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Information submitted by the Committee

The State report

On 29 June 2006, the State party submitted its 3rd periodic report, which had been due in 2001. This report was available translated into English on 10 January 2007.¹ Sudan last came before the Human Rights Committee ('the Committee') in 1997, when it submitted its 2nd periodic report for consideration. The present report contains a response to the previous Committee report on Sudan, a general legal framework of the country, an explanation of organs of the government, efforts by the state to combat HIV/AIDS, and an article by article commentary on implementation of the International Covenant on Civil and Political Rights ('the

¹ CCPR/C/SDN/3, 10 January 2007. This report is available at the Human Rights Committee Treaty Body site, <http://www.ohchr.org/english/bodies/hrc/hrcs90.htm>.

ICCPR' or 'the Covenant'). The report was thorough in relating the Covenant to the Interim Constitution of 2005, especially considering the Constitution explicitly grants in the "Bill of Rights" the rights listed in the ICCPR. However, the report was limited in terms of statistical information which would have been useful for determining the State's progress in implementing the ICCPR.

List of issues

In their list of issues,² the Committee put forward questions addressing fundamental rights within the ICCPR. These included the punishment of adultery differently for women and men as a violation of the relevant provisions in Articles 2, 3, 12, and 26 requiring equality between the sexes; the militia activities in Darfur under Articles 6 and 7 and the right to life and the prohibition of torture; the abduction of women and children and demobilisation of child soldiers under Article 8 and the abolition of slavery; and the compatibility of the freedom of conscience and religion, as provided by Article 8, with *Sharia* law and *Hudud* or Islamic sanctions. Additionally, the Committee stressed the importance of making domestic legislation compatible with the Covenant, asking for information about the legal status of the Southern Sudan Human Rights Commission and statistics in relation to the work of the Special Criminal Court on the Events in Darfur. The delegation submitted replies to the list of issues in Arabic only on the morning of the first day of the session, but at the time of publication they still had not been translated into English.

NGO parallel reports

Seven organisations submitted reports to the Committee. The Global Initiative to End All Corporal Punishment of Children submitted a report³ that summarized the domestic legislation that allows corporal punishment of children at home, at school for male children, as well as the existence of corporal punishment in the penal system.. Conscience and Peace Tax International's report⁴ described the lack of conscientious objections in Sudan, and other subjects related to military service - for example allegations of Southern Sudanese Christians being prevented from completing military service and thus being unable to progress to higher education. A group of eight NGOs submitted a report⁵ to the Committee that argued that there was an incompatibility between Sudan's status as a State party to the ICCPR and their contradictory domestic laws. The report covered a range of ICCPR articles, including the prohibition of torture (Article 7); the right to liberty and the security of person (Article 9); the treatment of persons deprived of their liberty (Article 10); and the right of the child to name, nationality, and equality before the law (Article 24). Amnesty International's report⁶ provided a brief overview of their main concerns regarding Sudan's implementation of some of the ICCPR's provisions. These included the right to freedom of expression (Article 19) and assembly (Article 22), including the arrest of participants at a particular human rights training; the right to life (Article 6) through violations resulting from direct attacks on civilians and indiscriminate attacks perpetrated by Sudanese forces and Janjaweed militias; and the prohibition of forced evictions (Article 12 and 17), particularly of internally displaced persons (IDPs). Track Impunity Always (TRIAL) submitted a report⁷ highlighting the duty to investigate and prosecute under Article 2 paragraph 3 in the ICCPR, and argued that Sudan may also have a responsibility to cooperate with other States in the discharge of the obligations to investigate and prosecute, if the Sudanese Government alone cannot protect its people. Article 19, the global campaign for free expression, submitted a report⁸ outlining their concerns over the *Journalism and Press*

² CCPR/C/SDN/Q/3/CRP.2, 9 May 2007. Available at site in footnote 1.

³ Briefing for the Human Rights Committee Pre-sessional Working Group, March 2007. Available at <http://www.ohchr.org/english/bodies/hrc/hrcs90.htm>.

⁴ Conscientious Objection to Military Service: Issues for the Country Report Task Forces, Sudan, March 2007. Available at website in footnote 3.

⁵ Sudanese NGOs Alternative Report on the International Covenant on Civil and Political Rights, July 2006. Available at website in footnote 3.

⁶ Amnesty International. Sudan: Submission to the Human Rights Committee, March 2007. Available at website in footnote 3.

⁷ Track Impunity Always (Swiss Association against Immunity). Submission to the Human Rights Committee regarding the consideration of the State report submitted by the Sudan, June 2007. Available at website in footnote 3.

⁸ Article 19, Global Campaign for Free Expression. Concerns on Respect for Freedom of Expression in Sudan: Submission to the UN Human Rights Committee, June 2007. Available at website in footnote 3.

Publications Act of 2004, which they argue did not implement the Committee's 1997 recommendations that the independence of the Sudanese Press Council be drastically reviewed.

Themes and issues

Sudan's delegation was headed by Mr Abduldaim Zamrawy, Undersecretary Ministry of Justice. He was supported by other high level representatives, including: H.E. Ambassador Ibrahim M. I. Mohamed Kheir, the Permanent Representative to the UN mission in Geneva; H.E. Ambassador Omar D. F. Mohamed, the Deputy Permanent Representative to the UN Mission in Geneva; Mr Abdullah Ahmed Mahdi, the Attorney General; Mrs Bothina Mahmoud Abdulaziz, the Head of Legislative Department; Dr Abdul Monim Osman from the Human Rights Department; Mr Mustafa Matar, a Counsellor for the Freedom of Press & Expression Department Advisory Council; and Mrs Rahman Salih Elobeid, Minister Plenipotentiary to the UN Mission in Geneva. Ms Joy Kwafe, a representative from the Southern Sudan Government, had been scheduled to arrive but did not attend the session due to travel difficulties.

