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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

Situation of human rights in the Sudan

**Report of the Special Rapporteur, Gerhart Baum, submitted in accordance with
Commission resolution 2002/16**

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Executive summary

While welcoming the latest developments within the peace process, the Special Rapporteur believes that the overall human rights situation should not be overlooked and stresses the importance of placing human rights at the heart of the peace talks, for a just and sustainable peace.

The monitoring of the peace agreement, both from within and from outside, is paramount. The peace process should be built on specific mechanisms for the promotion and protection of human rights. These must include the creation of independent internal institutions as well as the establishment of an effective system of monitoring from the outside.

To this end, the Special Rapporteur envisaged a number of benchmarks, which are annexed to the present report, aimed at integrating a human rights dimension in the peace talks.

In general, in spite of the commitments made, the overall human rights situation has not improved. While the civil society has become more pro-active and better organized, the security apparatus continues to operate in impunity.

The situation remains of concern also in areas controlled by the Sudan People's Liberation Movement/Army (SPLM/A), where virtually no guarantees are set for the respect of basic rights and fundamental freedoms.

The Special Rapporteur welcomes the progress made on the issue of access for humanitarian operations.

The Special Rapporteur deems that special courts in Darfur are not in keeping with international human rights standards and encourages the Government to explore alternative ways of dealing with the situation in the region.

The Special Rapporteur believes that the United Nations should play a stronger political role in the Sudan, with a view to supporting the current peace process with a view to achieving a durable and sustainable peace.

The Special Rapporteur renews his appeal to the donor community to gear its assistance to long-term development projects aimed at creating an environment conducive to peace.

Introduction

1. Following his third mission to the Sudan and Kenya in March 2002 and the presentation of his oral report to the Commission on Human Rights at its fifty-eighth session, the Special Rapporteur travelled to London in August 2002, to Cairo, the Sudan and Kenya in September-October 2002 and to Washington and New York in November 2002. While in London, on 12 and 13 August, he met with several international and Sudanese London-based non-governmental organizations (NGOs) as well as individuals to discuss the situation of human rights in the Sudan.
2. From 29 September to 10 October, the Special Rapporteur travelled to Cairo, Nairobi and the Sudan, where he visited Khartoum and El-Fasher, northern Darfur, to look into the issue of special courts.
3. The Special Rapporteur acknowledges the very good cooperation he received from the Office of the United Nations High Commissioner for Refugees (UNHCR) in Cairo, the Office for the Coordination of Humanitarian Affairs (OCHA) and Operation Lifeline Sudan (OLS) in Nairobi, the Office of the High Commissioner for Human Rights (OHCHR), and UNICEF in Khartoum. Special thanks go to all those who contributed to a successful visit.
4. From 4 to 14 November, the Special Rapporteur visited New York and Washington where he met with officials of the United States Government, members of the United States Congress, members of the team of the new Presidential Envoy for Peace, John Danforth, the United Nations Secretary-General, the High Commissioner for Human Rights and other United Nations officials, international NGOs, representatives of Churches, and several government representatives, including of the European Union.
5. On 4 November he presented his interim report (A/57/326) to the fifty-seventh session of the General Assembly.
6. The present report includes the findings of the mission as well as an updating of the overall situation based on information collected since then.
7. The Special Rapporteur plans to conduct his fifth visit to the country in February/March 2003. His findings will be reflected in his oral presentation to the Commission on Human Rights.

I. POLITICAL CONTEXT

8. Following the appointment of a new special envoy, General Lazarus Sumbeiywo, by the Inter-Governmental Authority on Development (IGAD) and renewed international interest, the initiative brokered by IGAD succeeded in bringing the parties together in a serious attempt to discuss peace in the Sudan.

9. In this connection, the Special Rapporteur welcomed on 20 July the signing of the Machakos Protocol on the two issues of self-determination and religion and the State, as well as the memorandum of understanding between the Government of the Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) on aspects of structures of Government, signed on 18 November 2002.

10. He also welcomed the signing on 15 October by the Government and the SPLM of the memorandum of understanding on the cessation of hostilities, which commits both parties to unimpeded humanitarian access to all areas and to all people in need, as well as the procedural agreement signed on 26 October on unfettered humanitarian access during the period November-December 2002.

11. While welcoming the above-mentioned developments, the Special Rapporteur believes that the overall human rights situation should not be overlooked and stresses the importance of placing human rights at the heart of the peace talks, in order to achieve a just and sustainable peace.

12. In this connection, in his address to the Third Committee of the General Assembly, the Special Rapporteur presented a number of human rights elements which, in his view, should be fully integrated in the peace negotiations. Such elements have been shared with General Sumbeiywo, as well as the observers to the peace talks, notably the representatives of the United States, the United Kingdom, Norway and Italy, as well as the United Nations.

13. In his interim report to the General Assembly, the Special Rapporteur had noted the commitments made by the Government of the Sudan in several areas, including in the area of human rights and with regard to the peace process. While also noting that follow-up on such commitments had been limited, he will continue to follow with interest any relevant developments relating to the Government's concrete follow-up action on the above-mentioned benchmarks.

II. OVERALL HUMAN RIGHTS SITUATION

A. General observations

14. In view of the linkages between the human rights situation, on the one hand, and the latest political developments, on the other, and bearing in mind the outcome of the first rounds of the IGAD-brokered peace talks and subsequent events, the focus of the Special Rapporteur's fourth visit was mainly on the peace process and its implications for the overall human rights situation in the Sudan.

15. During his visit, the Special Rapporteur noted with appreciation that the civil society is playing an increasingly active role. Human rights NGOs are more visible, organized and keen to participate actively in the peace process. This is an important element that needs to be taken into account for the negotiations to lead to a just and sustainable peace and in view of the links between peace, democratization and human rights.

16. The democratization of the country and free and fair elections are steps in this direction. The monitoring of the peace agreement, both from within and from outside, is paramount. Accordingly, the Machakos process should be built on specific mechanisms for the promotion and protection of human rights. These must include the creation of independent internal institutions¹ as well as the establishment of an effective monitoring system from the outside.

