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Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights on his visit to Sudan


Comments by the State*

* The present document is being issued without formal editing.

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A. Introduction

1. The Sudan thanks the Independent Expert on the situation of human rights in the Sudan for availing the opportunity to comment on the observations and findings of the draft report which was received by the Sudan's Permanent Mission in Geneva as an attachment to his note verbale dated 05 July 2019, and in which he welcomes receiving the response of the Sudanese authorities by Friday 12 July 2019 (i.e. 7 days period including transmission time and weekend). In this regard, Sudan would like to refer to Article 13 (c) of the Annex to HRC Resolution 5/2 of 18 June 2007 (*Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*) which provides that the State concerned shall be given adequate time to respond. Paragraph 74 of the Manual of Operations of the Special Procedures of the Human Rights Council of August 2008 states that: *ideally, six weeks should be allowed for Government comments to be taken into account.*
2. Since the establishment of the special procedures in respect of the Sudan, Sudan continued to engage and cooperate with the mandate holders, a fact that has been affirmed in all HRC resolutions under the Agenda Item concerned. The postponements of IE visit to the Sudan during his current mandate would be justifiable taking into consideration the recent developments in the country, as the Sudan has witnessed a major political and constitutional change that had its impact on the executive and administrative apparatus of the State, and the occupancy of officials in addressing the emerging situations.
3. We hope that the Independent Expert would take into consideration the present comment by the Government of the Sudan in his final report, and we request the OHCHR Secretariat to circulate the same as an addendum to the IE's report, pursuant to Article 8 (d) of the Annex to HRC Resolution 5/2.

B. General observations

4. Sudan reiterates its stance that the present report, as did the previous IE reports, follows the same methodology applicable to reports considered under Item 4 of HRC Agenda, a matter that we look at as a side track from the actual mandate which focuses on the provision of technical assistance and capacity-building to improve human rights in the Sudan, as so titled in the HRC resolution 39/22. Strict observance of mandate and ensuring that recommendations do not exceed the mandate, are important conditions for the work of mandate-holders provided for in article 7 of the Annex to HRC resolution 5/2.
5. Despite the undisputed lengthy narrative of facts pertaining to the political and constitutional developments in the country, yet the draft report is full of inaccurate facts and ill-founded allegations that make the report as if it is a compilation of data and reports from the media and other unauthenticated sources, as will be illustrated below. It is not required to disclose such sources but, at least, there should be indications to the effect that they are reliable.
6. Non-compliance of the report with the Annex mentioned above is evident in a number of paragraphs of the draft report. These include: expressing personal opinion without objective ground based on concrete evidence, such as describing the Sudanese women to have been in "backdrop of longstanding deprivation of rights"¹, mentioning matters which fall outside the IE's mandate and not relevant to human rights issues, and utilizing terms which amount to ethnical designation, such as describing a group of population as "Arab" who are allegedly threatening IDPs².

C. Key developments

7. Regarding the key developments in Sudan, we would like to indicate here that the IE draft report does not preview the political developments in Sudan in a way that it deserves.

¹ Paragraph 72 of the draft report.

² Ibid, paragraphs 27 and 41.

8. It is expected that the report should have to reflect the positive image of the Sudanese revolution which is considered as a great popular revolution, and looked at as a qualitative move towards the progress of human rights in the country. The acclaimed sit-in near the Armed Forces Headquarters, with the armed forces participating in the revolution by aligning with the demonstrators and sitters-in, eventually leading to the birth of the outstanding revolution which terminated the era of former president Omer Al Bashir.

9. The Transitional Military Council (TMC), which assumes power in the country, issued a number of Constitutional Decrees which contain provisions assuring the commitment of the Sudan to all international human rights instruments to which Sudan is party, and in line with this MTC issued a number of decisions for further promotion and protection of human rights in the country, which include:

(a) Lifting of curfew which had been imposed during the term of the former President.

(b) Releasing of all political detainees.

(c) Full guarantee of freedom of the press and media and lifting censorship formerly imposed on the newspapers and mass media.

10. Subsequently, and in the context of negotiations which was conducted between TMC and Revolutionary Front the TMC also issued orders releasing all detainees associated with the armed movements as well as declaring cession of hostilities and cease-fire.

11. Negotiations between TMC and FDFC are substantial developments in the Sudan which reflect the practice of democratic process in Sudan since the birth of the Sudanese revolution. The negotiations continued for four months under the auspices of the African Union which nominated Prof. Mohamed Alhassan Lebat as mediator.