The delegation did not submit their replies to the list of issues until the morning of the first meeting, 11 July, 2007, and then only in Arabic. Instead of the first meeting consisting of an overview of the most important issues, the entire first meeting consisted of the Sudanese delegation's oral presentation of their replies to the list of issues. Of the 28 questions, they covered thirteen on Wednesday 11 July and the remaining fifteen on 12 July. This oral presentation took so long that the Committee extended the session to three meetings, adding a third on the afternoon of 12 July. Due to this extension, the Committee and delegation were able to get through most of their work, although some of the answers to the Committee's questions on the second half of the list of issues were asked to be submitted through written replies to the Committee by 18 July, the following Tuesday.

Darfur

One of the primary issues the delegation was asked to report on was the persistent allegations of human rights violations by the militias in Darfur and what is being done to resolve the conflict in that region. A lengthy history of the context in which the Darfur conflict emerged was provided by the delegation.⁹ The first major step forward cited was the joint presence of United Nations (UN) and African Union (AU) peacekeepers in the region. Although there is a heavy presence of the UN, the AU, and the Sudanese government, prosecution of many of the crimes has not come to a conclusion. The delegation relayed hopes that peace will be returned to the region soon.

Mr Kalin asked the Sudanese delegation to comment on the militias in Darfur that continue to violate the right to life, which applies even in armed conflict. The large scale destruction of villages, the large scale evictions, and the tens of thousands of people killed since 2003 was of concern to the Committee. The delegation was asked to address the allegations of governmental cooperation with the Janjaweed. If this is true, the duty to protect civilians is being breached. Mr Kalin also wanted to know what is being done to avoid support or acquiescence in the military attacks and what is being done to disarm the militias. Lastly, he was concerned that, despite several activities and workshops on disarmament, the results on the ground have been limited. In response, the delegation denied any State cooperation in the Darfur incidents, but admitted that some representatives have been implicated. They continued to deny, however, the immunity of any state officials.

Investigations

Investigations of the Darfur conflict in 2003-04 have established the presence of many armed forces in the region, but according to the delegation there is 'crippling delay of the investigations' as Sudan is a very large

⁹ Briefly, the conflict arises because sedentary and nomadic tribes shared the same land during some seasons of the year. A drought created a conflict over the usage of the land and fighting broke out as a result. The conflict was further encouraged by a tremendous influx of weaponry to the region. The complexity of the situation cannot be understated – some 13 armed movements represented the sedentary tribes only in the Abuja Accords.

country and without modern communications or roads. The limited roads are vulnerable to attack, further delaying the process and increasing the danger of the situation.

Specifically, the Committee requested information regarding complaints, investigations, convictions and compensations awarded in Darfur through the Sudanese Special Criminal Court (SCCED) and Commission of Inquiry. The delegation explained that there is a dual judiciary – Special Courts in Darfur review only the more grave cases like armed robbery, violence against women, arson, and assault, but the judiciary in the Darfur province carry out other ‘normal’ cases. After a brief history of the establishment and composition of the Commission of Inquiry, the delegation stated that it did find grave violations of international humanitarian law and human rights law. However, evidence obtained during the investigation was found to be inadmissible. The Commission then recommended the establishment of a Judicial Investigation Committee, from which the Commission of Judicial Inquiry was born, headed by a judge in a higher court. Twelve cases against suspects retained by this Commission have been tabled and over 150 defendants have been accused, including two cases against individuals in the armed forces for the use of torture. Sentences have been issued ranging from imprisonment to a death sentence:

- Over 70 cases of violence against women came to the courts. Some of the accused were found guilty and put to death.
- There were over 80 cases in Northern Darfur resulting in over 70 condemnations and some sentences of imprisonment. The claim was not proved in some cases due to a lack of available evidence.

When the Committee had an opportunity to respond to the delegation’s claims, it became clear that their concerns were not with the establishment of such services, but with the effects thereof. Ms Wedgewood sympathised with Sudan’s desire to keep the Darfur trials domestic, but expressed concern for what is happening on the ground. Reports of the use of aircraft and governmental participation in martial attacks to villages are particularly disconcerting. She condemned what she referred to as ‘tit for tat’ justice, by reminding the delegation that the modern law of war does not support such means and that it is forbidden for the Sudanese government to provide assistance to attacks that are known to be launched in a manner contrary to humanitarian law. Lastly, she was disappointed that certain delegation members who could more appropriately discuss the Darfur situation were not present.

The Sudanese delegation responded to the inquiries by attesting to the difficulties in the region, but providing some information about how the Sudanese are taking a more serious approach. The hindrances mentioned were a lack of security, the presence of arms, inadequate infrastructure, and the transitory nature of both the rebel bodies and potential witnesses. The dual judiciary system, discussed above, was established to combat these problems.

Mr Amor referenced the vast quantity of evidence showing the limits of domestic investigations into Darfur and the lack of follow-up. Ultimately, Mr Amor wondered if Sudan has the legal and judicial capacities to fight against the atrocities suffered by so many in Darfur. Additionally, he was concerned that various sources stated that victims and witnesses avoid lodging complaints for fear of the consequences.

The delegation stated there is no lack of human or material resources for the judicial branch. They claimed the presence of judges and lawyers with experience at all levels as well as capable law enforcement officers prepared to enforce the rulings. However, they did say that a lack of security in the region incites reticence in witness testimony, but they are optimistic that since the signing of the Abuja Peace Accord in 2005 and because of the joint forces Sudan is allowing into Darfur, the situation will continue to improve. Additionally, the Sudanese do not ‘limit themselves’ to legal provisions allowing tribal reconciliation to take its course, thereby lightening the judicial load.

Ms Chanet requested specific statistics about how many people have been judged and condemned by the special courts as the Secretary General had criticized the courts in September of 2006 for being “ineffective”. Ms Chanet wondered how to make the courts more effective, including texts criminalising war crimes, genocide and crimes against humanity. However, her request was not answered appropriately.

Abuja Peace Accords and amnesty

As a result of the signing of the Abuja Peace Accord, the government is to provide amnesty for certain individuals for actions which took place during the wars, for example those who have borne arms in Southern Sudan and those who rebelled or attacked military barracks in Darfur. In response to concerns about general amnesty, the delegation assured the Committee that it only applies to crimes of public concern, not those against the rights of private citizens. Additionally war criminals are not given amnesty because they are detained under the obligations of international conventions and treaties. The process of getting amnesty is relatively simple – the name of the individual who has committed a pardonable offence is made known to the government and an ‘amnesty ticket’ is given to the individual (or their representative) by the president of the local court.

