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HUMAN RIGHTS COMMITTEE
Ninetieth session
Geneva, 9-27 July 2007

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES

UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Sudan

1. The Human Rights Committee considered the third periodic report of Sudan (CCPR/C/SDN/3) at its 2458th, 2459th and 2460th meetings on 11 and 12 July (CCPR/C/SR.2458, 2459 and 2460). It adopted the following concluding observations at its 2479th meeting (CCPR/C/SR.2479) on 26 July 2007.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Sudan, albeit nine years late, and the opportunity thus offered to resume its dialogue with the State party. The Committee invites the State party to respect the schedule it has established for the submission of reports. It is grateful to the Government for the additional documents supplied before, during and after consideration of the report. It regrets, however, that the State party did not provide answers to each of the questions set out in the list of issues and that, partly for lack of time, the answers given to some questions were not detailed or specific.

B. Positive aspects

3. The Committee welcomes the signature of the Comprehensive Peace Agreement on 9 January 2005, which contributed significantly to ending multiple, serious violations of the guarantees provided under the Covenant.
4. The Committee welcomes the adoption of the Interim National Constitution of 9 July 2005, which provides for safeguards of fundamental rights and describes the process for adapting Sudanese legislation to these new provisions. The Committee also welcomes the adoption of the Interim Constitution of Southern Sudan adopted on 6 December 2005.
5. The Committee welcomes the signature of the Darfur Peace Agreement on 5 May 2006, and the continued efforts to find sustainable peace in Darfur.
6. The Committee takes note with interest of the new 2007 Law on political parties.

C. Principal subjects of concern and recommendations

7. The Committee notes the efforts made by the State party on the issue of self-determination in Southern Sudan. It takes note in particular of article 222 of the Interim National Constitution, which provides for a referendum on self-determination. The Committee regrets, however, the lack of information from the State party concerning the human rights situation in Southern Sudan.

The State party should deploy all the human and material resources required to hold within the prescribed time limit the referendum provided for by the Interim National Constitution. The State party should ensure that its next periodic report covers the human rights situation throughout Sudan, including Southern Sudan.

8. The Committee notes that pursuant to article 27 of the Interim National Constitution of 2005, the Covenant is binding and may be invoked as a constitutional text. It regrets, however, that the rights protected by the Covenant have not been fully incorporated into domestic law, and that the Covenant has not been sufficiently well publicized to be easily invoked before the courts and administrative authorities. (art. 2 of the Covenant)

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant. It should in particular ensure that remedies are available to safeguard the exercise of those rights. The Covenant should be made known to the general public, and in particular to law enforcement personnel.

9. Despite the information provided by the State party about prosecutions of a number of perpetrators of human rights violations, the Committee notes with concern, particularly in the context of armed conflict, that widespread and systematic serious human rights violations, including murder, rape, forced displacement and attacks against the civil population, have been and continue to be committed with total impunity throughout Sudan and particularly in Darfur. It is particularly concerned at the immunity provided for in Sudanese law and untransparent procedure for waiving immunity in the event of criminal proceedings against State agents. It also

notes that the State party has provided few examples of serious crimes that have been prosecuted and punished, whether by criminal courts or courts set up to investigate violations in Darfur. The Committee continues to be concerned at Decree No. 114 of 11 June 2006 relating to a general amnesty and its scope of application. While also taking note of the information provided by the delegation, the Committee remains concerned with respect to the State party's ability to prosecute and punish war crimes or crimes against humanity committed in Darfur. (art. 2, 3, 6, 7 and 12 of the Covenant)

The State party should:

- (a) Take all appropriate measures to guarantee that State agents, including all security forces, and militia under State control put an end to such violations immediately;**
- (b) Ensure that State bodies and agents afford the protection needed by victims of serious violations committed by third parties;**
- (c) Take all appropriate steps, including cooperation with the International Criminal Court, to ensure that all human rights violations brought to its attention are investigated, and that those responsible for such violations, including State agents and militia members, are prosecuted at national or international level;**
- (d) Ensure that no financial support or materiel is channelled to militias that engage in ethnic cleansing or the deliberate targeting of civilians;**
- (e) Undertake to abolish all immunity in the new legislation governing the police, armed forces and national security forces;**
- (f) Ensure that no amnesty is granted to anyone believed to have committed, or to be committing, crimes of a particularly serious nature;**
- (g) Ensure that victims of serious violations of human rights are guaranteed an appropriate reparation.**

10. The Committee notes with concern the scale of values applied to punishment in the State party's legislation. It considers that corporal punishment including flogging and amputation is inhuman and degrading. The Committee also notes with concern the continued practice of, and legislation concerning, *diya* (blood money) which may be paid in exchange for less severe punishment (arts. 2, 7, 10 and 14 of the Covenant).

