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Human rights situations that require the Council's attention

Report of the independent expert on the situation of human rights in the Sudan, Mr. Mohammed Chande Othman

The present report is being issued pursuant to decision 14/117 adopted by the Human Rights Council on the independent expert on the situation of human rights in the Sudan. In this decision, the Council - noting that the independent expert was unable, for medical reasons, to present his report at the fourteenth session - decided to proceed with a technical extension of the mandate of the independent expert until the end of the fifteenth session of the Council to allow an interactive dialogue to be held with him. The decision noted that it was understood that the independent expert would continue his work until the end of the fifteenth session and would be in a position to complement his report thereupon, if he so decided, at this session.

Summary

This progress report of the independent expert on the situation of human rights in the Sudan is submitted pursuant to Human Rights Council Resolution 11/10 of 18 June 2009, in which the Council established the mandate of the independent expert and requested him to monitor the human rights situation in the Sudan and report to the Council. The present report covers the period May to August 2010.

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 decided 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. It requested the mandate holder to engage with the newly created human rights forums in the Sudan as well as the human rights sections of the United Nations Mission in the Sudan (UNMIS) and the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and to report to the Council at its fourteenth session.

2. In its decision 14/117, the Council - noting that the independent expert was unable, for medical reasons, to present his report at the fourteenth session - decided to proceed with a technical extension of the mandate of the independent expert until the end of the fifteenth session of the Council to allow an interactive dialogue to be held with him. The decision noted that it was understood that the independent expert would continue his work until the end of the fifteenth session and would be in a position to complement his report thereupon, if he so decided, at this session.

3. The present report, submitted ahead of the Council's review of the independent expert's mandate, provides an overview of developments and activities during the four month period from 1 May to 31 August 2010. The report is based on information made available to the independent expert by the Government, UNMIS, UNAMID and information obtained from other sources including from UN Agencies, bodies and programs with operational competence in the Sudan.

General human rights situation

4. During the reporting period, while the Government continued steps towards democratic transformation, the general human rights situation in the Sudan deteriorated. While the successful conduct of the elections in April 2010 marked an important milestone in the implementation of the 2005 Comprehensive Peace Agreement (CPA), the anticipated expansion of political space did not materialize. Instead, particularly in May and June, the country witnessed a pattern of political repression with a deteriorating environment for civil and political rights, including arrests of political opposition leaders, journalists and peaceful demonstrators, and restrictions on press freedom.

5. In Darfur, the security and humanitarian situation has also deteriorated with continued sporadic clashes between Government troops and the armed movements resulting in civilian casualties and further civilian displacement. The reporting period also witnessed increasing attacks on UNAMID peacekeepers and increasing cases of abductions of humanitarian workers. In Southern Sudan, the post election period was marred by violence and widespread human rights abuses. The conduct of the Sudan People's Liberation Army (SPLA) in post election violence raises grave concerns about the prospects for future democratic transformation in Southern Sudan.

Northern Sudan

6. The post election period was characterised by a pattern of political repression and a deteriorating environment for the exercise of civil and political rights, including arrests and detention of political opposition activists and journalists. On 16 May, the leader of the

Popular Congress Party (PCP) and a prominent critic of the Government was arrested and held without charge or judicial oversight until 30 June. Also on 16 May, four journalists of Rai al Shaab, a PCP affiliated newspaper, were arrested and detained. They were subsequently tried by a Khartoum court, with three receiving prison sentences of two to five years on charges of “attempting to destabilize the constitutional system”. One of them told the court that he had been severely tortured while in custody of the National Security Service (NSS).

7. In early June, the NSS arrested and detained six doctors for leading a doctors’ strike calling for better working conditions. They were held without charge until 27 June. One of the doctors reported being badly beaten while in detention and threatened with re-arrest should he continue to lead the strike.

8. The reporting period also saw increasing restrictions on press freedom. As well as arresting its journalists, on 16 May, Rai al Shaab was shut down by the NSS. It has remained closed ever since. On 8 June, the National Press and Publication Council announced a ban on all news relating to the detained journalists. On 6 July, the NSS also shut down the pro-National Congress Party (NCP) *Al Intibaha*, reportedly because of pro-secessionist rhetoric.

9. The Government also reintroduced pre-print censorship following the elections, a practice the President had suspended in late September 2009. Security agencies harassed journalists, human rights advocates, and non-governmental organizations and resumed visits to newspapers to remove contents deemed unsuitable. While visits by NSS censors were again suspended in early August, newspapers reported new restrictive measures including NSS demands that journalists provide personal information, including political affiliation, tribe, and contact information for family and close friends.