17. In this connection, the Special Rapporteur identified a number of key elements to be integrated in the talks and implemented within a specified time frame (see annex I).

18. During his February-March visit, the Special Rapporteur had noted a number of new elements mainly focusing on the building up and/or strengthening of institutions and training activities. He took note of the new Committee for the Elimination of Abductions of Women and Children (CEAWC) structure, the ongoing discussions relating to the creation of a national human rights institution, the training activities organized by OHCHR within its technical cooperation programme and, in rebel-held southern Sudan, the initial steps taken towards the strengthening of the civil society. He also took note of the many commitments made by the Government in the field of human rights and repeatedly stressed the importance of following up on these initiatives, with a view to evaluating their impact. The planned extension of the emergency status for a fourth year is not in accordance with the spirit of a peace process.

19. In his interim report, the Special Rapporteur provided an overview of the situation by comparing commitments made and action taken and concluded that, overall, the human rights situation has not yet changed significantly. However, some positive areas need to be highlighted.

B. The civil society

20. The Special Rapporteur has observed that the current political environment does not allow for political parties and associations to develop freely. Political opposition parties, politically active students and representatives of independent newspapers or human rights NGOs have continued to be subjected to different forms of harassment. Daily or periodic summoning to State security offices as well as torture, in both physical and more subtle psychological forms, have continued to take place. Prisoners are often moved away from their community of origin, which deprives them of their family's support and assistance.

21. The Special Rapporteur was informed that students who are involved in human rights and/or political activities as well as political opposition party members - particularly from the Democratic Unionist Party (DUP) and the Popular National Congress (PNC) - have continued to be harassed. Prior to his visit, he was informed that some 150 PNC supporters had been arrested all over Sudan at the end of September. In most cases, their whereabouts were not known and no charges had been put before them. PNC leader Hassan al-Turabi's detention was further renewed, on 15 August, under Emergency Order No. 2/2002 "for the renewal of citizen detention", by the President of the Republic, "after reading the recommendation from the Director of Internal Security and according to article 132 C of the Constitution, and in accordance [with] article 15 of the Emergency and Public Safety Statute of 1998". According to information received, however, the Constitutional Court had ascertained the lack of legal

grounds for his detention. In this connection, the Special Rapporteur noted that, in spite of his request, he was not allowed to visit Mr. Turabi, reportedly in view of his health condition, although his family stated that the situation, while serious, would have allowed for a visit.

22. The Special Rapporteur was particularly concerned at information received regarding student riots taking place at the University of Khartoum during the last week of October. Reportedly, the immediate cause of the demonstrations was the cancellation of a political rally, although restrictions on the freedom of association and assembly seemed to be the main cause of the disorders.² According to information received, demonstrating students were attacked by anti-riot police. The operation resulted in two students being seriously injured by gunfire and/or beating and some 100 students detained, some of whom (about 60) were subsequently released. Most of the students were reportedly charged under sections 69, 77 and 142 of the 1991 Criminal Code.

23. Some of the students from the University of Khartoum are reportedly still detained in Kober prison, incommunicado. Their names were reported as follows: Adam Abdel Rahman Adam, Muhsin Anwar, Alamin El Zein, Abdel Samad El Nour Adam, Hassan Awad, Omer Barakat, Mohamed Omer Mohamed, Atif El Khidir, Mohamed Abkr, Nazar Mohamed Hamza, Khalid Ali, Atif El Suni and Omer Faroug. Mr. Faroug was reportedly severely tortured.

24. Since his first visit in March 2001, the Special Rapporteur encouraged government authorities as well as representatives of the civil society to consider the establishment of an independent human rights national institution. He noted that the civil society had followed up on his proposal and that discussions were being held to that end, including in the presence of government officials. He welcomed the seminar on national institutions which was held by OHCHR, which helped dissipate all confusion on the matter with a view to proceeding as appropriate.

25. The Special Rapporteur had raised this issue with government officials during his visit in February-March and had received reassurances that the Government would not interfere with the ongoing discussions. He learnt, however, that on 19 February, a meeting had been scheduled to discuss the issue and security officers prevented some participants from attending. He raised this incident during his last visit in October. While the Minister of Justice himself assured him once again that the President had no objection to the creation of such an institution and that any problems with the security services should be referred to him, the Advisory Council on Human Rights stated that the meeting had been the initiative of certain individuals within the preparatory committee for the establishment of a national institution rather than the whole group, and that a prominent lawyer, allegedly part of the preparatory committee, was himself against the creation of a national institution. Aside from the fact that the prominent lawyer referred to was never part of the preparatory committee, both elements of the Advisory Council's statement are in any case irrelevant to the point in question. The Special Rapporteur noted that (a) there remains some confusion about the creation of a national human rights institution; and (b) infringements on freedom of assembly by security agents remain an issue of concern. In view of the Minister's position as noted above, the Special Rapporteur called upon him to follow the situation closely with a view to avoiding similar incidents in the future.

26. In addition, the Special Rapporteur was informed that some individuals within the Government considered that the Advisory Council itself could be “upgraded” into a national institution. In this connection, the Special Rapporteur wishes to recall that the Advisory Council is a governmental body dealing with human rights within the Ministry of Justice. He also wishes to refer to the Principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”) with a view to highlighting the independent character of such institutions.

27. Regarding NGOs, the Special Rapporteur was glad to report that there had been some progress. A network of NGOs working on human rights has been established following the first training organized by OHCHR. Since then, NGOs have coordinated the organization of seminars on human rights and defended victims, including in cases of torture, harassment by security organs, violation of freedom of expression, etc. It should also be noted that the network has not been harassed by security officials so far, although single organizations have experienced difficulties at times in the discharge of their activities. Overall, individual cases have continued to occur and it is difficult to identify perpetrators. Some sources referred to recent cases of students being subjected to torture in the previous two to three months. The Special Rapporteur met with one of these students, who had 13 cigarette burns on his arms. When the Special Rapporteur raised this specific case, he was told by a very senior government official that such incidents could be the result of self-inflicted acts aimed at evoking compassion. The Special Rapporteur was appalled by this answer and urged the Government to address the issue of torture seriously, including with a view to bringing perpetrators to justice.