The State party should abolish all forms of punishment that are in breach of articles 7 and 10 of the Covenant. It should also review the practice of the payment of *diya* (blood money) for murder and similar crimes. The State party should also ensure that sentences are proportional to the crimes and offences committed.

11. While taking note of the work of Sudan's national commission of inquiry, the Committee notes with concern that the authorities have not carried out any exhaustive, independent appraisal

of serious violations of human rights committed in the territory of Sudan and in particular in Darfur, and that few victims have received reparations. (arts. 2, 6 and 7).

The State party should:

(a) Undertake to ensure, in all circumstances, that the victims of violations of human rights are guaranteed effective remedy, which is implemented in practice, including the right to as full compensation and reparations as possible;

(b) Provide the human and financial resources required for the efficient functioning of the Sudanese legal system, particularly the special courts and tribunals established to try crimes committed in Sudan;

12. The Committee notes with concern the insufficient information provided on the national human rights commissions, in particular the Southern Sudan Human Rights Commission.

The State party should speed up the process of establishing independent human rights commissions in Sudan and Southern Sudan, including ensuring that they are given appropriate resources and powers.

13. While noting the State party's willingness to implement legislative reform and give thought to the condition of women in Sudan, the Committee notes with concern a persistent pattern of discrimination against women in legislation, particularly in the area of marriage and divorce (arts. 3, 23, 25 and 26 of the Covenant).

The State party should:

(a) Speed up the adaptation of its laws governing the family and personal status to articles 3, 23 and 26 of the Covenant, in particular with regard the institution of the *wali* (guardian) and the rules on marriage and divorce.

(b) Step up its efforts to raise popular awareness of women's rights, promote further women's participation in public affairs and ensure their education and access to employment. In its next report, the State party should inform the Committee what action it has taken in this area and what results it has achieved.

14. While taking note of steps taken to reduce violence against women in Sudan, the Committee continues to be concerned that violence against women persists - in particular, the many cases of rape in Darfur. It notes with concern the information from the State party that women do not trust the police, and that women are reticent to report rape to which they have been subjected, which would explain in part the small number of rapes that are reported (arts. 2, 6, and 7 of the Covenant).

The State party should:

(a) Step up its efforts to raise awareness of, and educate the police and general public about, violence against women.

(b) Undertake to review its legislation, in particular articles 145 and 149 of the 1991 Criminal Code, so that women are not deterred from reporting rapes by fears that their claims will be associated with the crime of adultery.

(c) Ensure implementation of the Action Plan to combat violence against women in Darfur, and its extension to the rest of the country.

15. While noting that the State party has made efforts to end and criminalize female genital mutilation, the Committee remains concerned that this assault on human dignity, which in Sudan occurs in one of its most serious forms (type III - infibulation), persists. (arts 3, 7 and 24 of the Covenant)

The State party should:

(a) Prohibit in its legislation the practice of female genital mutilation, and step up its efforts to completely eradicate the practice, in particular in communities where the practice remains widespread.

(b) Ensure that the perpetrators of female genital mutilation are brought to justice.

16. The Committee notes with concern reports suggesting that torture and cruel, inhuman or degrading treatment are widespread in the State party, especially in prisons, and is concerned that such abuse is carried out in particular by law-enforcement officers. Moreover, these law-enforcement officers and their accomplices reportedly very often go unpunished. The Committee regrets that there is no definition of torture in Sudan's Criminal Code. (arts. 2, 6, and 7 of the Covenant)

The State party should:

(a) Guarantee that all allegations of torture or cruel, inhuman or degrading treatment are investigated by an independent body, and that the perpetrators of such acts are prosecuted and punished as appropriate and that victims are granted effective reparation.

