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Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in the Sudan

Addendum

Comments by the State*

* Reproduced as received.

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Comments by the Government of the Sudan on the Report of the Independent Expert on the situation of human rights in the Sudan (A/HRC/27/69)

I. Introduction

1. Pursuant to the HRC resolution 24/28 of 8 October 2013, the Government of the Republic of Sudan welcomed the two visits of the Independent Expert to the Sudan in February and June 2014. The Government fully cooperated and positively engaged with the Independent Expert and allowed him full access to different states of the country upon his request, and provided him with the necessary information to determine the technical assistance needs.

2. The Government of the Republic of Sudan welcomes and appreciates the thankful words expressed by the Independent Expert in the report to the government for granting access and facilitating his visits to Khartoum, North Darfur, East Darfur, Central Darfur, South Kordofan, and Blue Nile that reflects the spirit of cooperation. The degree and level of Government engagement is clearly reflected in paragraph (7) of the report. The Independent Expert was able to meet and discuss with five relevant Federal Ministers, an assistant to the President of the Republic, Governors of the States, as well as many other senior officials.

3. The Government of the Republic of the Sudan notes with regret that the considerable information, the written and verbal data, the response for the urgent appeals which were provided to the Independent Expert during his visit to the country including presentations by senior officials are merely reflected in the report. However, more attention is given to other resources such as NGOs and other entities.

4. The report identified many positive and promising steps and measures undertaken by the Government and other stakeholders during the reporting period, that such as:

- Establishment of villages for IDPs with facilities to encourage the voluntary return with the support of the State of Qatar (Par 10, page 6)
- The national initiative of linking development to human rights particularly in rural areas, especially after the success of this initiative in South Kordofan State (Para 16).
- NCHR four years National Strategic Plan for the protection and promotion of human rights, described as "promising".(Para 26)
- Ministry of Education programme regarding human rights education, as a part of the implementation of the ten years National Action Plan on protecting and promoting human rights. (Para 26)

The potential seen in the above mentioned points requires a strong call of support to International community to provide technical assistance to these promising steps, however, such a call is not detected in the recommendations of this report to the different parties particularly the international Community. The government regrets the negligence of these important steps and measures, particularly, because providing recommendations on technical assistance represents the core of the mandate of the Independent Expert as specified in HRC resolution 24/28.

II. Comments

5. Paragraph (4): the report indicates that the Government of the Sudan did not give authorization to the Independent Expert to visit Kassala and Khor Abeche IDP camp due to security and administrative concerns. As mentioned above the Independent Expert was given full access to all parts of the Sudan during his two visits in 2014, it is important to add some clarifications regarding the reasons that hinders realization of the Independent Expert request to visit Both Kassala state, and Khor Abeche IDP camp.

a. Regarding the Kassala state, the visit was not conducted due to time constraint. As a practical alternative the Government arranged a meeting with the Commissioner of Refugees in which detailed and thorough presentations were presented to the Independent Expert by the Commissioner of Refugees and senior and technical staff of the Commission of Refugees regarding the situation in Refugee Camps and related challenges and efforts exerted by the government to address them, as well as the needs of technical assistance and capacity building. It is regrettable that the report failed to mention neither the meeting nor the information provided.

b. Regarding the Khor Abechi case, the visit was not requested in the Independent Expert's programme, security reasons was also a major factor that was clearly explained.

6. Paragraph (7): During his last visit to Sudan the Independent Expert had an official meeting in Khartoum with Dr. Amin Hassan Omar Government chief negotiator for peace in Darfur. The report missed to mention this important meeting.

7. Paragraph (8): line 4 of the report: mentioned "victims of human rights violations ..." since it is not decidedly proved that the ones mentioned in that phrase are "victims" or that they are victims of "human rights violations". The word "victims" has to be qualified by adding a word like "alleged" for the sake of accuracy and professionalism.

8. Paragraph (9): While agreeing to the emphasis put on the impact of armed conflicts as a major factor in human rights challenges the Government regrets that the report failed to mention or analyze the ample information rendered to the Independent Expert by the Special Prosecutor for Darfur, including the measures taken to prevent impunity.

