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Technical assistance and capacity-building

### Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State

#### Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi.

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## **Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State\***

### **A. General Comments**

1. The Government of the Sudan appreciates the efforts exerted by the IE to fulfil the mandate described in the human rights council resolution 30/22 of September 2015 including the country visit to Sudan and the deliberations took place during the visit including discussions with government officials and other stakeholders in the agreed programme of the visit. (a copy of the programme is attached).
2. The report is largely devoted to the evaluation of the human rights situation in the country, while basically neglecting the core IE's mandate under Item 10 , stated in the HRC resolution A/HRC/res/30/22 which restricts the mandate to verifying and reporting on human rights situation, not in a monitoring capacity but for the purpose of making recommendations on technical assistance and capacity building.
3. The Government of the Sudan would like to draw the attention to a major concern in relation to the support provided to the IE by the OHCHR, particularly during his visit to the country (14-24 April 2016). The IE was supported by one OHCHR staff who was unfortunately not able to follow all meetings and events contained in the programme of the visit due to the load of work as he expressed in several occasions. The language barrier is also an issue of concern since most of the interlocutors could express themselves better in Arabic and the only assistant accompanying the IE does not speak Arabic. The inclusiveness of the report seems to be adversely affected by the lack of adequate resources available to the mandate of the Independent Expert.
4. The Government of the Sudan is also concerned by the tendency to pick some alleged incidents and take them as an evidence for making sweeping generalizations and reach inaccurate conclusions on the situation of human rights in the country. (see paragraphs 9,10,11,15,18 of this document for more details).
5. Politicization of human rights issue continues to pose a vast challenge to the work of human rights in the country. Political opponents to the sitting government persistently use human rights issues as a tool in their opposition including by promoting unfounded claims and twisted narrations aiming at portraying a negative image for the government. The report under consideration shows no sensitivity towards this issue, it is rather sending confusing messages that can provide enabling conditions to the political misuse of human rights issues.
6. As far as technical assistance and capacity building is concerned the government of the Sudan notes with regret that the report failed to provide any analysis and/or assessment in the area of needs and required assistance to the Sudan in the field of human rights. The deliberations and discussions that took place on this issue in the meetings held with different stakeholders during the visit, including with Government officials did not enjoy adequate consideration in the report. In March 2016 a set of projects for technical assistance to different related institutions was shared with the Independent Expert with a view to cooperate in funding and implementing them, this document dose not also enjoy any attention in the report. This could undermine the mandate.

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## B. Comments and observations

7. In Paragraph 7, a clarification is needed regarding the meeting held in the Judiciary where the meeting was held with the Deputy Chief Justice and representatives of Judiciary, it is also the case in the meeting held in humanitarian aid commission (HAC) where the IE met with the Deputy Commissioner of the Humanitarian Aid Commission. In line 15 of the same paragraph, the phrase “victims of human rights violations” is to be revised to read “victims of alleged human rights violations”, since and unless human rights violations have been substantiated by a competent judicial body, they remain mere allegations.

8. In paragraph 8, it is deemed important to state that the official name for the Special court assigned with the jurisdiction of trying conflict-related crimes in Darfur is the SPECIAL COURT FOR DARFUR, the name of the court and its special prosecutor need to be corrected in the entire report. The report is silent about the IE’s meeting with Head of the Judicial Organ of North Darfur state, thereby ignoring the briefing during that meeting of the remarkable improvement in the judiciary infrastructure and the increase in number of judges. The report is also silent towards the statement of the Public Prosecutor of Darfur Special Court in respect to non-cooperation by UNAMID with the Office of the Prosecutor in reporting incidents, where more than 40 acts of assault were committed against UNAMID personnel including an incident of murder. UNAMID also refused to take part in the joint investigation committee concerning the killing of 7 Sudanese civilians in the city of Kass in 20 & 21 April 2015.

9. In Paragraph 12, with respect to the national dialogue it is important to clarify the fact that 79 political parties and 31 armed oppositions groups have participated actively, therefore describing the dialogue as tainted with a wide boycott is clearly inaccurate. The report mentions only three parties and three armed groups, given that the name “Umma” is common in 6 political parties, 5 of which took part in the dialogue.

10. In paragraphs 13&14, the report managed to stress some views of the “political opposition”, while failed to recognize the guarantees and measures adopted by the Government to ensure atmosphere conducive for the national dialogue, including by the declaring a cease fire and general amnesty for armed rebel groups. These measures and guarantees enabled those 31 rebel movements to be represented and freely participate in the national dialogue.

11. Regarding the statements in paragraph 15, it is rather important to make it clear that the military operation launched in January 2016 by SAF was a legitimate response to put an end to the continuous attacks and looting of civilian, military and commercial convoys by SLA/ Abdulwahid in some areas of Jebel Marra. Government Authorities can never remain idle towards the destructive activities of an armed rebel group. The abuses conducted by the rebel groups should be clearly condemned.