(b) Improve the training of State agents in this regard, in order to ensure that all persons who are arrested or held in custody are informed of their rights.

(c) In its next report, provide detailed information on complaints filed in connection with such acts, the number of persons prosecuted and convicted, including members of national security forces, and the reparations paid to victims.

(d) Provide a legal definition of torture in its legislation, in accordance with article 7 of the Covenant.

17. While noting efforts by the State party to eradicate the practice of forced recruitment of child soldiers, including the establishment of disarmament, demobilization and reintegration commissions, and the reference made by the State party to the disarmament, demobilization and reintegration commission website, the Committee remains concerned at the small number of children who have actually been demobilized. It also notes the statement by the State party that

in the absence of a comprehensive civil register it is difficult to determine the exact ages of the people serving in its armed forces. (arts. 8 and 24 of the Covenant)

The State party should put an end to all recruitment and use of child soldiers, and provide disarmament, demobilization and reintegration commissions with the human and financial resources they need to fulfil their mandates, in order to ensure the expertise required to demobilize child soldiers. The State party should also speed up its programme for the establishment of a civil register, and ensure that all births are registered throughout the country.

18. While noting efforts by the State party to eradicate the practice of abducting women and children and secure the return of abductees, in the light of reports from non-governmental sources and the State party of large numbers of abductions the Committee remains concerned at the small numbers of people who are traced. The Committee also takes note of the explanations put forward regarding the role and responsibility of tribes in the matter. (arts. 8 and 24 of the Covenant)

The State party should put a stop to all forms of slavery and abduction in its territory and prosecute those engaging in such practices. It should make available to the Committee for the Elimination of Abduction of Women and Children the human and financial resources it needs to fulfill its mandate. The State party should also provide abductees with assistance in settling back into their families and communities. It enjoins the State party to hold the tribes more accountable, and to take forceful action against tribes that continue to engage in abduction.

19. The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including embezzlement by officials, robbery with violence and drug trafficking, as well as practices which should not be criminalised such as committing a third homosexual act and illicit sex, is incompatible with article 6 of the Covenant. (arts. 6 and 7 of the Covenant)

The State party should ensure that the death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes. Any imposition of the death penalty should comply with the requirements of article 7. In its next report, the State party is asked to furnish information on the number of executions which have taken place and the type of offence for which the death penalty has been imposed.

20. The Committee notes with concern that although the Interim National Constitution prohibits the imposition of the death penalty on those under the age of 18, exceptionally in Northern Sudan the death penalty can in fact be imposed on minors. While it takes note of the State party's reply that offenders under the age of 18 are subjected to protection and re-education measures, it emphasises that the Constitutional Court has been seized, by a person claiming to be a minor, with a case challenging a death sentence against the individual concerned. It repeats that the Covenant does not allow the death penalty to be imposed for crimes committed by

individuals aged under 18, and permits no derogation from that article (arts. 2, 4 and 6 of the Covenant)

In keeping with article 6 of the Covenant, the State party should guarantee that the death penalty will not be applied to persons aged under 18 years.

21. The Committee expresses concern at the permitted legal duration of detention in police custody (*garde à vue*), which can be prolonged to as much as six months and, in practice, beyond. It also notes with concern that in actual fact the right of the detainee to have access to a lawyer, a doctor and family members, and to be tried within a reasonable time, is often not respected. (arts. 7 and 9 of the Covenant)

The State party should ensure that the permitted legal duration of detention in police custody (*garde à vue*) is restricted by the Code of Criminal Procedure in accordance with the Covenant, and guarantee that that permitted duration will be respected in practice. The right of detainees to have access to a lawyer, a doctor and family members should be laid down in the Code of Criminal Procedure. In its next report, the State party is invited to supply detailed information on the steps it has taken to uphold the rights of detainees in practice, and on the methods employed to monitor conditions in detention.

22. Despite assurances from the State party, the Committee voices concern at the many reports from non-governmental sources of “ghost houses” and clandestine detention centers. Following the events of 13 June 2007, 13 people were arrested during a protest against the construction of the Kajbar dam and four of them were held incommunicado for a week; to this day the whereabouts in detention of two of these people is unknown. (art. 9 of the Covenant)

The State party should ensure that all detention facilities operate under the supervision of the Prisons Administration, and uphold all the provisions of article 9 of the Covenant.