10. Freedom of Expression and Media is enshrined in Article 39 of the Interim National Constitution and by Article 19(2) of the International Covenant on Civil and Political Rights, to which Sudan is a party.

11. The majority of violations detailed above were perpetrated by the NSS. The new National Security Act, which came into force on 28 January 2010, maintains wide discretionary powers of arrest and detention for the NSS, in contravention of the Interim National Constitution, and the CPA, both of which envisage a NSS with an advisory mandate limited to gathering and analysing information. Under the new law, the NSS can arrest and detain people for up to four and a half months without judicial review.¹ It also maintains NSS members’ immunity from prosecution, leaving the possibility for impunity should they commit crimes.

12. Continuing violations of human rights by NSS officials highlights the need for further reforms in Sudan’s security apparatus. The legal framework under which the NSS operates is incompatible with Sudan’s constitutional and international human rights guarantees, as evidenced by the NSS’s ability to ride roughshod over them. National security objectives need to be clearly defined, ensuring they fully encompass human rights principles and respect for the rule of law. This should be considered as a matter of urgency.

13. The fifth meeting of the UNMIS/ Government of Sudan Human Rights Forum took place on 6 May 2010. During the meeting, UNMIS Human Rights and the Advisory Council on Human Rights (ACHR) presented reports detailing their assessment of the human rights situation in the Sudan. The Forum decided to establish a Committee comprised of representatives from the ACHR, UNMIS Human Rights and the international

¹ See Article 50 and 51 National Security Act 2010 - Sudan

(donor) community to consider the reports with a view to identifying the main human rights issues and developing recommendations on how to address the challenges identified. The Committee's report will be presented at the next Forum.

Darfur

14. The reporting period witnessed a significant deterioration in the security situation in Darfur with fighting between Government troops and the Justice and Equality Movement (JEM) as well as sporadic fighting between the Sudan Liberation Army (SLA/Abdul Wahid) and Government troops particularly in the Jebel Marra regions of West and South Darfur. The clashes between Government forces and JEM re-occurred against the backdrop of JEM's expulsion from Chad following the rapprochement between the Governments of Chad and Sudan in the beginning of 2010, and the consequent relocation of JEM inside Darfur. The month of May was recorded as the deadliest in Darfur since the establishment of UNAMID with more than 400 conflict related fatalities reported. Even though most fatalities were among combatants, a significant number of civilians were killed, displaced or lost their livelihoods as a result of the fighting.

15. Armed violence, insecurity arising from banditry and crime, and the threat of abduction continue to make it very difficult and dangerous for UNAMID and humanitarian organizations to operate in Darfur. UNAMID forces were attacked on several occasions between May and August resulting in the deaths of five peacekeepers. Two peacekeepers were killed on 7 May when unidentified armed men ambushed a UNAMID convoy in south Darfur, and in West Darfur, armed men in military uniforms attacked UNAMID troops guarding a construction site in Nertiti, killing three UNAMID soldiers and seriously injuring one.

16. On 14 August, two UNAMID peacekeepers were kidnapped by unidentified gunmen in Nyala, the capital of South Darfur, as they walked towards a UNAMID dispatch point from their residence. The two were released unharmed three days later. Again in Nyala, three aid workers of an international aid organization including a local security guard were abducted on 22 June from their residence. The two international staff members were released on 27 July after spending 35 days in captivity. Another female aid worker of an international organization kidnapped in mid-May spent more than a hundred days in captivity before being released by her abductors on 30 August.

17. In spite of several demarches made by UNAMID at the highest level of Government, no one has been held accountable and brought to justice for any of the above mentioned crimes.

18. Inter communal conflicts intensified in Darfur during the reporting period and continued to cause large numbers of casualties and significant population displacement. In West and South Darfur, continuing clashes between the Misseriya and Nawaiba, both nomadic tribes, resulted in more than 200 casualties in the months of May and June alone. In June the two tribes reached a peaceful settlement to halt further hostilities and committed to establishing a security task force to restore law and order. However, some two months later, fighting broke out between the Nawaiba Reizigat and the Misseriya in the Kass area of South Darfur resulting in the killing of more than 50 people. The clashes also resulted in the displacement of whole communities to neighbouring towns and villages.