C. Role of police and security officers

28. The state of emergency in force since December 1999 provided the basis for the imposition of security measures, often arbitrarily implemented. The Special Rapporteur has already referred to the amendment to the National Security Forces Act, which virtually allows for incommunicado detention for periods of six to nine months, as well as the amendments to the Criminal Procedure Act of 1991 which strengthen the powers of law enforcement agents in matters relating to, inter alia, investigation, arrest, interrogation and detention, without judicial review. Overall, the role of the security apparatus as the main entity responsible for the human rights abuses as well as the impunity enjoyed by security officers remains an issue of serious concern.

D. Freedom of the press

29. In spite of a temporary lifting of censorship in late November 2001, and contrary to information received from the National Press Council, the Special Rapporteur noted that independent newspapers have continued to be targeted. Besides the continuation of direct and indirect forms of censorships and the imposition of restrictive measures such as high fines, the Special Rapporteur was informed that an official instruction was issued in July that newspapers should have a minimum of 12 pages. The increase in production costs consequent upon this instruction has been considered an indirect sanction against the independent print media.

30. Some sources complained that their margin for manoeuvre is heavily dependant upon the overall political situation. As an example, they referred to the more conducive environment after

the signing of the Machakos Protocol in late July, which was reversed after the fall of Torit at the beginning of September. They also complained about an overall lack of professionalism, in view of the fact that many journalists are reportedly “on the Government’s payroll”. Some sources stressed that journalists who are suspended become unemployed, with no guarantees of being employed again as in most cases, suspended journalists cannot work for other newspapers either. Complaints were made concerning the role of the National Press Council.

31. The case of the Al-Ray al Shaab newspaper is still pending. Since the 20 February 2001 incident with the security services, and in view of its claimed links with the PNC, the newspaper has been closed and has not been given any indication of when it might be allowed to reopen. Complaints to the National Press Council as well as to the courts have reportedly gone unanswered, due to the apparent involvement of security organs. An appeal to the Higher Court has also remained unanswered. In the meantime, the newspaper is reportedly still paying for the rental of the building, which is reportedly occupied by security forces. Reportedly, the Journalists’ Union prepared a statement, which was blocked by security organs and therefore only published outside the Sudan.

E. Freedom of religion and belief

32. While sources reported that it was difficult to cite specific cases of abuses in the past six months, discrimination against/harassment of Christians, e.g. denial of visas, permission to build new churches and equal participation in the educational system, have continued to be reported. Confiscation of properties remains a problem that has not yet been addressed in a satisfactory manner; in this connection, reference was made to the Catholic Club case, which, reportedly, is still pending.

33. Sources expressed regret that the Council of Christians has not been established in a democratic, participatory manner and that its members were appointed by the Government. As a result, the Churches seem to have no trust in the Council.

34. **Equal rights should be guaranteed for all Sudanese citizens, irrespective of religion.**

F. Human rights and humanitarian law

35. The month of October, during which the visit of the Special Rapporteur took place, was a challenging, but also a rewarding month on the humanitarian front. At the beginning of the month the situation looked grim. In spite of the reassurances received by the Secretary-General during his July visit, there had been no changes on the issue of access.

36. Restrictions imposed for the month of October were defined as “discouraging”: in addition to the 61 (out of 178 requested) locations denied (or declared “unknown”), the Government requested all areas in the Nuba Mountains to be supplied from government locations, notably El-Obeid. Further limitations were imposed on the use of specific aircraft (two out of three). The flight restrictions over Eastern and Western Equatoria and the suspension of humanitarian activities for over a week were especially worrisome, particularly if considered against the background of the increasingly restrictive policy on access which has made it progressively more difficult for humanitarian operations to work effectively in the Sudan. In

terms of impact, it was reported that access to some 400,000 people was denied. While they remained reachable through alternative locations, they had to walk longer distances to reach food supplies.³ In addition, the recent access denial in Eastern and Western Equatoria was in direct violation of the tripartite Beneficiary and Security Protocols and the humanitarian principles governing OLS.

37. During his visit, the Special Rapporteur stressed in no uncertain terms that humanitarian access should be fully respected as a principle and could not be dealt with on an ad hoc basis.

38. In this connection, the Special Rapporteur welcomed the developments that occurred as from mid-October, notably the memorandum of understanding signed on 15 October by the Government and the SPLM/A to cease hostilities for the duration of talks, which, according to some observers, has opened the door to greater access to conflict-affected populations in the south.

39. Also, the Special Rapporteur further welcomed the signing, on 26 October, of what has been defined a “landmark aid deal” between the Government, the SPLM/A and the United Nations allowing unimpeded humanitarian access. Reportedly, the agreement, which would last from 1 November until the end of 2002, when the Machakos peace talks were scheduled to end, would enable the World Food Programme (WFP) to provide food aid to an additional 558,000 people, on top of the 3 million people already targeted for assistance. In addition, it would allow a polio immunization campaign due to start on 28 October to go ahead as planned.

40. Overall, in spite of some bureaucratic hurdles, access has now been ensured and there are no restrictions being imposed on security grounds.

G. The situation of the internally displaced

41. While there have been no major waves of further displacement, the situation of IDPs has remained an issue of concern. Sources referred to it as “exasperating”. Some sources reported that IDPs, particularly from Unity State, have been facing serious problems during the past two months, because of a pro-Government militia led by Paulino Matiep who reportedly has been given the power to arrest Nuer, detain them in a house in Khartoum and/or forcibly recruit them to be sent to war zones. This has reportedly led to inter-tribal clashes and shooting.