23. The Committee notes the steps taken to facilitate humanitarian assistance and the State party’s expressed willingness to respect the voluntary return of internally displaced persons. It remains concerned at the absence of measures to ensure the protection of displaced persons and humanitarian workers, and the lack of resources made available to allow the displaced to return home under acceptable conditions. (art. 12 of the Covenant)

In keeping with all international standards governing the matter, including the Guiding Principles on Internal Displacement, the State party should:

- (a) Take such steps as are necessary to afford displaced persons, in particular women in and around camps, greater protection;**
- (b) Take appropriate steps to ensure the safety of humanitarian workers and their vehicles and supplies, and facilitate their access to the beneficiaries of humanitarian aid;**

(c) Not resort to forced relocation of displaced persons living in camps or unsafe areas without consulting them beforehand and offering acceptable alternatives;

(d) Redouble its efforts to guarantee the safe, voluntary return of displaced persons.

24. The Committee, while taking note of the 1974 Asylum Act, is concerned that certain asylum-seekers cannot access asylum procedures thus exposing them to the risk of being deported in violation of the principle of non-refoulement as well as about reports that asylum-seekers and refugees trying to obtain or renew identity documents faced numerous obstacles. (arts. 7 and 12 of the Covenant)

The State party should, in order to avoid any instances of refoulement, ensure full access to asylum procedures for all asylum seekers in all parts of Sudan as well as to documentation for asylum-seekers and refugees.

25. The Committee is concerned that confessions obtained in violation of article 7 of the Covenant are not explicitly proscribed by the law of the State party, and that such confessions have been used in some inquiries and have culminated in death sentences. (art. 7 et 14 of the Covenant)

Besides banning torture outright, the State party should prohibit the use of confessions obtained in violation of article 7 of the Covenant in any Sudanese court. In its next report, the State party should also indicate the number of appeals for review of conviction resulting from an unfair trial or the use of a confession obtained under torture.

26. The Committee is concerned that apostasy is a crime under the 1991 Penal Code. (art. 18 of the Covenant)

The State party should abolish the crime of apostasy, which is incompatible with article 18 of the Covenant.

27. While taking note of legislative reforms allowing greater press freedom, and the fact that article 130 of the Code of Criminal Procedure has not applied to the press or reporters since April 2007, the Committee nevertheless notes with concern that many reporters have been subject to pressure, intimidation or aggression, have been deprived of their liberty or have suffered ill-treatment at the hands of the State party's authorities. (art. 19 of the Covenant)

The State party should guarantee the exercise of freedom of the press and ensure that reporters are protected in conformity with article 19 of the Covenant.

28. While taking note of legislative reforms, the Committee nevertheless notes with concern that many demonstrations have been violently dispersed and a number of people have suffered

through the excessive use of force by State employees. The Committee notes in this connection information from the State party indicating that several people died when security forces recently dispersed two demonstrations. (arts. 6 and 21 of the Covenant)

The State party should respect the right to express opinions and should protect peaceful demonstration. It should ensure that any restriction on the exercise of the right to demonstrate is compatible with article 21 of the Covenant, and that inquiries are mounted into the excessive use of force when demonstrations are dispersed.

29. The Committee is troubled that many human rights organizations and defenders are unable to operate freely and suffer frequent harassment and intimidation including arbitrary detention at the hands of State employees. The Committee remains concerned about the controversy over the 2006 Act regulating Humanitarian and Voluntary Action. (arts. 9, 21 and 22 of the Covenant)

The State party should respect and protect the activities of human rights organizations and defenders. It should ensure that any governmental regulation is compatible with articles 21 and 22 of the Covenant, and make sure that the 2006 Act is consistent with the Covenant.

30. The Committee has set 26 July 2010 as the due date for the next periodic report of Sudan. It requests that the text of the present report and these concluding observations be made public and disseminated adequately and promptly throughout Sudan. It also requests that the next periodic report be made available to civil society and to non-governmental organizations operating in the State party.

31. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit information within one year on the follow-up given to the Committee's recommendations contained in paragraphs 9, 11 and 17. The Committee requests the State party to provide information in its next report on the Committee's other recommendations and on the application of the Covenant as a whole.