12. TMC and FDFC concluded the Political Accord and the Constitutional Document. The Political Accord provides for the establishment of the power structures, which comprises the three principal organs of the State, namely: the Sovereign Council, the Cabinet and the Legislative Council. The Constitutional Document also provides for the functions and powers of such organs. The Document contains a chapter devoted to the comprehensive peace issues, which enumerates all the necessary steps for realizing equitable and lasting peace in the country. The Document, further, provides for the establishment of independent Commissions including, inter alia, the Peace Commission, Constitution-making and Constitutional Conference Commission, Elections Commission, Human Rights Commission, Transitional Justice Commission and Women and Gender Equality Commission.

D. Comments by paragraphs

Paragraphs 10 to 24 of the IE draft report

13. It is true that the protests in the country were mainly ignited by economic hardship, the primary cause of which is the unilateral coercive measures, as rightly expressed by the Independent Expert, imposed on the Sudan for more than quarter of a century. The decision by USA Administration to lift the sanctions in early 2017 remained without effect on the ground, with the continuance of designation on the terrorist list. Another major factor which contributed to the Sudanese people suffering, and has not been mentioned in the draft report, is the burden of foreign debts which Sudan has been qualified for relief thereof according to the HIPC initiative, but is yet to be benefited from.

14. Corruption and mismanagement of the State resources are admittedly redounded to slow development and aggravation of poverty. Even before the fall of Al-Bashir regime, a unit for combating corruption was established but only a few cases were identified and investigated. Following the removal of Al-Bashir, the Attorney General has assigned a number of public prosecutors to investigate cases of corruption and unlawful enrichment, and a number of the former regime leaders, including the deposed President Al-Bashir, have been indicted.

15. However, the Political Accord on the Government Structures and Institutions for the Transitional Period signed on 17 July by the Transitional Military Council (TMC) and Forces of Declaration of Freedom and Change (FDFC), contained a provision under the title “international support” for the engagement of the anticipated interim government with international community in order to delist the Sudan from terrorist list, lift the sanctions and relief foreign debt. The preamble to the Accord also embodied a commitment to fight corruption and restore stolen public property.

16. The offer by the High Commissioner of January 2019 referred to in paragraph 12 of the draft report has not been communicated as an official proposal to the Government. It was a media statement in which Ms. Bachelet “stressed the readiness of the UN Human Rights Office to deploy a team to Sudan, to advise the authorities and help ensure they act in accordance with the country’s international human rights obligations”. A number of national investigation and fact-finding mechanisms have been established, as will be detailed later. Concerning the emergency decrees issued in March mentioned in paragraph 13, and since the advent of the new authority the effect of such decrees has been suspended, the emergency courts have been dissolved and all persons convicted by those courts on charges pertaining to the protests were set at liberty.

17. It is to be confirmed that all alleged human rights violations in the context of the protests starting from December 2018 and onwards are taken seriously via thoroughgoing investigation and inquiry. Besides the fact-finding and investigation committees referred to in the draft report, the Directorate of Public Prosecution designed a plan to mobilize public prosecutors to conduct the investigations efficiently and swiftly. The investigation committee established by the Attorney General to investigate in the events of 03 June and related incidents has accomplished its work and submitted its report to the Attorney General on 21 July, and on 27 July the committee published its findings in a press conference.

18. Further, the Constitutional Document initially signed by TMC and FDFC on 4 August 2019³, and as does the Political Accord, provides for the establishment of a national independent committee, with African support when so required, to conduct transparent and precise investigation in the violations that took place in June 3rd 2019, and in the events and incidents in which there had been violations to the rights and dignity of individuals, whether civilians or militaries.

19. It is noticeable that the draft report when referring to cases of deaths or injuries, frequently states a figure published by the authorities and another alleged by other sources, which is usually higher. All the cases of injuries and death during the events were precisely monitored and admitted to hospitals or mortuaries, as no dead body found in suspicious circumstances is allowed to be buried without running an official post-mortem examination thereon. The Federal Ministry of Health is in a position to accurately report on the number of victims.

20. Engagement in talks between the TMC and FDFC continued unabated, and it culminated in initially signing the Political Accord and the Constitutional Document, on 17 July and 4 August respectively. The Revolutionary Front, which comprises several armed groups are currently involved in the talks in a lateral track. The dialogue between the parties was under the auspices of the African Union and supported by the Ethiopian mediator.

21. The measure taken by the AU Peace and Security Council suspending participation of the Sudan was of a routine character applied to cases of sudden constitutional breakdown in any of the African State members, pursuant to the Council’s Protocol. On 5 July 2019 the Chairperson of the AU Commission highly commended the people of Sudan on the occasion of this important breakthrough and recognized their commitment to the peaceful expression of their legitimate aspirations for a peaceful and democratic Sudan. He reiterated the steadfast and continued commitment of the African Union to accompany the Sudanese people in their pursuit towards a democratic Sudan. In an earlier joint communiqué of the AU Commission and Federal Republic of Ethiopia Issued on 02 July, they re-emphasized the need for a

³ Article 7 (16) of the Constitutional Document.