42. Sources also reported that following the fall of Kapoeta and Torit, new waves of displacement towards Juba have been recorded. In view of NGOs’ withdrawal from Juba for security reasons, the internally displaced have reportedly been left helpless. Assistance is urgently needed from both the Government and the international community.

43. The Special Rapporteur welcomes the second visit of the IDP Inter-agency Unit, which took place from 1 to 17 November, aimed at mapping out a United Nations system strategy for supporting the Government and regional authorities in conceptualizing, resourcing and implementing durable solutions for IDPs, with a main focus on community-based interventions.

H. The situation of women

44. In keeping with relevant Commission on Human Rights resolutions (1996/73, 1997/59, 1998/67, 1999/15, 2000/27, 2001/18, 2002/16), in which the Commission stressed the importance of the Special Rapporteur's continuing to apply a gender perspective systematically in the reporting process, including information collection and recommendations, during his visits to the Sudan, he paid particular attention to the situation of women, including in the framework of the conflict.

45. Accordingly, the Special Rapporteur reported on the issue of abduction of women and children, legislation affecting women, the situation of southern Sudanese women as internally displaced and their resorting to alcohol brewing, which is a crime under Shariah law.

46. During his visit, the Special Rapporteur was informed that some, though still limited, progress was made in the field of abductions, following the restructuring of CEAWC, on the one hand, and owing to the fact that the train from Babanusa to Wau had not been running lately, on the other. It was not clear, though, whether this was due to a political decision.

47. The Special Rapporteur noted that CEAWC was no longer a controversial issue. He was informed that the Government followed up on its pledges and had given CEAWC US\$ 200,000. While the Special Rapporteur welcomes this as a positive element, some sources pointed out that the initial figure referred to by the Government was much higher. In any case, CEAWC considered that this was a satisfactory amount of money, while regretting decreasing funding from donors.

48. The Special Rapporteur was also informed of a new rule whereby any new cases of abduction would be prosecuted and would not benefit from the procedure described in the Special Rapporteur's previous reports. As he reported, one year after the restructuring of CEAWC, old cases would also be referred for prosecution. The Special Rapporteur was informed that the new rule fell within the CEAWC rules of cooperation and that it was legally binding. The Special Rapporteur noted, however, that so far not much has been done in terms of prosecuting the people responsible.

49. Some sources reported as a positive development that it was now possible to reunite former abductees with their families in SPLM/A areas. The Special Rapporteur was informed at the time of his visit that five cross-line flights had been sent to reunite children with their families. In this connection, the Special Rapporteur noted the proposal by CEAWC to establish a safe corridor for the reunification of abductees with their families, which would be less expensive than using planes.

50. The Special Rapporteur also noted that the two conferences that had been planned as part of the CEAWC workplan following the restructuring had not yet taken place due to lack of funding. While he regrets this, he wishes to note that CEAWC made a number of alternative suggestions to provide donors with different options for funding.

51. Funding remains a problem and is affecting seriously the impact of CEAWC. The Special Rapporteur was informed that since 1999, US\$ 1.5 million had been received; however,

little funding had been received for 2002, while the CEAWC budget had increased greatly. This may confirm the view expressed by an observer that despite being put under the President, CEAWC seems in fact to have been isolated. Some sources highlighted that lack of funding is reportedly linked to lack of appropriate structures within CEAWC that needed to be put in place for the funds to be released.

52. Further challenges remain to be faced. One of these is related to the child's best interest and what to do when an abductee, who has lived all his/her life with his/her abductors, considers the latter as his/her family and wants to remain with them rather than be reunited with his/her "biological" family, with whom she/he has had no contact whatsoever.⁴

53. Another issue of concern has to do with the treatment that former abductees - women and children - are given in their tribe of origin. Some sources reported that the latter often see the abductees as "returned stolen goods" rather than granting them their place within the society, treating them with the same dignity and respect as any other members of that society. This would appear to be a reflection of a male-dominated society, an issue which should be addressed within the overall context of the problem of abduction of women and children. The Special Rapporteur believes that this is an area that would benefit greatly from programmes focusing on education and awareness-raising.

54. In view of information received, the Special Rapporteur paid particular attention to the issue of female genital mutilation (FGM). While acknowledging and fully supporting the work done by both international and local organizations, and while noting that FGM is illegal in the country,⁵ the Special Rapporteur was informed of new elements of concern: the holding of an event in May, sponsored by the Ministry of Guidance and Endowment, during which statements were made in support of FGM; reports on the recent establishment of a clinic in Khartoum undertaking female circumcision; the fact that government officials have seldom made clear statements against this practice, "leaving it up to the people".

55. The Special Rapporteur encourages the Government to play a more active role, including in terms of awareness-raising, and to strengthen existing laws and their implementation with a view to eradicating this traditional harmful practice. In this connection, he was pleased to learn that the Wali of South Darfur had approved a law against FGM, which was praised by the civil society.

56. During his visit, the Special Rapporteur received further information on cases of discrimination against women. More specifically, he was informed that dismissal from public offices has continued. According to the regulations for exit visas as issued by the Ministry of the Interior, women cannot travel unless they get a travel permit from their "guardian". The permit has to be stamped by a judge or a lawyer. Women living alone are reportedly often harassed by the security services, including sexually. They often face difficulties when they want to book a room in a hotel.

57. The Special Rapporteur expresses concern at a recent case in which 17 women were reportedly convicted of adultery and sentenced to 100 lashes in what was reported to be a summary trial in Nyala, South Darfur. The names of the women were reported as follows: Um Alnas Mohamed Ahmed; Hanan Abdulrahman Mohamed; Hagir Mohamed Ahmed;

Nimat Abakr Abdelgadir; Rasha Bahr Aldin Adam; Fatima Abdulla Adam; Gada Mosa Hamid; Shamael Omar Fadl; Hawa Yousif Abdelgadir; Fathia Ahmed Abdulrahman; Laila Adam Siraj; Kaltoum Isam Adam; Rawda Abdelgabar Mohamed; Zahra Hassan Ali; Gadah Abdelgabar; Asma Mohamed Ahmed; and Zakia Altayeb.