9. Paragraph (11): The Government would like to clarify that it is the aim and commitment of the Government to improve the situation of all the prisons in the country to perform their reformatory role similar to the example of Alhuda prison commended in the report, the ministry of interior put an ambitious plan that does not exclude Zalenje. The situation of Zalenje prison reflects the negative impact of the armed conflict on the institutions in affected states.

10. Paragraph (18): the conclusion of this paragraph seems to reverse the correlation between the effective implementation of his recommendations to the Government and international community's responsibility in supporting technical assistance and capacity building, by implying that implementation by the Government comes first and then the latter follows; whereas such assistance is needed for the very objective of implementing those recommendations.

11. Paragraph (19): the last three lines of this paragraph (about 25 words) summarily reached the inculcating conclusion that denies any significant improvement in the protection of human rights, in antecedence of the premise and adequate *ratio decidendi*.

12. Paragraph 23: the Government responded to the urgent appeal concerning Mohamed Salah and three others by the ACHR Rapporteur dated 2 June 2014. A copy of the response

was delivered to the Independent Expert during his 5th visit to Sudan. However, all the three mentioned young persons were released on 11 July 2014 after the investigations with them were completed. The Independent Expert is requested to reflect with full transparency all the important information that provided to him (verbally or by documents) during his meeting with the Sudanese officials.

13. Paragraph (28): It is important to stress that the state has indeed a duty to defend its citizens, territories and institutions. The Government, here, also regrets that the report does not give consideration to the information presented to the Independent Expert by the Sudanese Armed Forces (SAF) representatives in an official meeting during his visit to Sudan in February 2014, on the rules that govern the work of armed forces and its compliance with international humanitarian law, SAF professionalism. The accountability and disciplinary measures of SAF members in cases of infringement are also reflected as well as the system for victim compensation.

14. Paragraph (29): While discussing the implementation of Independent Expert recommendations the report neglects to mention the information (verbal and documental) rendered to the Independent Expert during his official meetings with different officials and stakeholders. These include enlightenment on the guarantees provided for by the National Security Act by senior NISS officers, as well as briefing on women empowerment policy by the Ministry of Welfare and Social Security.

15. Paragraph (40): The briefing made to the Independent Expert was a summary on the ongoing investigation process including measures taken, and facts found to that date. It was not a final and complete report. The briefing did not state that the investigation had been finalized, it is continuing and a considerable progress has made in the process of investigation.

16. Paragraph (36): It is worth mentioning that the case submitted for trial referred to in paragraph 36 of the report, in which the court discharged the accused for lack of sufficient evidence and hence an appeal was lodged by the public prosecution, has been reopened by the Court of Appeal in its decision made on 26 August 2014. The Court decided that the court of first instance was wrong in weighing the evidence adduced by the prosecution, and ordered that the accused be re-arrested and the trial be continued. It was not stated in the brief report that "it was not impossible to locate any of those who shot and killed..", it was just mentioned that the prosecution authorities have been encountered with a difficulty in identifying the forces operating in the location concerned, for the reasons given in the report. So the Independent Expert's judgment that it is "morally and legally unacceptable" is hasty and unjustifiable.

17. Paragraph (41): The call by the Independent Expert on the Government to form 'an independent judicial public enquiry' in the report does not include the reasons for it since the public prosecution is competent and willing to assume such investigation.

18. Paragraph (42): (shooting of a University of Khartoum student); the paragraph does not refer to the U. Of K Vice-chancellor's affirmation to the Independent Expert during the mentioned official meeting that no police forces are allowed to enter the University campus and that the shooting incidence occurred from within the mob which comprised intra-mural students, graduates and students from other universities. However the case was actually seized of by the public prosecution, entered as criminal information at the police northern section in Khartoum on 11 March 2014 and investigation of the case is on-going.

19. Paragraph (43): The citation quoted from the Sudan's 2nd periodic report to the ICCPR Human Rights Committee in 1997 that "section 126 of the Criminal Act 1991 does not make conversion from Islam an offense, but only the manifestation of such conversion is such manifestation adversely affect public safety", has been well recognized and affirmed by the Court of Appeal in the case of Abrar Alhadi (known in the media as Meriam

Ibrahim). The Court in interpreting section 126 of the Criminal Act 1991 quoted the jurist Dr. Awad H. Alnour that "the Sudanese law does not punish for bare conversion unless such conversion is incorporated into propagation, and this element is raised by Islamic Scholars whose opinion is that apostasy is not applicable save to combatant apostate and not to a Muslim who merely changes his/her religion, and the Sudanese law adopted this view". Since this ruling has become final, and according to section 3 (a) (iv) of the Principles of Judicial Verdicts 1983, it constitutes a judicial precedence to be followed by courts in any potential similar cases.