Women’s rights

Mr Amor raised concerns about women’s and children’s rights in Darfur. The head of the delegation himself cited concern for the protection of women from various militias and the police forces themselves considering the widespread public fear of such authorities. The result of such fear is impunity for these authorities. The Committee hoped that immunity for violence against women does not exist. Conducting a dialogue where the ICCPR is the frame of reference will provide assistance in implementing the necessary framework.

Another major concern is the abduction of women and children in general and, specifically, the recruitment of children into the army. Once again, the Committee wants this challenge to be dealt with in the context of the ICCPR. In response to these issues, the delegation gave broad commentary on the improving situation, but did not provide statistics.

Southern Sudan

There were certain issues addressed to the delegation specifically referring to Southern Sudan, but the representative, Ms Joy Kwafe, never arrived. The delegation was able to explain the three levels of governance in Sudan – the federal government, the Southern Sudanese government, and the state governments. Because each body has a different authority and competence, the absence of Ms Kwafe, Chairperson of the Human Rights Committee in the Legislative Council of Southern Sudan, was ‘alarming’ to the Committee. Ms Majodina, the Committee member most concerned with issues of Southern Sudan, raised a few points which it is hoped will be answered in writing. She was encouraged by the need expressed by the Sudanese government to establish an independent government for Southern Sudan. However, the establishment of the current Human Rights Commission in the south was not in line with the Paris Principles and, despite the fact that it has not been finalised, the Commission has taken up certain cases. This is of concern because the Commission parameters (mandate, terms of office, etc.) have yet to be established. Ms Majodina urged the Southern Sudan legislative assembly to hasten and facilitate debate on the *Commission Draft Bill* so that a working body can be legally established.

International cooperation

The Committee was concerned about Sudanese cooperation in a variety of international contexts ranging from the ICCPR to the Security Council and the International Criminal Court (ICC). The result of the consultation was support for the recent cooperation with UN and AU forces in Darfur, but continued disagreement with regards to certain aspects of the ICCPR and a UN resolution calling for ICC authority in Darfur.

ICCPR in the Constitution

Committee member Mr Amor succinctly stated that the ability to implement the ICCPR in Sudan is vital to increase protection of human rights in Sudan, particularly in Darfur. According to the Sudanese delegation, because of Article 27 Paragraph 3 of the 2005 Interim Constitution, the ICCPR can be invoked in the Constitutional Court of Sudan. This provision states that any international convention ratified by Sudan is

domestically enforceable. Two examples were cited by the delegation showing that, indeed, such cases have been brought before the courts. Despite these examples, Mr Amor asked the delegation to ensure that all of the articles of the ICCPR are compatible with national legislation in Sudan, not only those which are specifically mentioned in the Constitution. Additionally, he expressed the importance of including all aspects of the ICCPR in the new Constitution which will replace the Interim Constitution of 2005.

The delegation responded to Mr Amor by stating that this Constitution is temporary so as to allow for changes in the document with respect to the changing political status of Southern Sudan. Mr Zamrawy added that any provisions in the Constitution regarding human rights will remain because citizens have those rights regardless of the political landscape. He added that the Bill of Rights is subject review if necessary. However, the Sudanese government is of the opinion that their laws do not contradict the Covenant, a point on which the Committee members had to agree to disagree with the delegation. In Sudan, flagellation and whipping are legal punishments, but the Sudanese suggest they do not contradict the Covenant because they do not consider these punishments inhuman or degrading, because they are in line with the Sudanese interpretation of *Sharia* law, and because they are explicitly stated in the laws. However, Ms Wedgewood reminded the delegation that the Committee considers the Covenant as outlawing any kind of whipping, even with a light reed, as it is still cruel and unusual punishment.¹⁰

The International Criminal Court

Sudan is not a signatory to the Rome Statute and as a result does not give the International Criminal Court (ICC) jurisdiction in any cases occurring in the country. However, the Security Council (SC) mandated that the ICC have jurisdiction in cases arising from the Darfur region.¹¹ The Sudanese delegation alleged that this resolution is politically motivated and discriminatory and that the ICC is not a competent authority in the matter. Furthermore, the ICC delegations which have ventured to Sudan, as well as the requests by Chief Prosecutor, Mr Moreno-Ocampo, to arrest accused individuals, are violations of international law because a sovereign state has the right to choose domestic law for redress of domestic issues. Therefore, the government has not cooperated with the resolution and the incidents in Darfur are being tried by courts established in that region. Ms Wedgewood requested Sudanese cooperation because their government is a member of the UN, must respect the SC resolutions, and therefore is required to submit to the ICC. Additionally, she mentioned that many effective witnesses for the trials are no longer found in Sudan and are thus outside the jurisdiction of the Sudanese courts.

Women's Rights

Violence against women

This was an important theme and was discussed in relation to many issues, particularly in the situation in the Darfur region. In response to the call for information on the plan to combat violence against women in Darfur¹², the State party responded that the Government realizes that the three States of Darfur are seeing an increase in violence in that region, but that the Government is working towards combating the problem. The delegation mentioned three commissions in place to fight violence against women. While not naming them, it noted that they include international NGOs and UN agencies involved to ensure that human rights were respected. Mr Zamrawy described one of the commissions as one that can receive individual complaints, to be forwarded to the proper authorities. He stated that they are trying to plug the legal vacuum created when the public lost faith in the police and avoided filing violence against women complaints with them. Another commission he mentioned was for a special new police force in Darfur, made up of 12,000 police officers. The Government plans to include a female presence in the force to examine possible cases of violence against women. Mr Zamrawy finally outlined that the third commission focused on raising awareness through the media about the problem of violence against women. The delegation also mentioned a move towards

¹⁰ *Higginson v. Jamaica*, Communication No. 7921998, 28 March 2002, CCPR/C/74/D792/1998
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40dc97b15fe67797c1256bed004ac91a?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40dc97b15fe67797c1256bed004ac91a?Opendocument)

¹¹ GA Resolution 1593 (2005): <http://www.icc-cpi.int/library/cases/N0529273.darfureferral.eng.pdf>

¹² Question 10 of the list of issues.

removing immunity for these offences. Mr Zamrawy ended his treatment of this topic by noting that there had been a reduction in violence against women, especially since 2003, although he provided no statistics to support this statement.