58. Since his appointment, the Special Rapporteur has been urging the Government to continue discussions and awareness-raising with a view to acceding to the Convention on the Elimination of All Forms of Discrimination against Women. The Special Rapporteur welcomes the forthcoming OHCHR training seminar in early 2003 which will address this issue in the framework of the OHCHR technical cooperation programme and which include experts of the Committee on the Elimination of Discrimination against Women among the participants.

59. Regarding the situation of women in SPLM/A-held territories, the Special Rapporteur was informed of the limited involvement of women in development projects, owing to the fact that the local society is reportedly predominantly male dominated. Women are generally not educated, and when they reach the age of 10 or 12, most of them are reportedly taken as wives by local leaders or commanders. It seems that the situation varies only slightly from region to region.

I. The situation of children

60. The Special Rapporteur was informed that no significant progress has been made on the situation of children. Reportedly, street children and juvenile justice remain areas of concern. Only two reformatories exist and children are very often detained with adults and allegedly subjected to inhumane treatment.

61. The Special Rapporteur was informed that child exploitation reportedly continues to take place, particularly in the agricultural and pastoral sectors. Families are poor and forced to send their children to work rather than to school. Agriculture keeps children far from towns and population centres, they roam in dangerous areas where they are potentially more exposed to abuses (armed conflict, banditry, etc.) while in cities the situation is reportedly slightly different, they still run the risk of becoming street children (shoe-shiners, car-washers, etc.). The Special Rapporteur's attention was drawn to the fact that street children in Khartoum are mostly IDPs. Networks that exploit them, including sexually, reportedly flourish. The Special Rapporteur deems that stronger government involvement is necessary.

62. The Special Rapporteur was also informed that forced recruitment of children in war zones has reportedly continued. He learnt that an unconfirmed number of children have been imprisoned in Bahr al-Ghazal because of desertion and sentenced to up to 20 years in prison. He was glad to learn that the Wali of Wau reportedly decided to release them based on the fact that, as minors, they should not have been recruited in the first place.

J. The SPLM/A-controlled territories

63. In view of the flight ban affecting Eastern and Western Equatoria at the time of his visit, the Special Rapporteur was unable to travel to southern Sudan. He plans to visit the region in February 2003.

64. While in Nairobi, the Special Rapporteur met with representatives of the SPLM/A with whom he discussed issues relating to the building up and/or strengthening of the civil society and democratization. He was informed that relevant initiatives sponsored by the New Sudan Council of Churches and bilateral donors were continuing.

65. He was encouraged by the outcome of the Chukudum Crisis Peace Conference, which took place in Kapoeta county, Eastern Equatoria, from 8 to 12 August, for reconciliation and healing between the Didinga people and the SPLM/A, witnessed by the peoples of Kapoeta, Torit and Magwi counties and representatives from the Dinka community. The Special Rapporteur reiterates his unconditional support for grass roots, people to people initiatives which help pave the way for peace.

66. The Special Rapporteur also inquired about the holding of elections for the so-called National Congress which, though supposed to be held every four years, have been repeatedly postponed. This was again the case this year, owing to the ongoing fighting. In this connection, the Special Rapporteur noted, however, that some sources point to very large war-free areas in southern Sudan, which would allow for the undertaking of initiatives aimed at fostering democratization, as is proven by the numerous programmes of assistance ongoing in southern Sudan.

67. Some sources working in southern Sudan regretted the absence of a civil society, making it difficult to establish partnerships and formulate exit strategies. Opinions on this issue, however, differed to a certain extent.

68. The Special Rapporteur was informed that perpetrators of abuses are sometimes brought to justice. Some sources reported that in some areas there were relatively high levels of accountability, but that this was strictly linked to the personalities concerned. In general, the judiciary often acts on an arbitrary basis. Civilian courts were reportedly slowly beginning to emerge to replace military courts, and local chiefs, who had been mostly marginalized, were slowly being brought in and have started playing an active role in rule-of-law settings.

69. The main problems are, however, what was defined as the “enormous power of the security”; severe restrictions on freedom of opinion and expression, speech, assembly and association; and the implementation of repressive measures to control and/or suppress independent political initiatives as well as administrative structures. As a result, there continues to be no political opposition in southern Sudan, nor any newspaper; in short, no real alternative to the SPLM/A. The population is generally not informed about the peace process, nor prepared for it. The Special Rapporteur was informed, however, of the mounting of an internal opposition and of the fact that the SPLM/A was to some extent confronted by the civil society when it failed to deliver. This would seem to confirm that the SPLM/A is not yet taking full responsibility as a ruling party.

70. On the issue of child soldiers, in spite of some progress made on their demobilization, as previously reported by the Special Rapporteur, some sources reported that forced recruitment of children around 15 years of age continued to take place in conflict areas. The number of child soldiers remains high. Sources also reported that demobilized children are sometimes recruited again.

71. Forced recruitment is also reportedly ongoing.

K. International conventions

72. The Special Rapporteur wishes once again to encourage the Government to continue discussions with a view to acceding the Convention on the Elimination of All Forms of Discrimination against Women as well as ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Government has promised to do since the Special Rapporteur's first visit.

73. The Special Rapporteur welcomes the training seminars which will be organized by OHCHR in the framework of its technical cooperation programme, upon ratification of the two conventions, with the participation of international experts from the respective committees.

74. Regarding the status of reporting, the Special Rapporteur noted that the Government has submitted all the reports due under the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

75. He welcomes the submission of the second periodic report and the written replies to the list of issues that the Government submitted to the Committee on the Rights of the Child and took note of its concluding observations (CRC/C/15/Add.190).

L. Individual cases

76. From the submission of his interim report until the time of submission of the present report, the Special Rapporteur sent 10 joint urgent appeals concerning 177 individuals. He expresses concern at the number of cases concerning students reportedly arrested, detained and at times allegedly tortured as a follow-up to the incidents that occurred in Khartoum in late October.