19. Arbitrary arrests and detentions mostly by the NSS and Military Intelligence continued to be of concern during the reporting period. UNAMID documented more than 30 cases of arbitrary arrests in the months of May and June alone. Most victims were arrested due to their political affiliations or their alleged links with the armed movements. The Government continued to hold detainees for long periods without charging them with a

crime and denied them the right to challenge the basis of their detention in a court of law. At the end of August 2010, six men from Abou Shok IDP camp in North Darfur who were arrested in August 2009 together with 12 others under the 1997 Emergency Law for their involvement in the murder of a local community leader, remained in detention, and have been denied the right to challenge the lawfulness of their detention in court.

20. On a positive note, UNAMID signed a memorandum of understanding with the Government prison authority in February 2010, granting the mission access to all Government operated prisons. In spite of this, UNAMID reported in August that it was denied access to prisons and detention centers in several localities in North Darfur. Under a new Government directive, UNAMID is required to obtain permission from the head of the state judiciary in order to access state prisons. UNAMID has also been denied access to detention facilities run by the Sudan Liberation Army Minnni Minawi faction (SLA/MM).

21. Women and young girls in Darfur continue to experience insecurity in the form of gender and sexual based violence usually perpetrated by men in military uniform. While the numbers of reported cases have continued to drop, there is concern that the lack of access for verification of cases and the social stigma associated with rape may have resulted in underreporting. UNAMID is helping to address this problem through the establishment of coordination and analysis groups within UNAMID to streamline the process of verification and reporting of sexual and gender based violence cases. These efforts notwithstanding, police inaction in investigating sexual violence cases continues to foster a climate of impunity. Between July and August, UNAMID documented 18 cases of sexual and gender based violence involving more than 20 victims. In eight of these cases, the police failed to follow up on complaints filed by victims.

22. Towards the end of July, a state of unrest and insecurity prevailed in some Internally Displaced Persons (IDP) camps in Darfur as a result of differences over the direction of the Doha peace process. Violent clashes erupted between different factions in the camps due to the participation of some IDP leaders and civil society representatives at the Doha talks. In Kalma camp, in North Darfur, the situation escalated into deadly violence with up to 10 people killed in confrontations. Similar tensions arose in Hamadiya camp, near Zalingei, West Darfur where three pro-Doha IDPs were reportedly killed in clashes with the SLA-AW faction. Six IDP leaders in Kalma camp accused of instigating the violence in the camp sought refuge at a UNAMID outpost, resulting in a standoff between UNAMID and the Government. UNAMID has refused to hand the IDPs over to the Government without due guarantees for their safety and protection.

23. The Darfur mediation process in Doha has seen very little progress since the Joint Chief Mediator brokered two peace ceasefire agreements between the Government and JEM and the Liberation and Justice Movement (LJM) in February and March 2010 respectively. In spite of the signing of these agreements, JEM withdrew from the mediation process in May. The Government, however, resumed talks with the LJM in June and both parties committed to achieving rapid progress and the inclusion of civil society in the talks. The Government has at the same time unveiled a new strategy for achieving peace in Darfur that will allow a wider spectrum of the Darfur society to participate in the political process. The plan seeks to achieve peace through expediting the process of returning IDPs to their homelands and providing support through developmental projects in their areas of origin.

24. During the reporting period, human rights sub-forums were established in all three Darfur states as a further positive step towards enhancing local participation in the Darfur-wide human rights forum. The sub forums are aimed at increasing cooperation between UNAMID and the Government on human rights issues. They will also serve as a means for assessing the capacity building needs at the state level for better promotion and protection of human rights.

Southern Sudan

25. The post election period in Southern Sudan was marred by violence and widespread human rights abuses. This was especially true in areas where the Sudan People's Liberation Movement (SPLM) had faced strong opposition during the elections from breakaway candidates and groups, including the SPLM-DC. Jonglei, Upper Nile and Unity States were badly affected. Clashes between SPLA elements and armed civilians also occurred in Western Bahr el Ghazal, Warrab and Lakes States.

26. In Jonglei State, a former SPLA Deputy Chief of Staff alleged vote rigging and staged a rebellion after he lost the State gubernatorial election to the SPLM's candidate. His forces are accused of launching a 30 April attack on an SPLA barracks in Upper Nile State in which more than 30 SPLA soldiers were killed. The SPLA retaliated by launching operations in Pigi County (formerly known as Khorflus) in early May. They engaged with the former gubernatorial candidate's supporters on 6-7 May, killing an unknown number and causing up to 5,000 people to be displaced.