The Committee members treated this topic as an important one. Mr Amor stated that violence against women could be attributed to their lack of legal protection and the societal views of women. He continued by saying that the role of the State is to incite change and promote equality between men and women. However, the delegation's comments focused on the situation in Darfur.

Discrimination against women

Discrimination against women was another area of concern for the Committee. Questions 7 and 8 in the list of issues dealt with gender equality and non-discrimination. Question 7 focused on the laws that appeared to breach the Interim National Constitution ('the Constitution') and the principle of non-discrimination as set forth in the Covenant. Specifically, under the *Nationality Act*, only men may pass on Sudanese nationality to children, in contravention of Article 7 of the Constitution; the law provides that land registration can only be in the husband's name; men and women are treated differently where the crime of adultery is concerned; and the law appears to be different for women looking to marry or travel because a woman must have the approval of her guardian. The delegation replied orally to these questions. Regarding nationality, Mr Zamrawy called attention to the nationality law's modification in 2005 so that a newborn can acquire the nationality of his mother. Regarding land inheritance, he noted that parcels of land for housing should be given to families, and that the person registering the land should interpret the land as belonging to the husband, wife, and children, not just the husband. He also stated that land could not be sold without the consent of the wife. Additionally, an unmarried woman, or one whose husband dies, can be granted the opportunity to have land registered in her name. Regarding a father's necessary approval of a woman's marriage, Mr Zamrawy stated that such a practice is a 'social institution' designed to guarantee that the woman's rights would be observed in full after the marriage. He noted that both the bride and groom had a deputy, but outlined the women's deputy as a male, whether her father, uncle, or neighbour. The presence of a deputy, however, was not a necessary condition to validate the marriage. Mr Zamrawy also said that a decree in 2003 cancelled the requirement of approval by the father for the wife's travel.

Committee members' responses included both satisfaction that progress was being made and concern over outstanding issues. For example, Christine Chanet praised the possibility of having matrilineal nationality, but expressed concern that to get a divorce, a man can 'sign a piece of paper', while a woman must go to court, and that there still exists quite a disparity in literacy rates between men and women. Ms Chanet also asked about the freedom of movement, asking for the delegation to clarify the scope.

Zina (extramarital sexual intercourse)

Beyond general gender discrimination, Question 7 also dealt with alleged discrimination between how men and women are treated regarding the crime of adultery. Under Islamic or *Sharia* law, adultery is a crime of extra marital sexual intercourse called *zina*. In his oral response to this question, Mr Zamrawy affirmed that there was no difference between the treatment of men and women for *zina* according to the penal code of Sudan because the code refers to a 'person', therefore including both male and female persons. Sir Nigel Rodley voiced concern of counter-allegations of *zina* for a woman whose rape charges were rejected. Mr Zamrawy responded that the correct interpretation of the law is that no woman can be accused of having committed adultery from a rape case, though he did not cite examples or expand on his answer.

In relation to a similar concern that unmarried women who become pregnant will be convicted of adultery, Sir Rodley cited two Secretary-General reports to the Security Council.¹³ One reported women in the Mukjar area of West Darfur being harassed for being pregnant and unmarried, as well as those who report the alleged rape

¹³ Sir Rodley did not mention the details of the reports such as names and places, but did refer to the content.

being arrested.¹⁴ The other reported the existence of survivors, their family members and community leaders who came forward to seek justice only to face serious problems, including intimidation by various governmental entities and even counter-prosecution.¹⁵ For example, in Bindisi, several pregnant rape victims were detained on charges of adultery and beaten and sexually assaulted while in detention. He asked the delegation to relate the Secretary-General's reports with their interpretation of the penal code as prohibiting this kind of counter-prosecution. In their limited response time at the end of the session, the delegation did not take time to respond to this query.

Female genital mutilation

Question 11 in the list of issues dealt with the practice of female genital mutilation (FGM)¹⁶. The delegation stated that excision was an 'age-old tradition' present not just in Sudanese society, but throughout North Africa. Mr Zamrawy affirmed that this practice needs to be combated because it prevails 'among persons who are ignorant and not sufficiently familiar with health repercussions.' He cited Article 32, paragraphs 2 and 5 of the Interim National Constitution, which require the State to combat this practice and protect child's rights. Mr Zamrawy noted also that both the professional medical association and the Fatwa Council supported curbing the practice of FGM. The Medical Council adopted standards prohibiting licensed medical professionals from practicing excision, and the Fatwa Council have issued a *fatwa* banning excision of females. Additionally, media have generated awareness raising campaigns, and the issue is covered in school curricula and various training programmes. The Government is also cooperating with civil society in organising seminars for raising awareness. He affirmed that the results of this effort have lead to falling rates of excision in provincial capitals; however he only cited figures for Khartoum, which had a decrease of 24% over an unstated time period.

Ms Chanet brought up the subject the following day, saying that the prohibition against FGM must not be sufficiently drastic because women and girls still undergo this mutilation. She elucidated that in Sudan, the type of excision was the worst – 'type III'¹⁷ – and that drastic measures must be taken to eradicate this 'horrific' practice. In response, the head of the delegation reiterated that the Government has a clear position against FGM and that the rate continues to decrease every year. Furthermore, he pointed out that the number of women in education and public schools is higher than the number of males, and that this represents an element that might encourage people not to resort to FGM. While it will not disappear overnight, the Sudanese Government is working against the 'scourge'.