Sudanese-owned process, free from any external interference and in full respect of the sovereignty and the will of the Sudanese people in the pursuit of a Political Agreement.

E. Main human rights challenges

Economic and social rights

Paragraphs 25 – 28

22. The causes of the economic crisis in the country, its major role in inflaming the protests and suspension of US-Sudan talks following the removal of Al-Bashir, as cited in paragraphs 25 and 26 of the draft report are unchallenged facts.

23. However, the assertion that over 8 million people needed humanitarian assistance before the events of 3 June 2019 misquoted the Resident Coordinator/Humanitarian Coordinator Ms. *Gwi-Yeop Son* in her introduction to Sudan Humanitarian Response Plan 2019. The 8 million include only about 2 million IDPs, while over 6 million are refugees from South Sudan and other countries who are hosted by Sudan. The rate of access to targeted and needy areas is over 98%, according to the reports of a joint UN-Sudan committee. Up to end of June, no cultivation-linked or tribal clashes have been recorded by police or local administration in the conflict affected areas, save Deleij incident.

24. The status of procedures of UN agencies, NNGOs and INGOs, as reported by the Unified Procedures Compound for the period from 01 April to 18 June 2019, reveals that all 398 applications for travel permit have been accepted, and all 206 applications for entry visa have been granted. All 60 applications pertaining to employment and Labor Office procedures have been approved.

Violations against the rights to freedom of peaceful assembly and of association

Paragraphs 29 – 42

25. The statement that most of the 107 people arrested in 25 December 2018 belonged to Abdul-Wahid armed movement is not accurate. The right number was 14 persons who were accused of carrying out subversive activities, and were released later on. The former President Al-Bashir is currently under arrest facing numerous charges, some have formally been formulated and others are under investigation. The same is applicable in respect of the former Vice President Ali Osman Taha.

26. There is no doubt that transgression on hospitals and health facilities is a matter of serious concern and unjustifiable in any circumstances. For this reason the Minister of health and the National Human Rights Commission condemned those events, as mentioned in paragraph 33 of the draft report, and the matter is currently under investigation. Concerning the attempt to break up the sit-in on 08 April, the commander and participants in the force which made that attempt had been identified, arrested and are facing prosecution. The correct number of deaths was 7 persons including a member of medical staff and three army officers, and not 21 as stated in paragraph 35 of the draft report.

27. With regard to the events at Otash IDPs camp in Nyala referred to in paragraph 38 of the IE draft report, the authenticated official facts are that on 02 May a number of IDPs of that camp set fire to HAC premises and looted some houses. They arranged a mob with the intention to raid WFP warehouses and adjacent buildings. The South Darfur state security committee arranged to secure those locations, thereafter the mob attempted to seize army vehicles, pillaging the market and committing other criminal activities. Therefore, leaders of the demonstrators were arrested.

28. The aftermaths of 03 June events are placed in top priority of the investigations. The Attorney General's committee of investigation, the latest mechanism addressing this issue, as disclosed in the press conference referred to above, adopted a surveying method of investigation and took into account international investigation standards. It examined 59 witnesses and reviewed 29 documents and reports relating to the events. The committee described in details the procedures it followed and activities it performed.

29. The committee concluded that the plan made by the authorities was to clear out the area alongside the Nile Avenue (popularly known as Colombia) which increasingly developed as a center of criminal and irregular activities, but not to disperse the sit-in near the General Command Headquarters. However, certain members of the force assigned with this task commanded by brigadier acting under orders by a major general infringed the instructions and infiltrated into the sit-in area using tear gas and firearms inflicting deaths and injuries. The number of deaths on 3 June was 87, of whom 17 were inside the sit-in area. The number of persons injured was 168. The 2 bodies picked out of the Nile were far away from the sit-in area near Halfaya Bridge, North of Khartoum. The committee exerted big efforts in investigating the allegations of rape and burning, but found no evidence to the occurrence of any such cases.