27. The SPLA was also reported to have used violence against civilians. It was accused of numerous human rights violations against civilians including killings, rapes and burning of homes as it attempted to flush out potential insurgents in "clean up operations" following the fighting detailed above. Political violence also spread to Upper Nile State where SPLA leaders admitted that their troops killed four people they claimed to be bandits during another military operation against a suspected SPLM-DC militia group. Four international aid workers accused of collaborating with the militia group were arrested and detained by the SPLA. In Blue Nile State, SPLA soldiers reportedly harassed and arbitrarily arrested and detained supporters of the northern NCP party, forcing many to flee to neighbouring states. Such abuses by SPLA troops continued unabated into July and August. The conduct of the SPLA in post election violence raises grave concerns about the prospects for future democratic transformation in Southern Sudan.

28. Inter-communal conflicts between heavily armed civilians over cattle and natural resources continued to claim civilian lives. These attacks invariably lead to revenge attacks and reprisals, furthering the cycle of violence. In the months of April and June alone, UNMIS documented more than 60 incidents of such violence in Southern Sudan, with Warrap, Jonglei, Upper Nile, Western Bahr el Ghazal and Lakes States particularly affected. Fighting continued into July and August. In Warrab State, for example, four civilians were killed in east Tonj County between 22 and 24 July. In Lakes State on 2 August, 21 people were killed and six others injured.

29. Though not on the same scale as the inter-communal conflicts, sporadic attacks by the Lord Resistance Army (LRA) continued to be reported in Western Equatoria State. On 16 May, suspected LRA combatants ambushed a Government vehicle on a road between Yambio and Tambura and killed three officials. A similar ambush on a vehicle belonging to a UN contractor on a road near Yambio on 29 July killed two and wounded four others. The LRA was again reported to have attacked four civilians near Tambura on 26 May, killing one and abducting three others. Another suspected LRA attack on 23 July in a village in Western Bahr el Ghazal, resulted in the killing of a 60 year old woman and three people being abducted.

30. The violence is abetted by justice sector weakness. The police, prosecutors and especially the judiciary are chronically under represented and poorly trained. The inability of authorities to offer an alternative to violent redress results in widespread impunity. A culture of impunity also exists within the SPLA, who are often reluctant to cooperate with the civilian justice system. There was some encouraging news in June, when the Lake State High Court convicted three SPLA soldiers for armed robbery, sentencing two of them to five years imprisonment. However, the widespread absence of prosecutors and judges,

often due to security concerns in conflict prone areas, is hampering efforts to adjudicate conflicts and maintain law and order. The Independent Expert notes that an effective justice system is a prerequisite for a credible referendum in 2011.

Transitional Areas - Abyei

31. Presidential elections in the contentious region of Abyei were generally peaceful in spite of the government's decision to forego elections to gubernatorial and Legislative Assembly positions. The CPA partners are yet to resolve outstanding issues including the establishment of the Abyei Referendum Commission, border demarcation and the issue of residency and voter eligibility, all of which could affect the overall CPA timetable. In addition, tensions continue to build between the Misseriya nomads and the Dinka ethnic group, with Misseriya possession of weapons during seasonal migration a flashpoint issue. In early June, at least five Southern Sudan policemen were killed and two seriously injured when armed Messeriya militias reportedly attacked Tajalen, a town north of Abyei.

Update on the implementation of the Group of Expert on Darfur (GED) recommendations

32. The Independent Expert notes that his mandate in Resolution 11/10 requires him to assume the mandate and responsibilities set out by the Council in its resolutions 6/34, 6/35, 7/16 and 9/17 including following up and fostering the implementation of the remaining recommendations of the Group of Experts on Darfur (GED) through open and constructive dialogue, and to include this information in his report.

33. The Independent Expert submitted his first report on the status of the implementation of the GED recommendations as an addendum to his report to the Council at the fourteenth session. This report analyzed information received from UNAMID, UNMIS, and UN agencies, bodies and programs with operational competence in Darfur. However, it did not have the benefit of a Government response at the time of its writing.

34. The Independent Expert is submitting a new report to the Council's fifteenth session which will update his first report on the status of the implementation of the GED recommendations. This new report will focus on the response provided by the Government of the Sudan on the implementation of the recommendations, which was received on 17 May 2010, as well as additional information subsequently obtained from other sources including UNAMID, UNMIS and UN agencies.

Conclusions

35. In summary, despite steps taken by the Government towards democratic transformation, serious challenges remain in the protection of human rights in the Sudan. In the months since my first report to the Council, the country has witnessed a sharp turn towards political repression and restrictions on civil and political rights. Political opposition parties, journalists and students were targeted with arrests and detentions on account of their activities. Detainees often alleged that they were subjected to torture and ill treatment and denied the right to challenge the lawfulness of their detention in a court of law. These developments coupled with the increased restrictions in press freedom represent a serious setback, and are of particular concern as the country prepares for the referendum scheduled for January 2011.