Abductions

This topic was dealt with in question 14 of the list of issues, which asked for detailed information on the measures taken by the State party and on the activities conducted by the Committee for the Eradication of Abduction of Women and Children (CEAWC) to put an end to abductions and to make sure that those responsible for such acts are brought to justice. In their response, the delegation framed the issue historically, referring to the actors in the civil war in the South and the clashes between the tribes west and south of Kordofan (located in North Sudan) as the main perpetrators of abductions. Mr Zamrawy outlined the State party's creation of the CEAWC in May 1999 and mentioned their mandated tasks of searching for the abducted persons and taking legal measures to return these people to their families. The CEAWC was restructured in 2002 to 'give it more weight and resources' to ensure the participation of some non-

¹⁴ S/2005/140, 4 March 2005.

¹⁵ S/2005/240, 12 April 2005.

¹⁶ The practice is also referred to as female circumcision or simply 'excision'.

¹⁷ Type III comprises 15% of all cases of FGM, and is the prevalent form practiced in Northern Sudan, Djibouti and Somalia. It often (but not always) refers to the complete removal of the clitoris, labia manora and the inner surface of the labia majora, and often results in scar tissue and complications for sexual intercourse, as well as difficulties with menstruation, infections, and other problems. World Health Organization, "Management of pregnancy, childbirth and the postpartum period in the presence of female genital mutilation". 2001. Available at <http://www.who.int/reproductive-health/publications/fgm.html>.

governmental bodies. Mr Zamrawy gave a range of figures affirming CEAWC's progress.¹⁸ With the greater mobility, the Government hopes to be able to reunite even more people.

One point of contention was differing ideas on the actual number of abductees. Committee members mentioned NGO reports as claiming upwards of 40,000 abductees, and CEAWC had quoted 40,000 in one of its own reports, but the delegation, as shown above, did not assert that figure. Mr O'Flaherty asked for the delegations reaction to the CEAWC figure and the delegation continued to maintain that their figures given during the meeting were the correct ones.

Mr O'Flaherty also cited a recent report¹⁹ by the Special Rapporteur for the situation of human rights in the Sudan that called CEAWC massively dysfunctional.²⁰ In response to various appeals from the Government for more financial assistance, Mr O'Flaherty noted that it was not just financing but also coordination that affected the situation of abductees, and that perhaps this was an area the State party could work on before financial resources were bolstered. Mr O'Flaherty also asked whether it was true that CEAWC could only work in two locations – Kardofan and Southern Sudan – and if so, why the work was so restricted. The delegation, however, did not answer this question.

Children

The matter that most directly addressed children was Question 15, which asked for indication of the measures taken to comply with the obligation under the Comprehensive Peace Agreement to demobilise all children in the ranks of former warring parties by July 2005 and report on the situation. Dr Osman responded to the question by affirming that the Sudanese army 'has no children', and that it does not recruit any children. He characterised the problem of child soldiers as beginning after the peace agreement with Southern Sudan, which meant that many factions that did recruit children, or that used children for other non-military tasks, were folded into the army. He described a similar phenomenon as occurring between the warring factions of Darfur, with children being forcibly recruited from IDP camps. In relation to the demobilisation of all child soldiers, Dr Osman pointed to the stipulation for disarmament, demobilisation, and reintegration (DDR) under the Comprehensive Peace Agreement of 1995, and the establishment of the Interim DDR Programme for the country, which set up separate DDR commissions for the North and South. The DDR process works with the support of the UN Security Council *Resolution 1590* of March 2005²¹ and UNICEF for reintegrating children. Dr Osman described one component of the DDR programme as workshops organised for information offices to help raise awareness. These efforts were organised by the areas that suffered, like the Kasala and Blue Nile provinces. He also affirmed that the DDR efforts have led to the return of 16 children in one province and 24 in another, sparking a reply from Mr Kälin that this number of returned children was still quite low. Mr Kälin wondered also how the DDR operations on the ground would have enough expertise to effectively protect the children being returned. This question was not answered.

Dr Osman bemoaned the remaining difficulties, including the fact that some tribes refused to discuss the question of disarmament while the war is still ongoing. However, he stressed that the Government is determined to deal with the problem of child soldiers in 'different armed factions'.

¹⁸ He said that from 1999 to 2004, CEAWC was able to document 1842 abductions and return 1496 abducted persons. Between March 2004 and November 2006, they were able to document 11237 cases of abduction, with the increase possible because of easier mobility after they signed the peace agreement. Additionally, 3998 people were returned to their families.

¹⁹ E/CN.4/2006/111, 11 January 2006. Available at http://ap.ohchr.org/documents/dpage_e.aspx?m=95.

²⁰ In this report, the Special Rapporteur noted that under the authority of CEAWC, some abductees were forced to leave new homes in the North, some were separated from their children, and some were sexually assaulted en route. Additionally, no preparation was undertaken for their return and reintegration. She noted, however, that CEAWC has allowed UNICEF to monitor returns since 2005.

²¹ In paragraph 4, the resolution stated, 'that the United Nations Mission in the Sudan (UNMIS) shall assist in the establishment of the disarmament, demobilization and reintegration programme as called for in the Comprehensive Peace Agreement, with particular attention to the special needs of women and child combatants, and its implementation through voluntary disarmament and weapons collection and destruction'. S/RES/1590, 26 March 2005. Available at http://www.un.org/Docs/sc/unscl_resolutions05.htm.

Internally Displaced Persons (IDPs) and freedom of movement

One part of Question 19 on the list of issues dealt with the restrictions on freedom of movement among the various regions of Sudan. Dr Osman cited statistics about the possibilities for travelling around Sudan by noting that since Sudan signed a communiqué with the UN, visas were issued in less than 24 hours for citizens and less than 7 days for NGOs. He also noted that the policies for humanitarian workers have been changed so that aid work is easier, for example there are more flights from Khartoum to Darfur, and customs have been waived on aid materials.

In response to a section of the question dealing with the trends in forced displacement in Darfur and as well as the access to displaced persons, Dr Osman mentioned a survey conducted by various UN agencies that found decreases in malnutrition and child mortality. He also mentioned the problem of direct attacks on aid convoys and aid personnel, which he discussed within the framework of international cooperation, saying that the Government is trying to cooperate with the international community, specifically the International Organisation for Migration, for safe return.