77. In his interim report, the Special Rapporteur referred to the fact that he had received no reply nor any information on action taken on most urgent appeals sent. More specifically, he received one reply, from the Permanent Mission to the United Nations Office at Geneva, on one out of 11 urgent actions which had been sent at that time.

78. The Special Rapporteur raised this issue with the Advisory Council on Human Rights during his visit. He was first told that appeals lacked basic information and that therefore relevant action might be delayed in the process of identifying the subject of the appeal, his or her

whereabouts, or details of the case. He was then told that replies were indeed sent to the Permanent Mission in Geneva for onward transmission. However, with the exception of the above-mentioned reply, no other responses on urgent actions have been received so far.

79. The Special Rapporteur wishes to reiterate his appeal to the Sudanese authorities to follow up on any individual cases received and to inform him, as well as thematic rapporteurs, of any action taken, as appropriate.

M. Darfur

80. In view of the seriousness of the reports received, the Special Rapporteur started paying particular attention to the situation in Darfur in 2001 and requested permission to visit the area during his visit in February-March. Relevant background information was reflected in the Special Rapporteur's interim report. In his view, the main issue of concern was the establishment of special courts.

81. During his visit, he was informed that eight special courts had been established at the same time in North and South Darfur⁶ in May 2001 "because robbery has no boundaries", that they were established in keeping with Sudanese laws and that they are composed of three judges, one civilian and two military members. All those tried by the special courts were reportedly given legal representation and the right to appeal. Defendants also reportedly had the right to withdraw their confessions. However, those confessions would be considered as evidence if corroborated by other evidence.

82. In the course of the discussion, the Special Rapporteur was informed that accused have the right to be represented by "a lawyer as a friend", meaning that the "accused has the right to speak for himself and the lawyers do not speak for the accused"; rather, "the lawyer indicates to the accused what he should say, in order to make the procedure very fast so that the trial can reach a conclusion as fast as possible [and] to avoid procedural complexities which may occur leading the trial to last for many years", and to avoid "recurrence of conflict among tribes". He was also informed of a number of initiatives at the grass-roots level aimed at reconciling tribes in the region.

83. With respect to cases referred to in his interim report it appeared clearly from his discussions that no time was allowed for individual cross-examination; that some of the prisoners had not been given any reasons for being sentenced to death; that most of the others were sentenced for carrying out an armed attack and murder. All had appealed. The Special Rapporteur noted that all the prisoners were held in shackles which, he was told, was customary for prisoners sentenced to death. Because of the heat, prisoners had to wrap the shackles in paper and/or plastic to avoid contact with their skin.

84. In the course of his discussions, the Special Rapporteur repeatedly inquired about the reason for establishing special courts. He was told that there were serious problems linked to (a) gangsters and armed banditry; (b) drug traders; (c) trade in weapons; (d) tribal clashes; that if special courts had not been established, tribes would resort to revenge; that procedures adopted by special courts allowed for cases to be processed faster.

85. During his visit to Khartoum, the Special Rapporteur discussed this issue with the Minister of Justice, who explained that special procedures had been created by the Walis based on emergency laws aimed at dealing with the situation in the region, because of the impossibility of convening a regular court of justice in a war zone. He stressed, however, that defendants should have a chance to defend themselves and that cases dealt with by the special courts had often been referred to the High Court in Khartoum for appeal. According to the Minister, the High Court was very reluctant to confirm death sentences handed down in Darfur.⁷ The Minister conceded that “the procedure adopted in Darfur was a hurried one” and that “cross-examination is lacking in these courts”.

86. In this connection, the Special Rapporteur was provided with some statistics on cases referred to the Constitutional Court to which 13 cases had been referred in 1999. In 2000, the total number of cases referred was 14, 10 of which were dismissed. Of the remaining four, in which the convicted persons had been sentenced to the death penalty, two were confirmed and two were commuted to life imprisonment. In 2001, 26 cases were referred to the Constitutional Court, 15 of which dealt with the death penalty. Of those, nine were confirmed and six were commuted.

87. In 2002, the Advisory Council reported that 96 cases were referred to the Constitutional Court, “most of [them] dealing with death penalty”. Of those, four were dismissed. However, by October, no further information was available yet for cases referred in 2002, on the grounds that the year was not over.

88. During his visit, the Special Rapporteur travelled to El-Fashir, North Darfur, to look into the issue of special courts. He met with relevant segments of the local administration, including the police and security. He also held extensive discussions with the heads of the judiciary of South and North Darfur. He then visited the local prison where he met with representatives of the Rizeigat tribe, who had been arrested and sentenced to death following an incident that occurred in April/May in which they had clashed with the Mahlia tribe.

89. He extensively discussed the case with both the Head of the judiciary and the prisoners and was provided with details.⁸ He also raised the case of the presence of at least one prisoner who was underage, reportedly 14. He was told that legal responsibility starts at 15 years of age and is “linked to the appearance of manhood”; that the child was questioned by the court and “replied that he was a man”; that he was taken to a “specialized doctor” who assessed that the boy “must have been 17”.

90. The Special Rapporteur was informed that children under 18 cannot be sentenced to death except for armed robbery. The Appeal Court in Nyala confirmed the judgement, which was further referred to the High Court in Khartoum, where it is still pending.

91. As for the right to appeal, normally the decision of the Head of the judiciary is final, with the exception of death sentences and amputations, when the convict can appeal, including through a lawyer. In these cases, judgement is referred to the High Court in Khartoum. Reportedly, it takes months for the High Court to decide on appeal cases. None of the participants in the meeting could say how many. In addition, the convicted persons are usually not called to appear in the appeal process.

N. The oil issue within the context of the right to development

92. In his previous reports, the Special Rapporteur repeatedly stated that oil was exacerbating the conflict, insofar as the war in the Sudan is mainly the result of a fight for the control of power and resources.