36. In spite of the passage of a new National Security Act, the NSS continues to enjoy wide discretionary powers of arrest and detention. Under the new Act, the NSS can arrest and detain people for up to four and a half months without judicial review. As noted above, the NSS has been the main perpetrator in the majority of human rights violations documented in Northern Sudan during the reporting period. All this underlines the urgent need for further reforms of Sudan's security apparatus.

37. In Darfur, clashes between Government forces and the armed movements as well as inter-communal violence continues to cause further death and displacement among the civilian population. Humanitarian access has been hampered by increasing lawlessness, and abductions of peacekeepers and aid workers. The persistent climate of impunity in the region remains the central driver of many acts of violence and criminality. It is thus essential that the Government conduct thorough and timely investigations into these criminal acts and ensure that perpetrators are promptly brought to justice.

38. The situation in Southern Sudan continues to be characterized by high volatility in localized areas affecting civilian populations, especially women and children, as well as increasing human rights violations by the SPLA. Violence is further exacerbated by the near absence of functioning law and order mechanisms in many parts of the region, and the widespread proliferation of arms and ammunition. With the likelihood of violence in the lead up to 2011 referendum, as highlighted by post election clashes in many parts of the region, concrete measures aimed at ensuring law and order and addressing accountability and impunity should be urgently considered by both the national Government and the Government of Southern Sudan (GoSS).

39. One of the Independent Expert's primary concerns is the enormous challenge faced by Sudan to conduct a peaceful and successful referendum on Southern Sudan. While recognising the progress made so far, including the establishment of the Southern Sudan Referendum Commission, it is important to note that with only four months to go before the scheduled January 2011 date, significant issues including border demarcation and post referendum arrangements remain to be resolved. The April elections did very little to open democratic space as envisaged in the CPA. Ensuring a peaceful and conducive atmosphere for voters to be able to make their choice freely and in safety will be a critical challenge for both the national Government and the GoSS.

Recommendations:

The Independent Expert reiterates all previously unimplemented human rights recommendations including those contained in his first report to the Council, and those made by his predecessor the Special Rapporteur on the situation of human rights in the Sudan, as well as by the Group of Experts on Darfur (GED).

In particular, the Independent Expert recommends that the:

Government of Sudan

- Continue the process of review of national laws to conform with the CPA, the Interim National Constitution (INC) and international human rights standards; 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 for the NSS in the CPA and INC;

- 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;
- Take concrete measures to reform aspects of the current statutory framework which infringe on the exercise of political and civil rights and freedoms
- Ensure that human rights defenders, humanitarian workers, members of 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;
- Conduct thorough and timely investigations into violence and criminality committed against UNAMID peacekeepers and aid workers, and prosecute and punish perpetrators.

Government of Southern Sudan:

- Address impunity by ensuring allegations of violations of human rights, including those involving the SPLA, are investigated. The findings of inquiries should be made public, perpetrators promptly brought to justice and reparations provided to victims;
- Ensure 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.
- Ensure that the state budget is adequately distributed amongst key sectors such as education, health, social services, law enforcement and rule of law institutions, as well as offices working on human rights.
- Prevent SPLA interference in the administration of justice, especially in the work of the police and judiciary, and provide appropriate training to former SPLA members integrated into institutions of government.
- Support the Southern Sudan Human Rights Commission to enable it to fully implement its mandate and strengthen offices at the state level.

The international community:

- Continue to provide technical and financial support to the national Government of the Sudan and the Government of Southern Sudan, on the basis of needs assessment, to fully implement the CPA and build democratic national institutions for the protection of human rights;
- Continue to provide support and participate in the Human Rights Forums to facilitate a strong partnership between the Government, the United Nations and civil society in addressing human rights concerns;
- The Human Rights Council should remain engaged 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 (GED), and is assured of concrete and material improvement in the human rights situation on the ground.

The United Nations:

- **UNAMID and UNMIS, in accordance with their mandates and without prejudice to the primary responsibility of State authorities, should take necessary measures to protect civilians, proactively deter attacks on civilians and prevent violations of international human rights law;**
 - **Continue to provide support and technical assistance to the national Government of the Sudan and the Government of Southern Sudan, in accordance with assessed needs; in particular provide human rights training and support to judicial institutions, traditional and customary courts across the Sudan.**
-