20. Paragraph (46): The detention of Ibrahim At-Sheikh, as in the case of former detention of Al Sadiq Al Mahdi, is not a produce of an administrative arrest or detention. A pending criminal proceeding was initiated against him in accordance with the Criminal Act, the Criminal Procedures Act and the due process of law. Ibrahim Al- Sheikh's case is now submitted for trial by a competent court of law. The two abovementioned political leaders were not arrested by the NISS, complaints were filed against them under the Criminal Act. After the due process, the detention of Al Sadig Elmahadi was terminated in June 2014 by a decision of the Minister of justice under the criminal procedures Act (1991). The case of Ibrahim El Sheikh is now submitted for trial by a competent court.

21. Paragraph (49-53) (National dialogue): on 9 August 2014, the President of the Republic announced the start of the Societal dialogue Initiative in furtherance of the previously declared national dialogue. A road map has been agreed upon, which identified the aims and objects of the dialogue and the requests for making a conducive sphere for the dialogue including, inter alia, release of all political detainees, guarantee of fundamental political freedoms and freedom of expression, ensure the personal safety guarantees to leaders of rebel movements to engage in the dialogue with the view to maintain peace and security in the pockets of rebel movement activities in Darfur, South Kordofan and Blue Nile.

22. Paragraph (54): Salmah Center was not registered as a non- profitable association or an NGO at the Registrar of Voluntary Organizations of the Humanitarian Aid Commission. It was registered as a limited company under the Companies Act 1925, and was struck out of the register by the General Registrar of Companies in accordance with the provisions of this Act.

23. Paragraph (60): no reference is made in this paragraph to the provisions in the National Security Act 2010 that bestow on the detainee all the rights and guarantees and the availability of a considerable number of mechanisms and modalities of means of control and remedy, although all these guarantees and mechanism were well explained to the Independent Expert during his meeting with NISS. The commanding formula that "the Government should revoke the NSA 2010" is a bit unfair to be directed to a sovereign State in exercising its rights in the protection of its security and public safety like all other States, in accordance with international law and covenants.

24. Paragraph (61): General statements made on upsurge in armed conflicts, deterioration of the humanitarian and human rights situations, increased incidence of SGBV without specification of statistics. Regrettably, this is not an evidence based statement expected in an expert report.

25. Paragraph (66): The report states that the incidents of SGBV remain high in IDP's camps without specification. With regard to the specific case of five women who were killed the report gives no details about the incident or the resource of credible information on which it is based. Furthermore, this case was never raised during the Independent Expert's visits to Sudan and his meetings with the officials concerned. Both the local traditional leaderships and official authority in Hajer and the surroundings denied their knowledge of the story of those five women.

26. Paragraph (67): The report mentioned the absence of government security forces in many IDP camps, the Government would like to clarify that in respect to Kalma IDP camp, upon a mutual agreement it is under the responsibility of the UNAMID. The Government welcomes revising the situation if recommended by the Independent Expert for the sake of enhancing security inside the camp. Police forces are present at the perimeter of the camp.

The government is working with UNAMID to develop a manual for training female police on criminal investigation, and 500 jobs of female police officer have been assigned to the state of Western Darfur in 2013, in addition to the establishment of two offices for female investigation police including officer ranks in Nyala (Southern Darfur) and Al- Fasher (Northern Darfur).

27. Paragraphs (69 - 71): (humanitarian access and Government's suspension of ICRC activities); the report gave no consideration to the information presented to the Independent Expert by government officials on the measures taken by the government to guarantee and facilitate humanitarian access. The Independent Expert was informed that an agreement being negotiated with ICRC and expected to be signed soon. Fortunately enough the said agreement was signed on 28 August 2014 as expected. With regard to the vaccination access to conflict areas, hindrance of access is mainly caused by lack of cooperation of the rebel movements in this regard.

29 August 2014