12. In paragraph 20, concerning the September 2013 incidents, and with conformity with the national legal system, an independent inquiry was launched and is still going on. 86 case diaries were opened, criminal investigations are under process including post-mortum examination and eye witness testimonies. Several cases were referred to trial and the Government took the initiative to compensate those affected by the incidents including the families of those who lost their lives.

13. Paragraph 22-23: More than 45 news-papers are issued in Sudan freely without any restriction as to freedom of expression and freedom of opinion, including 30 daily political news-papers. During his visit to NISS’s headquarters, the IE was informed that NISS does not exercise any kind of pre-printing censorship on newspapers. What usually happens is that only media contraventions are being followed up, and the attempts to address complaints presented by the Press Council concerning publication of materials that

contravene the law. If such rights are infringed, the affected party can seek remedy including by resorting to the constitutional court (including the example given in para 24 of the IE report).

14. Paragraph 25: Concerning the issue of curtailment of activities of civil society organizations, the report mentioned two cases. In Sudan, the total number of civil society organization registered is 4,557 national NGOs, 97 international NGOs, and 47 national networks. The organizations mentioned in the report are all NGOs and are bound by applicable Law and related regulations. The majority of NGOs observe their mandate and has very positive contributions in human rights and humanitarian activities fields. The natural consequence of contravening law and regulations is the application of law through the legal procedures. Taking legal or even security procedures against two or three organizations in accordance with the applicable law, does not mean NGOs curtailment.

15. Paragraphs 26-27: KCTHD organized an activity which could undermine the national security by training some individuals on means designated to foil and sabotage the general elections taking place at that time. Ordinary criminal proceedings were initiated against them in accordance with the due process of law. All their constitutional and legal rights had been preserved.

16. Paragraph 28: The assumption that the reason beyond the travel ban on four individuals described as human rights defenders was their cooperation with the UN or their human rights activities is totally untrue. The travel ban (or rather travel delay) was for reason of emigrational documents irregularity. A week after, and upon rectification of the issue, the four persons left for Paris to join political opposition meetings without restrictions.

17. Paragraph 31;The General Assembly of the national dialogue, which is due to issue its outcomes, comprises 50 representatives of CSOs, besides the political parties and armed movements. The dialogue is inclusive and transparent, and no one is excluded from participation. Furthermore, the cooperation with NGOs and CSOs in the process of preparation for the UPR is a case in point where more the 50 organizations were actively involved. In conclusion, cooperation and dialogue between the Government is well established and being developed with a view of better serving the people of the Sudan including by further promoting and advocating human rights principles. The support of IE in this regard will be welcome.

18. Paragraph 34: The report cited the narration of the part of Pastor Telahoon Nogosi while dismissing the Government' statement that the said Pastor and others were duly accused of engaging in spying activities, providing financial support to armed and terrorist groups and disseminating fabricated information. The charges have nothing to do with their religious believes, activities or affiliation. They were indicted by the public prosecution and referred for trial. Pastor Telahoon Nogosi was in fact discharged before referral for trial for lack of sufficient evidence. All the requirements of fair trail are guaranteed to the above mentioned accused persons. The above mentioned information were communicated to the special procedures branch in response to a joint urgent appeal by eight mandates including the mandate of the IE on the situation of human rights in the Sudan.

19. Regarding paragraph 37 and 38, the freedom of peaceful assembly and association is guaranteed and regulated by law. The cases referred to were neither peaceful nor legal. Participants of the sit-in that those not meet the required regulations tried forcibly to prevent their colleagues from conducting their examinations, this action led to confrontation among the students, at this point the intervention by the authorities was necessary to maintain order in the respective campus.

20. Paragraphs 40 and 41: The report refer to the escalation of military operations in Jebel Mara area without reflecting the fact that the rebel groups have initiated those

operations by attacking sites and convoys of SAF beside attacking more than five villages in which SAF had no presence. The attacks occurred more than 16 times during the period from August 2015 to January 2016. It's worth mentioning that the responsibility of the rebels in the said escalation is well known and internationally reported and condemned. Bearing in mind that the reaction of the Government is deemed necessary as an exercise the right of self-defence and to protect the civilians from abuses committed by rebel movements as well as to create conducive environment for SAF to carry out its duties more effectively.

21. Paragraph 42: Full access for humanitarian actors is being granted unless security situation does not allow guaranteeing safety and security of humanitarian workers. Figures concerning IDPs mentioned in paragraph 42 are not accurate, according to HAC the number of people displaced as a result of the recent clashes in Jebel Marra is around 80 thousands, most of them were able to voluntarily return (around 66 thousands according to HAC).