Additional concerns addressed in Question 19 related to the reports of forced closure of facilities and camps for displaced persons in Khartoum and Gezira, as well as the return of IDPs to Southern Sudan. Mr Kälin²², while taking note of Government efforts in relation to IDPs, said that the fact remains that 2.1 million persons have been displaced either internally or to Chad. He also referred to statements made by the Undersecretary General for Humanitarian Affairs, Sir John Holmes, which referenced 160,000 persons as displaced in 2007. Mr Kälin asked why such a large number of people continue to be unprotected by the State. He also asked for any information on their return to original places of residence. Although the delegation did not have much time, Mr Zamrawy discussed some elements of these questions. He noted that the Government prefers if displaced persons return to their properties, and that the Sudanese Government does not allow anyone to occupy these properties.

Dr Osman had also discussed the displaced around Khartoum, saying that some camps there were not camps but 'shanty towns', where settlers came to be close to industries including some IDPs. He described how, as part of a general 're-planning', the Government has decided to shift the shanty towns to a new area. He characterised the situation as one in which current IDPs in Khartoum province were being moved to places with more facilities than before. Mr Kälin, however, described the situation he encountered during his visits in October 2005 as the Special Representative for the Secretary General on the human rights of IDPs, in which IDPs in the Khartoum region were being relocated, or were located where food and water supplies were minimal and access to employment is limited or nonexistent. Specifically, he referred to one camp in Khartoum Province and another in the Gezira Province. He asked if this was the present policy regarding urban development for IDPs in Khartoum and elsewhere. In response, Mr Zamrawy noted that the Khartoum government has provided services to the camps, including water, electricity and arrangements for road construction.

Political rights

Freedom of expression

Freedom of expression was discussed in Question 23 on the list of issues, where the State party was asked to: comment on reports that some journalists continued to be summoned by the authorities when they publish articles that are critical of government authorities or State security agencies; clarify whether the *Press Act* of 1999 is still in force and specify whether the *Act* was in conformity with the Interim National Constitution; outline the powers of the National Press Council; and refer to the judicial machinery that exists for monitoring licensing. The delegation's oral response focused on the existence of independent newspapers and television

²² Before joining the Committee, Mr Kälin was the Special Representative of the Secretary-General on the human rights of internally displaced persons.

stations, as well as an affirmation that free expression and criticism of the government was not criminalized, and closing down a newspaper was illegal. Mr Zamrawy described how Article 130 of the Criminal Code of 1991 – wherein newspapers could be closed down pending completion of legal proceedings²³ – was suspended following a *fatwa* issued against it. Furthermore, the 1991 Code is no longer in force, having been replaced in 2004 by the Law of the Press, which he affirmed was in keeping with the Interim National Constitution. Mr Khalil asked whether cancellation of Article 130 of the Criminal Code of 1991 was actually a repeal of the law or a religious decree. Mr Zamrawy did not give a clear response to this question, saying only that there was no censorship in Sudan.

Mr Khalil also referred to a ‘rumour’ that journalists are still under pressure and that this pressure has increased since 2006. Many of the major journalists have been subjected to observing what is called ‘the red line’, meaning that subjects including the abduction of women, the peace process, and other sensitive State matters were taboo.²⁴ He also mentioned other ‘rumours’ about newspapers being shut down, specifically that security forces have broken into a news office after they reported about violence in Darfur and that newspaper has since experienced a financial burden and has stopped publishing news. Ms Wedgewood added that the press can be a boon to Governments as it can provide both feedback in regards to human rights abuses and a way of disseminating ideas. She said that as much as a free press can magnify popular understanding about the extent of human rights, the abuse and intimidation of journalists can bring about losses in the government’s ability to protect human rights. The delegation gave a one sentence answer in the last ten minutes affirming their agreement with her statement, but then contradicting it by saying that the press could also “tell State secrets”, implying that they had a reason to be worried about the activities of the press.

Freedom of assembly

Regarding freedom of assembly, Question 24 on the list of issues asked about demonstrations being violently dispersed and demonstrators arrested and detained, and that human rights defenders and lawyers were harassed, arrested and charged with endangering national security. Mr Mahdi, the Attorney General of the Sudan, responded that the *Law on Political Parties* allows for peaceful demonstrations, but requires authorization. He also explained that if a previously peaceful demonstration became no longer peaceful, or took place without a permit, it may be dispersed. The manner in which the crowd is dispersed is left to the discretion of the officers concerned or the head of the armed forces, although they may not use force that could result in death. Mr Zamrawy added that only proportionate force was allowed. He referenced an ongoing case where authorities were investigating three cases of death allegedly resulting from the dispersal of a demonstration.

Freedom of association

Freedom of association, dealt with under Question 25, was expressed in terms of the ability of political parties to organise. The Committee asked for information on the power concerning the establishment, control and dissolution of political parties under the *Law on Political Organizations and Parties* of 2001, and whether this law was compatible with the Covenant. Mr Zamrawy described the 2001 Law as outdated and inapplicable, saying the new Law for 2007 provides that only the commission of violence can be the cause for instigating procedures to suspend the party. This recommendation for suspension has to go through the Constitutional Court, which can order that the organisation be terminated.

Question 26 related to the legal system applied to the registration of associations and the mechanism for judicial oversight. Dr Osman responded that the judicial mechanism was the newest version of the *Law over Voluntary Work*, from 2006. He described a simple system where there were straightforward conditions for the registration of associations, including the need for a headquarters and a record of the declared work in Sudan. The registrar should be a person with legal experience. The decision to accept an application for

²³ See International Press Institute, "World Press Freedom Review 2003 Sudan." 2003.

http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0004/KW0104/&year=2003.

²⁴ See Sudan Organisation Against Torture. "Arrest and Torture of a Journalist, 05/07/2003'.

<http://www.darfurinfo.org/news/soat050703.html>.

registration is an administrative one, subject to administrative appeal and eventually the Constitutional Court. Mr Khalil asked for clarification that the Constitutional Council or Supreme Council was the body rendering the final decision, and asked if there were specific aspects that have not just been examined. The delegation did not respond to this question.

