basic rights such as education, shelter and land. Many of the newly displaced have yet to receive any

full humanitarian assistance owing to a variety of reasons. Furthermore, the presence of armed men around some of the camps severely restricted the movement and other rights of camp residents.

52. Civilians also continued to be exposed to violence and abuses from attacks by rebel groups and militia affiliated with the Government. On 2 September 2010, an unidentified armed group attacked a market in the village of Tabarat, in North Darfur, killing more than 30 civilians. A UNAMID team dispatched to the area to assess the situation was prevented from reaching the village by the SAF and an armed movement. In October, the Government established a commission of inquiry to investigate the incident. The commission conducted two visits to Tawila, but to date nobody has been held accountable for this incident. In Shangil Tobaya, between 31 May and 3 June 2011, civilians were reportedly killed when clashes erupted between members of a local Zaghawa community and an unidentified militia group. An investigation by UNAMID confirmed that at least four people belonging to the Zaghawa tribe were killed when they attempted to retrieve their stolen livestock from the militia group. A commission of inquiry has been set up by the Governor of the State to investigate the circumstances surrounding the fighting and the killings.

53. On a positive note, during the reporting period, a considerable decrease was witnessed in inter-communal violence and targeted attacks on UNAMID and humanitarian actors. This may be attributable to the Mission's increasingly robust military and police presence and the Government's efforts to promote reconciliation between communities. Three crew members of the United Nations Humanitarian Air Service, the last humanitarian actors to be held in captivity, were released unharmed almost five months after being kidnapped. There were, however, several serious incidents of attacks on UNAMID peacekeepers and humanitarians, two of them resulting in fatalities. On 5 April 2011, a UNAMID policewoman was killed in an ambush by unidentified gunmen near Kutum, in North Darfur; and on 30 June, a UNAMID peacekeeper was shot and mortally wounded in an ambush by unidentified gunmen in El Geneina, West Darfur.

54. The state of emergency in Darfur and the application of the NSS Act 2010 and the Emergency and Public Safety Protection Act 1997 continue to curtail fundamental rights and freedoms. Human rights violations, mainly by the NSS and Sudanese Military Intelligence, continued to be committed with impunity. Perceived critics of the Government were routinely arrested and kept in prolonged detention without judicial oversight, and sometimes subjected to torture or ill-treatment. In October 2010, two internally displaced persons who took part in a meeting with a visiting Security Council delegation to the Abu Shouk camp for displaced persons were arrested and detained by the NSS. They were subsequently released but never charged with any offence. One of them was rearrested in November, but released again. Two UNAMID staff members arrested in April and May 2011 in South and North Darfur were detained for several weeks, without being charged with any offence. Again in North Darfur, four internally displaced persons detained in connection with the killing of a community leader and his wife in the Abou Shok camp are still in detention since being arrested in August 2009.

55. Sexual and gender-based violence remained a serious concern in Darfur in spite of measures taken by the Government to address it. The persistent climate of impunity continues to create an environment conducive to the perpetration of sexual violence. Many incidents of sexual violence were not reported owing to fear of social stigma associated with rape, fear of reprisal and the victims' lack of trust in the police to effectively investigate and prosecute offenders. Furthermore, the police do not have the capacity to follow up and investigate cases of sexual violence in areas under the control or influence of armed groups. These challenges notwithstanding, the Government has taken a number of positive steps to combat sexual and gender-based violence. In North Darfur, the authorities have significantly increased the number of female police investigators, while in West and South Darfur, female police investigators have recently been posted in family and child protection units of the Police solely to handle cases of violence against women.

56. The Darfur peace process continues to face significant challenges without the active participation of some major armed movements. In May 2011, the Darfur mediation successfully held an all-Darfur stakeholders conference aimed at drawing a broad consensus on the challenges ahead and enhancing civil society participation in the peace process. The United Nations and the African Union have proposed that the Doha process be concluded, and have invited all stakeholders to continue the peace process through a Darfur-based political process. The new process, to be spearheaded by UNAMID, calls for the establishment of an enabling environment necessary to protect the political and civil rights of the participants. The Government has indicated its willingness to lift emergency laws in effect in Darfur as a sign of its commitment to ensure the credibility of the process. The Government, meanwhile announced early in March that it would proceed with its decision to hold a referendum on the administrative status on Darfur, a move strongly opposed by the armed movements.