22. Paragraph 47: The call of the Independent Expert to the Government for maintaining a safe and secure environment for the displaced communities meets with tremendous efforts exerted by the authorities in this concern; those efforts are always faced by the terrorist activities of rebel group agents who penetrate among IDPs. The alleged 9 incidents of rape mentioned are not registered in the police records, and unfortunately no information regarding the said alleged cases was shared with the Sudanese authorities. These alleged cases are **either mere allegations or a new example of lack of cooperation and lack of due respect to the Governmental authorities from those who received the said reports.**

23. Paragraph 51: According to the information provided in the Humanitarian Response Plan 2016 the number of IDPs in Darfur is 2 Million, the Government welcomes the cooperation of the international humanitarian community for sustainable durable solutions that answers the needs and requirements for the best interest of the conflict affected communities in Darfur. The Government is annoyed by the tendency, in this report, to highlight views of different stakeholders except those provided by Government officials.

24. Paragraph 54: An important correction is necessary to the information mentioned in this report, the additional number of prosecutors deployed in Darfur since the beginning of 2016 is 20, and not 10 as mentioned in the report. Those statistics were clearly stated in the presentation made by the general prosecutor for special court for Darfur during his meeting with the Independent Expert on 23 April 2016. A prosecution office has been established in each of the 120 localities of the 5 states of Darfur, except 5 localities, which are regularly visited by the nearest resident public prosecutor. The source of information saying that most of the prosecutors were recalled should be questioned, in fact no prosecutor was recalled and all of them are conducting their duties in the area of their deployment.

25. Paragraph 62: Many points need to be clarified to provide additional information aiming at supporting the Independent Expert to reach more comprehensive assessment for the current situation of human rights:

(a) In addition to the information made available to the I. E., the Government took the initiative of voluntarily providing the Independent Expert with a written report illustrating the steps taken in implementing the previous IE's recommendations. No specific timeline was determined. The progress report on implementation of the IE report is being prepared and planned to be submitted on July 31st 2016.

(b) The number of prosecutors additionally deployed in the five states of Darfur since the beginning of 2016 is twenty prosecutors and not ten as mentioned in the report. This brings the total number of prosecutors in Darfur to 120.

(c) With regard to the cooperation of Sudan with human rights mechanisms it is important to add that Sudan received also the Special Rapporteur on the negative impact of the unilateral coercive measures on enjoyment of human rights (SR-UCMs) during the period covered by the report (23- 30 November 2015). The cooperation of the Independent Expert with the SR-UCMs is extremely important, steps taken by the IE in this concern are commendable including joint meetings of the two mandate holders with the permanent representative of Sudan in Geneva, those steps were surprisingly skipped in the advanced version of the IE report shared with the Government.

26. Paragraph 63: During his visit the IE was briefed on the law reform process, including the briefing the on the ongoing work of the law reform committees by the head or rapporteur of each committee during the meeting held with the ACHR in his last country visit. The report also surprisingly skipped this important issue. The laws identified to be revised and reformed by the presidential decree 140/2015 include -among others- the Criminal Act, the criminal Procedures Act, the National security Act, the Press Act, the Personal Status Act and others. The report skipped this fact. It is also relevant here to reiterate the general comment stated in paragraph 5 of this document.

27. Paragraph 64: with regard to death penalty, it is part of the Sudanese Penal Code and the position of the Government was repeatedly clarified including during the review by the Human Rights Committee referred to in the report. It is important here to clarify that:

(a) The imposition of death penalty is constitutionally restricted by Article 36 of the National Interim Constitution 2005.

(b) The assertion in the IE's report that Darfuri armed rebel groups is particularly targeted by such penalty is not true. Only those who commit serious crimes punishable by capital punishment according to the law face death penalty regardless of their affiliation.

(c) Death penalty, though provided for in certain legislative provisions for serious crimes, and occasionally announced by judicial decisions, is rarely executed. Private pardon, general amnesty and decisions by the higher courts or the Constitutional Court overriding conviction or substituting the sentence substantially reduce to the minimum the cases in which the death penalty is carried out.

(d) The fear of the rebel armed groups of such a punishment is originated from the illegal harmful and destructive ways and means they adopt as tools to achieve their interests at the expense of the safety and security of the people of the Sudan.

28. Paragraph 77: Sudan respects the views expressed by the Independent Expert and efforts he continue to exert including communications with armed rebel groups, while supporting the recommendation 77(b), the Government of the Sudan is constrained to express its strong reservation and total objection in regard to the recommendation 77(a) and any legal implication related to it. Such a recommendation cannot be legally acceptable to be directed to a non- state actor.