Non-discrimination and protection of minorities

A final question about political freedoms, Question 27, related to the possible situation of discrimination in the enjoyment of rights guaranteed under the Covenant due to race, colour, national or ethnic origin. It also referred to freedom to use minority languages, languages and cultures. At first, Mr Zamrawy gave a broad answer, noting that according to the Interim Constitution, Sudan is multicultural and multilingual, and that it is a homeland for all religions and cultures. He mentioned that Arabic and English were official languages of the State but that regions were free to add their own languages at the local level. He also stipulated that minorities have been able to use their own languages and bring up their children according to their traditions. Mr Khalil responded that the delegation's characterisation of the multiethnic nature of the country was only general, and that the information offered was incomplete. He asked that a census be undertaken to obtain clearer information for the next report.

Regarding freedom of religion, Mr Amor voiced that under Article 18 of the Covenant, individuals had the right to change their religion. This would mean that laws forbidding apostasy were incompatible with the Covenant, as well as certain interpretations of the Koran. Mr Zamrawy replied that there were many interpretations of the Koran over time, and Sudan's relevant laws come from the Constitution of 2005.

Torture, Immunity and Impunity

Torture

Dr Osman stated that torture and degrading punishment are prohibited in the Constitution and that the government is always intent on preventing immunity when it drafts new laws. The government is considering ratifying the Convention Against Torture ('CAT') without any reservations and establishing a governmental mechanism for receiving communications alleging incidents of torture, as encouraged in a clear mandate from the former Human Rights Commission. As evidence of their progress, he cited three cases, all in Darfur, where an army member was executed for having tortured a rebel to death.

Sir Nigel Rodley challenged the Sudanese delegation by stating that they had not made clear their willingness to stop the practice of impunity and bring to justice those who are responsible for war crimes, crimes against humanity and genocide. He cited concerns that the State Party can detain people for up to nine months without communication by virtue of an executive decision – acting as a 'de facto blank check to torture.' While the ratification of CAT will be a step in the right direction, the other measures Sudan is considering are 'not enough.'

With a disclaimer of limited familiarity with *Sharia* law Sir Rodley and Mr O'Flaherty challenged the delegation on the Sudanese penal system. Firstly, they noted an inconsistency in the practice of *Sharia* law as many other adherents to it apply the concept differently from the Sudanese. Rodley cited punishments implemented in Sudan as examples of incongruence with the value scheme of the CAT. For example, slavery is punishable only by up to one year in prison and a fine, whereas torture is punishable by up to three years, unless you are a member of the National Security Administration, where it is up to 10 years. The Committee expressed regrets that the Interim National Constitution does not reflect international human rights standards and is not considered a source of law the way *Sharia* and public will are.

Mr O'Flaherty questioned the delegation on the status of torture in Sudan, suggesting first that a clear definition of the prohibition on torture must be included in the interim Constitution of 2005. He was hopeful that ratification of the CAT will occur sooner rather than later. He urged, in furtherance of the Special

Rapporteur Sima Simar's country reports,²⁵ improved application of domestic law including the prohibition on torture. Because of the inherent danger of torture in a legal environment where immunities exist, he urged Sudan to eliminate the immunities regime when reforming legislation. O'Flaherty's concerns are the result of information provided by the Special Rapporteur and NGOs who suggest there is torture and abuse of detainees by the Sudanese security forces. He requested a reaction from the delegation regarding whether the Sudanese Government is taking the necessary measures to eradicate torture and ensure prosecution in all cases involving torture.

In order to illustrate their concerns, the Committee cited a number of disturbing examples. For example, the practice of tribal reconciliation was approved in a 2006 amnesty law and was permitted for individuals who tortured to death a 13 year-old child. The family agreed to a monetary compromise as retribution in lieu of punishment by the State. The Committee requested a statement from the Government to the effect that only when such a solution is the only legal and material possibility is tribal reconciliation allowable, but that it is not the wishes of the Government.

The Sudanese delegation provided little in response to these issues except to say that torture is not an accepted form of law enforcement and that the situation is improving.

Immunity

The Committee raised concerns in its list of issues regarding immunity for State actors such as the police and security forces, and requested detailed statistics of cases and a clarification of the legislation. The Sudanese delegation stated that only when a perpetrator is caught in the act is immunity not granted. However, in all other circumstances the norm for the State actor is immunity and, in order to be tried, the Minister of the Interior must waive the immunity. The delegation explained that this is merely an administrative procedure and does not automatically guarantee immunity because decisions taken by the Minister to not waive immunity can be appealed by the prosecutor. However, the Committee members were concerned by such a legislative construction, stating that they had not seen anything so 'exorbitant' since 'apartheid South Africa.'

The delegation stated there are some justifications for immunity which exist in all judicial systems to allow the security organs to work without restrictions. In discussing the extent of the immunity Mr Zamrawy stated it is only 'a measure' because if a member of the security forces is found guilty he will be sanctioned. He reiterated, then, that the system of immunities is normal and cited cases where the security forces have been punished. The circular logic of the system, whereby immunity must be lifted to conduct an investigation but an investigation must be conducted in order to lift immunity, left the Committee to question its effectiveness.

Mr Khalil stated that Sudan's system is abnormal because the immunities are granted by the executive branch for crimes involving the use of force. He recognised that some immunity is necessary for security and police forces to carry out their duties, but thought 'Sudan goes too far.'

Complaints lodged against police and security

In an attempt to demonstrate that their legal structure is functional, the Sudanese delegation took considerable time to list police officers who have been tried for offences and the results of such trials. A typical result for a murder was an immense fine, roughly equivalent to at least \$5 million US, and a jail sentence of a few years. Concerns were brought forth from Committee members Ms Wedgwood and Sir Rodley regarding the absence of prosecutions of officers above the rank of 'captain' and the seemingly insurmountable sums of money requested of the police officers. The former concern speaks to impunity for high ranking officials, the latter calls into question the feasibility of such fines as punishments. The Committee proposed a solution whereby there are different classifications of crimes when committed by a civilian versus by a State actor.