VII. Conclusion

57. **The successful conduct of the South Sudan referendum was undoubtedly a momentous achievement. The independent expert commends the Government of the Sudan and the Government of South Sudan for the great efforts made to ensure a credible and peaceful referendum process for the self-determination of South Sudan. With the separation of South Sudan, the first challenge facing the Government of the Sudan is to foster a culture of pluralism and tolerance and to move towards a more inclusive, participatory and transparent democratic process, which will have a direct impact on human rights. The realization of fundamental rights and freedoms, including the freedom of expression and association, remains an enormous challenge in the Sudan as it moves into a new era. In spite of the positive steps taken in the area of law reform, there is growing concern about the pervasive presence of the national security apparatus and its impact on the exercise of civil and political rights in the**

country. Throughout the reporting period there were widespread allegations of arbitrary arrests and detention, torture and incommunicado detention perpetrated by the NSS.

58. The independent expert would also like to point out the enormous challenges faced by South Sudan as it becomes as a new State on 9 July. The most urgent priority is for the SPLM to accelerate the transition from a military movement to a responsible and accountable Government that respects and protects the fundamental rights of the people. The post-referendum violence, particularly in Upper Nile, Unity and Jonglei States, and the systematic human rights abuses that continue to occur in an environment of impunity remain grave issues. The threats facing civilians are substantial and are likely to increase. Long-standing patterns of localized, inter-communal violence are likely to continue unless the Government of South Sudan takes concrete measures to protect civilians and to address the widespread impunity and lack of accountability that continue to be the central cause of conflict in South Sudan.

59. The human rights situation in Darfur remains precarious, with continuing fighting and breaches of human rights and international humanitarian law by the parties to the conflict. Hundreds of thousands of civilians continue to suffer the effects of the armed conflict through direct attacks, displacements and limited access to humanitarian assistance. Furthermore, the enjoyment of fundamental rights and freedoms in the region has to a large extent been suppressed by the combined effect of the application of emergency and security laws.

60. The independent expert is deeply concerned about the situation in Southern Kordofan and Abyei, which clearly demonstrates the need for immediate political dialogue between the partners of the Comprehensive Peace Agreement and a renewed commitment to address the outstanding issues facing the North and the South. In Abyei, the independent expert noted with alarm the utter destruction of the town since fighting broke out in May 2011. Hundreds of thousands have been displaced and have

limited access to humanitarian assistance. In Southern Kordofan, where the situation has deteriorated significantly since the outbreak of hostilities early in June, the main concern is the welfare and security of the many civilians trapped in the fighting. Furthermore, serious concerns remain about allegations of abductions, arrests, detentions and executions of civilians. The scheduled withdrawal of UNMIS from Northern Sudan after 9 July 2011 presents serious concerns, including continuing monitoring of the situation and humanitarian access.

VIII. Recommendations

61. The independent expert reiterates all previously unimplemented recommendations, including those contained in his first report⁴ to the Human Rights Council, and those made by his predecessor, the Special Rapporteur on the situation of human rights in the Sudan,⁵ and the group of experts on Darfur.⁶ In particular, the independent expert makes the recommendations set out below.

A. Government of the Sudan

62. The Government of the Sudan should continue the process of review of national laws to conform with international human rights standards and take concrete measures to reform aspects of the current statutory framework that infringe on the exercise of political and civil rights and freedoms. In particular, priority should be given to withdrawing enforcement powers, including of arrest and detention for the NSS, in line with the information-gathering and advisory role envisioned by the Comprehensive Peace Agreement.

⁴ A/HRC/11/14.

⁵ A/HRC/9/13.

⁶ A/HRC/6/19.

63. The Government should ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are brought to justice promptly, in particular those with command responsibility.

64. The Government should also ensure that human rights defenders, humanitarian workers, members of the political opposition, journalists and other civil society members are not intimidated, arrested and detained, ill-treated or tortured by State agents on account of their work, opinions or peaceful assembly.

65. The Government should ensure that its armed forces respect international human rights and humanitarian law and ensure the protection of civilians at all times.

66. The Government should also ensure open dialogue with the Government of South Sudan to address outstanding issues with regard to the Comprehensive Peace Agreement, including citizenship arrangements, border demarcation, the popular consultations in Southern Kordofan and Blue Nile States, the Abyei referendum and wealth-sharing.