93. The Special Rapporteur recalled the Declaration on the Right to Development, as well as relevant Commission on Human Rights resolutions. In view of the latest United Nations Development Programme, Arab Human Development Report, the Special Rapporteur wishes to highlight once again the link between development and governance, defined as “the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. ... Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable and it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources”.⁹

94. **Accordingly, the Special Rapporteur wishes to reiterate his recommendation that development aid be closely linked to tangible progress in the field of human rights.**

O. The role of the United Nations

95. In connection with his recommendations on the need to support the civil society in the Sudan, the Special Rapporteur reiterates his appreciation for the technical cooperation activities carried out for almost two years now by the OHCHR office in Khartoum, which aim at building and/or strengthening national capacities in the field of human rights through the provision of training in the promotion and protection of human rights.

96. The Special Rapporteur has already referred to the role of the United Nations, particularly in the framework of the peace process. He took note of the need to address the Sudan not only at the humanitarian level, but also at the political level. He believes that the opportunity provided by the Machakos process in this respect should not be overlooked and should instead be the starting point for a stronger involvement of the United Nations in the Sudan. Accordingly, he believes that while the existing humanitarian structure should continue to be looking at humanitarian issues, including access, a new structure, under the direction of a political office, should be envisaged to tackle more political issues, including those linked to the peace process and the post-conflict scenario. A human rights component should also be foreseen, entrusted with monitoring of and assisting in the implementation of the peace process.

97. During their meeting, the Secretary-General told the Special Rapporteur that a possible United Nations involvement would depend on the settlement of the conflict as well as the attitude of the parties.

IV. CONCLUSIONS AND RECOMMENDATIONS

98. The Special Rapporteur had the opportunity to visit the Sudan at a very interesting time, characterized mainly by the peace negotiations and the expectations it raised, as well as progressive change in the international context following, among other things, the events of 11 September 2001.

99. During his visit, the Special Rapporteur was allowed to meet with two government officials only, all other official meetings scheduled being cancelled, including at the last minute, with virtually no explanation. The Special Rapporteur regrets that no substantive discussion on the details of the report took place.

100. The Special Rapporteur noted that a number of international representatives present in Khartoum also experienced difficulties in discussing human rights-related issues, at least since the month of July, when the Machakos Protocol was signed. Some observers reported that the Government seemed to be satisfied with the outcome of the first round of the peace talks and therefore felt no need to continue focusing on human rights issues. Should this reflect the truth, the Special Rapporteur would see this as a risk and would like to stress in no uncertain terms that human rights do not belong to the post-conflict scenario, but must be an integral part, indeed be at the heart, of the peace talks, because with no consideration of human rights today there will never be a sustainable and just peace tomorrow.

101. In this connection, he wishes to refer to the benchmarks that are annexed to the present report, which should be fully integrated in the peace negotiations as further guarantees for the post-conflict scenario. He also wishes to reiterate that the peace talks should be a forum for all the parties to the conflict and as such cannot be the exclusive domain of the Government and the SPLM/A; that would have the further disadvantage of potentially polarizing the country, besides making the resolution of the conflict itself more difficult.

102. The Special Rapporteur noted that assistance tends to be directed at emergencies and that most donors tend to focus on that. He therefore wishes to reiterate his appeal that more energies and resources should be devoted to development, in the whole of the Sudan, and that these interventions be community based, focusing on developing a sense of ownership by the local communities which would, in turn, ensure their sustainability. Accordingly, traditional means of conflict resolution, healing and reconciliation should be encouraged, assistance should be targeted at developing coping mechanisms, and the civil society as a whole and women in particular should be empowered to play an active role not only in the negotiations but also in the post-conflict scenario.

103. The link between peace, democracy and human rights should always be taken into account, with equal emphasis placed on civil, cultural, economic, political and social rights. In this connection, relevant recommendations contained in the concluding observations of the treaty bodies should be the starting point for action, at both the national and

international levels. Also, relevant provisions of the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should be referred to for further guidance.

104. Finally, as he stated in his address to the Commission on Human Rights at its fifty-eighth session, the Special Rapporteur remains convinced that a long-term, comprehensive, unified approach is the only way for any peace initiative to succeed. Political follow-up by the United Nations is therefore urgently needed to preserve the momentum.

Notes

¹ In accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”).

² Some sources referred to the fact that there has been no students union for the past seven years and that elections were repeatedly postponed pending the return of those students who had been sent to war. Some sources also claimed that assistance for lodging for university students had also been cancelled except for those students belonging to the ruling party. It should also be noted that security is reportedly present and active within the campus limits, sometimes called by the university administration itself.

³ In addition, the Special Rapporteur was also informed that in view of the military operations around Torit, eastern Equatoria was particularly helpless, with bombing going on and IDP camps exposed to attacks from the Ugandan rebel Lord’s Resistance Army. He was also informed that groups of soldiers deserting from the SPLM/A were moving to western Equatoria, causing havoc along their way and putting civilians in danger while destroying villages and raping women.

⁴ It should be noted that the Dinka Committee refuses to consider the decisions of children who want to remain with their abductors.

⁵ Statement made by the Minister of Justice during a meeting on 6 October. The Minister added that female circumcision is a “problem of education”.

⁶ According to the Advisory Council, five courts were established in North Darfur and three in South Darfur. However, Nyala Special Court No. 1 was reconstituted in May 2002 following the transfer of the President of the court. It should be noted that the latter was an officer of the army, who has now been replaced by a civilian judge. Ninety-six people were brought before the court, 10 of whom were acquitted; 86 were convicted. All of them appealed to the Appeal Court, composed of one judge, the Head of the judicial organ in Darfur. Their case was transferred to the High Court and the Supreme/High Court in Khartoum, which is comprised of five judges. They also have the right to appeal to the Constitutional Court.

⁷ The Minister explained that the High Court is composed of five judges who look at cases on a case-by-case basis as well as at procedures. During the meeting, the Minister referred to two cases considered by the High Court, one of which had been confirmed; the other was still pending.