30. In respect of all death cases, criminal proceedings (mostly under section 130 of the Criminal Act 1991 – murder) have already been initiated. The Attorney General in a previous public statement said that he had received the committee's report and he undertook to take all the necessary measures for the implementation of the recommendations of the report. He ordered that initiation of criminal proceedings for prosecution of 8 officers (one major general, two brigadiers, one colonel, one lieutenant colonel, two majors and one sergeant), to face charges under section 186 of the Criminal Act 1991 (crimes against humanity), read with section 174 of the Armed Forces Act 2007 (contravention of orders). The Attorney General further ordered that the formerly initiated proceedings shall continue against members of forces, which include Salha camp forces, protection forces and riot police. The said 8 officers shall be joined as main accused in such proceedings. The committee assured that: these were the findings of the committee at this stage, and the continuing proceedings before the public prosecution offices might add any suspect against whom any prima facie evidence stands. All these facts were disclosed by the chairperson of the committee in the press conference referred to in paragraph 11 above. In order to ensure that the investigation is more elaborate and veracious, the establishment of the national independent committee of investigation is provided for in the Constitutional Document, as mentioned in paragraph 12 above.

Arbitrary arrest, detention, torture and ill-treatment

Paragraphs 43 – 56

31. By mid-April 2019, all detainees within the context of the protests were released, including those who had been sentenced to imprisonment by the emergency courts for their involvement in the protests. On 03 July the Head of the Transitional Military Council issued a general amnesty order whereby 235 persons associated with the armed movements were released. Many allegations of torture and ill-treatment during detention are currently under investigation by the public prosecution attorneys, and every individual who claims to be subjected to any form of torture or ill-treatment can lodge his or her complaint to the competent authority.

32. The officially recorded cases of death in detention facilities were only three and not six as mentioned in paragraph 47 of the draft report, two cases in South Kordofan where an enquiry board was established to investigate the causes of death, and 3 NISS members who had been responsible of custody were prosecuted and convicted of ill-treatment and negligence. Compensations (diyah) were paid to the families of the deceased upon compounding the case by remission. Concerning the heinous incident of the death of the schoolteacher Ahmed Kheir, NISS leaders were of opinion to prosecute and try those responsible in accordance with the National Security Act 2010 (by a court martial), but on 16 June the accused NISS members were handed over to the office of public prosecution in Kasala to face the charges in the proceedings already initiated by the public prosecution. On 30 July the case was referred for trial after indicting 41 NISS accused members.

Restrictions on freedom of expression and harassment of journalists

Paragraphs 57 – 71

33. Since 11 April all the mass media have remained to enjoy unhindered freedom of expression, all forms of newspaper censorship have ceased to exist and no further journalist has been arrested, detained or harassed solely by reason of lawfully expressing his or her opinion. Article 56 of the Constitutional Document enshrines a wide range of guarantees in respect of the right of expression and media. As to the dismissal of some journalists and halting of printing of some newspapers, it is worth mentioning that the press institutions in the Sudan are privately owned companies, and disputes which might lead to dismissal of a journalist, or financial restraints which might hinder publication are matters that only concern the owners of such institution, and could not be attributed to any form of intervention by the authorities. Concerning Al Jazeera TV, the issue is currently under consideration by a committee established by the Transitional Military Council.

34. It is true that shutting down of the internet would have a negative impact and inconvenience upon all; however the decision made to block the service was to prevent a greater harm (namely threat to national security) for a lesser one, as perceived by the official authorities. The shutdown was total only with respect to mobile data net and did not cover all the other devices. The internet service was restored by the end of June. Before that, a number of individuals filed petitions to the court challenging the decision and claiming damages. The court made a provisional order to the internet service providers to restore the internet service pending consideration of the claims, and the service gradually started to reconnect. The proceedings in respect of those who insisted on claims for compensations persist before the court.

Women's rights

Paragraphs 72-76

35. Participation of the Sudanese women in public life is old in time and they were not in longstanding deprivation of life as expressed in the draft report. In 1964 the first woman in the region elected to parliament was a Sudanese (Ms. Fatima A. Ibrahim), preceding by 7 years the recognition of women's right to vote in general elections in certain Western European countries. Over 34% of membership of parliament in the former National Assembly was women. The first woman who occupied a judicial post in Africa was a Sudanese (Justice Ehsan Fakhri, who was promoted to Supreme Court judge in 1976). The first Sudanese women society was formed in 1943, and the first women club (Association of Intellectual Girls) was established in 1947. Participation of women in the recent protests was unprecedented.

36. The recent events in the Sudan evoked enormous quantity of rumors and fabricated news, notably through social media. The draft report seemed to rely on such sources in a number of its paragraphs. Admittedly there had been human rights violations and challenges associated to those events, and the definite will of the State to address them exists, via investigation, prosecution, reparation and rehabilitation. Allegations of dozens of instances of rape and gang-rape were totally false. The statement in paragraph 76 that 5000 female vendors had been subjected to sexual violence and abuses is an extremely aggravated story, as no reasonable thinking could imagine the presence of such huge number of women who sell commodities in such a very limited area of the sit-in. Not only that, but casting the assumption that other cases of rape and sexual violence went unreported! It would have been more adequate to verify that the allegations combined with numbers have fully been reported.