67. Lastly, the Government should ensure unhindered humanitarian access to all aid organizations in order for them to provide needed assistance to persons displaced by the fighting in Darfur.

B. Government of South Sudan

68. The Government of South Sudan should address impunity by ensuring allegations of violations of human rights, including those involving the SPLA, the SSPS and the other security services, are thoroughly investigated. It should also ensure that the findings of these investigations are made public and that the perpetrators are promptly brought to justice and reparations provided to the victims.

69. The Government of South Sudan should engage with the Government of the Sudan to address outstanding issues with regard to the Comprehensive Peace Agreement, including citizenship arrangements, border demarcation, the Abyei referendum and the popular consultations in Southern Kordofan and Blue Nile States.

70. The Government of South Sudan should ensure that adequate means and resources are provided to institutions responsible for the administration of justice and rule of law, including the provision of legal aid services.

71. The Government should also ensure that the State budget is adequately distributed among key sectors, such as education, health, social services, law enforcement and rule of law institutions, as well as institutions working on human rights.

72. The Government of South Sudan should ratify key international human rights treaties and conventions, and ensure a participatory and inclusive process in the enactment of a future permanent Constitution for South Sudan.

C. International community

73. The international community should continue to provide to the national Government of the Sudan and the Government of South Sudan with technical and financial support for building democratic national institutions for the protection of human rights.

74. The international community should continue to provide support and participate in the human rights forums to facilitate a strong partnership between the Government, the United Nations, international partners and civil society in addressing human rights concerns.

75. The Human Rights Council should continue to focus on the situation in the Sudan until significant progress is made in implementation of all recommendations

made by the independent expert, Special Rapporteur on the situation of human rights in the Sudan and the group of experts on Darfur, and is assured of concrete and material improvement in the human rights situation on the ground.

76. Given the enormous human rights challenges faced by the parties to the Comprehensive Peace Agreement, including the direct bearing of outstanding issues on human rights, and the other grave human rights concerns arising out of the events in Abyei and Southern Kordofan, the independent expert recommends that the Human Rights Council closely monitor the situation on the ground with a view to ensuring that appropriate mechanisms for the effective protection of human rights are put in place.

D. United Nations

77. UNAMID, in accordance with its mandate and without prejudice to the primary responsibility of State authorities, should take the measures necessary to protect civilians, deter attacks on civilians and prevent violations of human rights and international humanitarian law.

78. The United Nations should continue to provide the national Government of the Sudan and the Government of South Sudan with technical assistance and other support, in accordance with assessed needs; in particular, it should provide law enforcement and rule of law institutions, including customary courts across the Sudan, with human rights training and support.

E. Other recommendations

79. With regard to Southern Kordofan, the independent expert calls on the parties to the conflict to agree to a cessation of hostilities, with immediate effect, with a view

to creating an environment conducive to resolving their differences and to engage in negotiations and dialogue to address the needs and aspirations of the various ethnic groups,

80. The independent expert reminds the Government of the Sudan of its responsibility to protect civilians from violence and to refrain from any actions that could put the lives of civilians in danger, and to hold those who violate international humanitarian and human rights law accountable.

81. The independent expert calls on the parties to grant the United Nations unimpeded access to all areas affected by violence.

82. The independent expert calls upon the parties to the conflict to provide humanitarian organizations with unhindered access in order that they may provide vital assistance for the needy and to ensure that a safe corridor is provided for the passage of civilians.

83. The independent expert calls the Human Rights Council to order an independent and credible investigation into alleged violations of human rights and humanitarian law during the hostilities in Southern Kordofan with a view to holding perpetrators to account.

84. The Governments of the Sudan and the SPLM must ensure that all necessary steps are taken to provide an enabling environment for the voluntary return of the Abyei residents to their homelands.

85. The independent expert reminds the Government of the Sudan and the SPLM of their responsibility to protect civilians from violence and to refrain from any actions that could put the lives of civilians in danger, and to hold those who violate international humanitarian and human rights law accountable.

86. The independent expert calls on the Government of the Sudan to grant the United Nations unimpeded access to all areas affected by the violence in Abyei.

87. The Government of the Sudan and the Government of South Sudan must resume negotiations on resolving their differences on the conduct of the Abyei referendum, including by promptly setting up the Abyei Referendum Commission and taking concrete steps to reduce tensions between the Dinka and Misseriya communities through dialogue and negotiations.