⁸ The Special Rapporteur was also given further background details by a different source who explained that the Government has allegedly been using the Rizeigat tribe as murahalleen. Within the tribe, a split was created between those operating as murahalleen and those opposing this practice. Following international pressure, however, the Government reportedly took some distance from these tribes claiming that incidents were “a tribal problem”. When tribal clashes broke out between Rizeigat and Mahlia, the Government, allegedly in an attempt to punish the Rizeigat who had not cooperated, did not intervene for 45 days, with the result that the Rizeigat decided to settle the matter by themselves.

⁹ UNDP, Arab Human Development Report 2002, chapter 7, page 105.

Annex I

HUMAN RIGHTS ELEMENTS TO BE INTEGRATED IN THE PEACE TALKS

1. The **state of emergency**, which the President is reportedly planning to extend for a fourth year, should be lifted.
2. The role of the **security** apparatus, which has to respect the basic principles of human rights and democracy, should be reduced. Security officers should be held accountable for their actions. The National Security Forces Act should be revised.
3. Any act of **torture** or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. Acts of torture should be considered as offences under criminal law. Perpetrators of similar acts should accordingly be held accountable and brought to justice and be subject to criminal, disciplinary or other appropriate proceedings. Any statement which is established to have been made as a result of torture or other cruel, inhuman, degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.^a The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which was signed by the Sudan in 1986 should be ratified.
4. **Discrimination against women**, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity. Accordingly, appropriate measures should be taken to abolish laws and practices which are discriminatory against women, including harmful traditional practices, and specific provisions should be envisaged to ensure adequate legal protection of women.^b Also, women should be empowered to play an active role in the peace process and post-conflict management. To this end, the Convention on the Elimination of All Forms of Discrimination against Women should be signed and ratified.
5. **Freedom of expression.**^c All forms of direct and indirect censorship should be effectively lifted. Everyone should be free to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, through any media of his/her choice.
6. **The independence of the judiciary** should be guaranteed by the State and enshrined in the Constitution or the laws of the country. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process should not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.^d More specifically, special courts should be abolished. Traditional mechanisms of conflict settlement should be looked into to solve the problem of

tribal clashes. Similar grass-roots, people-to-people initiatives, like the ones used to settle conflicts between Dinka and Nuer or between Dinka and Didinga, as well as between Rizeigat and Mahlia, could provide useful guidance to this end.

7. **Freedom of movement** should be ensured both within and outside the country. Lengthy procedures for visa requirements should be speeded up and should not be used as instruments of discrimination against human rights activists, political opponents, including students, or religious representatives.

8. **Freedom of assembly and association.**^e Representatives of the civil society, including non-governmental organizations, students, Churches, etc., should be allowed to assemble peacefully and to form and join trade unions for the protection of their interests, with a view to playing their role without any constraints other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health and morals or the protection of the rights and freedom of others. All restrictions on political activities should be lifted in order for political parties to play their role. Political prisoners should be released.

9. The building up and/or strengthening of the **civil society**, particularly in southern Sudan, should be further encouraged. The SPLM/A in particular should do more to replace existing military structures with civil ones with a view to fully respecting freedom of assembly, association and expression as well as the independence of the judiciary. The international community should support efforts aimed to this end.

10. **Internally Displaced Persons.** While responsibility for the protection and promotion of IDPs rests, first and foremost, with the national Government and local authorities, it is important for the international community to determine how it can best contribute to enhancing the protection of IDPs in conflict and post-conflict scenarios. In this connection, the Guiding Principles on Internal Displacement formulated by the Special Representative of the Secretary-General on Internally Displaced Persons are an invaluable tool to guide action on assisting and protecting IDPs.

11. Specific mechanisms of protection should be envisaged for **children**. In this connection, the concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.190) should be taken into account.

12. **The right to development.** Wealth sharing is inextricably linked to a sustainable peace process. Accordingly, specific provisions have to be put in place to ensure that development is a comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom. Specific provisions relevant to the right to development, including Commission resolution 2001/19, should be taken into account.

Notes

- ^a Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 3452 (XXX) of 9 December 1975.
- ^b Declaration on the Elimination of Discrimination against Women.
- ^c International Covenant on Civil and Political Rights, article 19.
- ^d Basic Principles on the Independence of the Judiciary.
- ^e International Covenant on Civil and Political Rights, articles 21 and 22; International Covenant on Economic, Social and Cultural Rights, article 8.

Annex II

PROGRAMME OF ACTIVITIES OF THE MISSION TO THE SUDAN

1. On 30 September and 1 October, in Cairo, the Special Rapporteur met with relevant Egyptian authorities, the League of Arab States, representatives of the Sudanese civil society and NGOs.
2. From 2 to 5 October, the Special Rapporteur travelled to Nairobi where he met with SPLM representatives, the Sudan People's Democratic Front leader, Mr. Riek Machar, United Nations agencies and NGOs under the umbrella of Operation Lifeline Sudan (OLS), non-OLS NGOs, key representatives of the donor and diplomatic community.
3. From 5 to 10 October, the Special Rapporteur travelled to Khartoum, where he met with the Minister of Justice and the Special Assistant to the President, Mr. Fadil al-Mubarak al-Mahdi, the Head of the Human Rights Committee at the National Assembly, the National Press Council, CEAWC staff and the Dinka community, members of the civil society, including human rights activists, Islamic organizations, students, journalists and representatives of political opposition as well as the preparatory committee for the creation of a national human rights institution, the Sudan Council of Churches, representatives of domestic and international NGOs, heads of United Nations agencies and representatives of the diplomatic and donor community.
4. On 8 October, the Special Rapporteur undertook a one-day trip to El-Fashir in North Darfur, where he met with the heads of the judiciary of North and South Darfur as well as relevant authorities at the local level. He also visited the local prison.
5. On 10 October, the Special Rapporteur met with the Rapporteur of the Advisory Council for Human Rights for a wrap-up session during which a number of issues were brought to the attention of the Sudanese authorities for their follow-up action.

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