Human rights situation in Darfur

Paragraphs 77 – 80

37. The draft report adduces that “across Darfur, civilians continued to be subjected to killings, assaults, abductions, sexual violence and arbitrary arrests and detentions”, without mentioning a single instance as an example.

38. Calling by the Independent Expert for continued presence of UNAMID in a civilian aspect in Darfur is a political overture and is ultra vires his mandate. UNAMID is an ad hoc UN-AU mission which carried out its functions with their successes and failures, and the UN Security Council is now convinced that the Mission has exhausted its purpose, and should exit by June 2020.

National accountability mechanisms

Paragraphs 81 – 85

39. The fact-finding committee chaired by the former Minister of Justice established in January 2019, had started its work in investigating human right violation associated with the protests. In February former President Al-Bashir dissolved the Council of Ministers, and since the committee included several State Ministers in its membership, it became unable to resume its functions, until the removal of Al-Bashir.

40. The national investigation committee referred to in paragraph 84 of the IE draft report concluded its work and disclosed its findings in a press conference, as mentioned in paragraphs 23 – 25 above. As the issue is being dealt with at the national level by national mechanisms and institutions, the need for foreign intervention in investigation desists.

41. The case against former President Al-Bashir was referred to trial under the first counts of charges, while other charges are undergoing investigation. Former National Congress Party leaders are still under investigation.

Technical assistance and capacity building

Paragraphs 86 – 92

42. Invoking UNSC resolution 2428 (2018) in paragraph 86 of the draft report amounts to circumventing HRC resolution 39/22 which called for engagement in talks between the Government and OHCHR on the modalities and mandate of the proposed country office in the Sudan, which is, by insinuation, understood that the country office should be of full mandate. The UN Security Council is not the competent body to decide on the establishment and nature of such office⁴. Further, in that resolution the Security Council was addressing a specific part of the Sudan, i.e. Darfur. It is always envisaged that a mandate-holder, who is appointed by the Human Rights Council, should limit his/her activities and reports within the ambit determined by the Council.

43. The efforts exerted by UNAMID in technical cooperation and capacity enhancement are appreciated. Devoting the whole paragraphs under the sub-title “Technical assistance and capacity building” in the draft report to activities of UNAMID is a clear indication that contribution of international community and potential partners in this respect remained to be insignificant, despite the lapse of 8 years since the Sudan situation has been considered under HRC Agenda Item 10.

F. Conclusion

44. The recommendations concluded to by the Independent Expert to the “Sudan Authorities” in paragraph 98 of the draft report were almost already implemented or under the course of implementation, as follows:

(a) On 29 July 2019 the Head of the Transitional Military Council issued a Presidential Decree for the restructure of the National Intelligence and Security Service, in a move to amend the 2010 Act by limiting NISS powers provided for in that Act, particularly in respect to search and arrest. The Decree changed the name of NISS to be “General Intelligence Service (GIS)”. Article 36 of the Constitutional Document restricts GIS functions to compilation and analysis of information, and presenting the same to the competent bodies.

⁴ See UN Charter, Chapters V, VI, VII, VIII and XII.

(b) The findings of the Attorney General committee of investigation were made public, as described in the foregoing paragraphs. The functions of other preceding committees were vested in the public prosecution offices by an order formerly the Attorney General. The proceedings undertaken by the public prosecution are accessible to the lawyers and representative of the parties to the case, and those referred to trial are heard in public court sittings. Investigations will be replenished by the national independent committee provided for in the Constitutional Document.

(c) Sudan remains committed and ready to resume discussion with OHCHR in respect of the proposed country office as early as convenient. The nature of mandate of the office is a matter of negotiation, pursuant to HRC resolution 39/22. Article 67 (h) of the Constitutional Document provides for facilitation of the OHCHR delegate mission to work in the Sudan.

(d) Realizing development, fighting poverty and addressing the economic crisis were the key objectives of the Sudanese Revolution, and achievement of such objectives will be top priority of the new era. Clause 18 of the Political Accord provides that the Cabinet shall adopt an urgent economic, financial and humanitarian plan to address challenges ensuing from the current economic, financial and humanitarian situations.

(e) Transfer of power to a civilian-led authority is undisputed, and is one of the most popular slogans of the Revolution. The signatories to the Constitutional Document set out a timetable for the transition to civilian government which is scheduled to complete by the end of August 2019.