International humanitarian law holds that that it is not only the perpetrators of crimes committed in armed conflict who are responsible, but also the perpetrators' commanding officers. In this light, Ms Wedgwood

²⁵ Country reports for Sudan can be found at http://ap.ohchr.org/documents/dpage_e.aspx?m=95

was curious about the procedure of acquiring a waiver of immunity as commanding officers could not be caught 'en flagrante' when a lower ranking official commits a crime. In response, the delegation stated that merely because nobody with a rank above captain was tried it does not mean there is impunity. Another justification is that acts such as these are perpetrated by officials on the ground, not their superiors – a response justifying Ms Wedgewood's concerns. Lastly, she requested more information about the appeals procedure when immunity is not waived, but this question was not addressed by the delegation.

Murder

Murder is punishable by a short jail sentence or the death penalty if the family of the victim so requests. If neither of these punishments is suitable to the family, they may receive payment directly from the guilty party as *diyya*. Ms Wedgewood took issue with the *diyya* when she stated that a murder is not a crime only involving the guilty party and the family of the deceased, but also the State. In response to this, Sudan agreed with her analysis and stated that the State has a right, in addition to the family, to prosecute the perpetrator because it has lost one of its members. The State has, therefore, set a maximum punishment of 10 years in prison for manslaughter, but has given leeway to the judges, who are admittedly fallible. To reiterate, the delegation stated there is imprisonment in all cases of manslaughter even if there is a pardon or compensation, but the jail sentences are notably shorter in such cases.

The death penalty

Capital punishment is a common practice in Sudan where they traditionally impose the sentence by hanging.²⁶ To justify this, the delegation stated that the reasoning contrary to the death penalty is that the State does not have the privilege to take a life, but in this same vein the murderer also has no right to take a life. They stated that capital punishment is 'just and fair if we ever have fair justice.'

There are some differences between the Southern Sudanese law and the Interim Constitution in Sudan. The general rule for the latter is that capital punishment is not to be applied to someone less than 18 years of age, but there are exceptions, including premeditated murder, where the minimum age for imposition of the death penalty is 7 years. The source of this legislation in the northern Sudanese states is *sharia* and customary law, whereas *sharia* law is not a part of Southern Sudanese law.

Judicial oversights

The Attorney General of Sudan, Mr Abdullah Ahmed Mahdi, spoke on judicial oversights in place to ensure the legality of the actions of the security forces. Arrests by the security forces are first subject to controls by consultants in the Ministry of Justice. The Minister of Justice himself has to look into the matter if there are complaints related to an arrest. There is also a judicial system designated by the Constitutional Court to handle cases of this nature. Any member of the security forces who abuses his authority via illegal imprisonment is punishable with up to 10 years imprisonment and via illegal arrest is punishable with up to 3 years.

The procedure to bring a case before the Constitutional Court consists of a petition brought by lawyers, a group of individuals, or a political party. Subsequently, a fee of roughly \$50US is required for final acceptance of the case. In order to arrive at the Constitutional Court via the appeals process the party must pay \$1,000US, but this can be waived if the case is brought under Article 19 Paragraph 6 of the Criminal Code.

Detainees

In reference to detainees of the State, the delegation provided information on established legal standards: that a person cannot be arrested and investigated for more than three days without charges, [you mean without

²⁶ The death penalty can be utilized for: provoking war against the state, spying, premeditated murder, inciting minors to suicide, adultery, unnatural sexual relations, rape, honor crimes, and treason in the case of a civil servant.

being brought before a magistrate/charged] that detainees cannot be harmed, and that they are provided with reasons for their detention. Additionally, facilities for contact with family members must be provided along with fair representation and medical care. The delegation cited measures undertaken in the 2005 laws to combat abusive detention via supervision and training provided in detention centres. There must be a vice prosecutor or a representative in all police stations at all times to supervise complaints, regarding abuse of police authority. Additionally, there is a public grievances chamber, a United Nations mission in Sudan, and visits by the African Union to the detention centres.

In response to a question about the existence of clandestine detention centres and incommunicado detention, the delegation flatly denied their presence. In an interesting statement, Committee member Mr Khalil conceded that there are no secretive detention centres, cited references to the contrary and merely said he hoped the situation has changed.

Fair trial

In response to the issue of a fair trial, the delegation cited their Constitution which provides a right to a lawyer, right to witnesses, and public courts, thereby corresponding with international principles. Procedural laws are also in place, including the right to appeal, so as to guarantee a fair trial. The independence of the judiciary, and the separation of the legislative and executive branches, means that there is no influence on the courts from other levels of government and the judicial budget is determined by the legislative branch.

The delegation went on to say that this issue was raised by the Committee in relation to torture and the Committee was under the wrong impression that a confession made as a result of torture was acceptable. The proper reading of the laws {was stated by the delegation?} is that evidence received via illegal procedures will not necessarily be considered unacceptable. They gave the example of a police officer searching a property without a warrant. If evidence is found related to the crimes, the evidence will be acceptable. However, this exception does not extend to the use of torture.

Dissemination of the ICCPR

Question 29 on the list of issues referred to information about the training on the Covenant given to relevant persons, especially teachers, judges, lawyers, police, and national security personnel. Mr Zamrawy mentioned a consultative council that carries out training seminars for people in 'all fields', and includes coverage on the Covenant. He said that academic studies are promoting and teaching the Covenant, and that Sudan's Council on Human Rights is trying to carry out more workshops and seminars to spread awareness. Such teaching includes reference to the concluding observations of the last session with the Committee in 1997. Ms Wedgewood commented that this was not a 'throw-away' question, and that such training is very important not only for judges, but also in public schools, to name one example. She suggested the Red Cross and Red Crescent's training materials that are already available for dissemination, and could be perfect for educating a young person as he or she joins the civil or military service.

Conclusions and next steps

The Sudanese delegation was requested to submit additional written replies to the Committee's questions from the Thursday morning meeting (12 July). The Committee asked that they be submitted by the following Tuesday, but it is unclear whether they have been received, as they might have been a private communication.

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