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HUMAN RIGHTS COMMITTEE

Ninetieth session

SUMMARY RECORD OF THE 2459th MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 12 July 2007, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the Sudan (continued) (CCPR/C/SDN/3; CCPR/C/SDN/Q/3)

1. At the invitation of the Chairperson, the members of the delegation of the Sudan resumed their places at the Committee table.
2. Mr. ZAMRAWY (Sudan), responding to question 14 of the list of issues (CCPR/C/SDN/Q/3), said that abduction was an ancient tribal practice observed in the context of local conflicts. Allowing abducted persons to return to their villages and families led to tribal reconciliation and settlement of conflicts. As a result of the protracted civil war in southern Sudan and clashes between tribes in border areas, abductions had escalated. His Government, aware of the threat posed to victims and desirous of creating an environment conducive to tribal peace in those areas, had established the Committee for the Eradication of Abduction of Women and Children (CEAWC) in May 1999. That Committee was entrusted with the task of searching for abductees and documenting their cases, in order to take the necessary legal measures to return them to their families. It was chaired by the former Under-Secretary for Justice and comprised representatives of government institutions, civil society organizations, women's unions and tribal chiefs. The Committee, in particular its government representatives, had initially expressed the wish to take legal measures against abductors, but the tribal chiefs had recommended that such measures should be taken only as a last resort. They considered that emphasis should be placed on dialogue, for fear that legal action might prompt reprisals against the victims and removal of evidence of any crime committed. In 2002, the role and resources of the Committee had been strengthened and its membership expanded to include a number of NGOs and international organizations.
3. Between 1999 and 2004, the CEAWC had documented 1,842 cases of abduction in regions inhabited by tribes and had secured the return of 1,496 abductees to their families. Between March 2004 and November 2006, 11,237 cases had been documented. That increase could be attributed to the signing of a Comprehensive Peace Agreement facilitating movement within the country, but also encouraging more victims to report their abduction to the local authorities. During that period, the CEAWC had secured the return of 3,398 abductees, and its efforts were continuing. As the Peace Agreement had facilitated movement around the country in search of abductors, the incidence of the problem was starting to decline.
4. The penalties for such practices were clearly defined in the Criminal Code of 1991: enticement (art. 161) was punishable by 7 years' imprisonment and a possible additional fine or compensation for the victim; abduction (art. 162) was punishable by up to 10 years' imprisonment and/or a fine; slavery (art. 163) by up to 1 year's imprisonment; and unlawful custody (art. 164) by up to 3 months' imprisonment and/or a fine.
5. Mr. MONIM OSMAN (Sudan), replying to question 15, stressed that the Sudanese armed forces did not have children in their ranks. The minimum legal age of recruitment was 18 years. The issue had emerged following the Comprehensive Peace Agreement, when many of the warring factions in southern Sudan, such as the "friendly forces", had joined the Sudanese armed forces. Those forces included many children, either directly taking part in military operations or

performing tasks in support of the armed forces. The ongoing war in Darfur had led to similar phenomena involving the participation of children. At the beginning of the conflict, in particular, some members of the warring factions would break into displaced persons' camps, notably refugee camps in Chad, to abduct children and recruit them as soldiers. As a result of the Abuja Agreement and the Comprehensive Peace Agreement, providing for the disarmament and demobilization of children and their reintegration into their communities after the advent of peace, two disarmament authorities had been set up - the Disarmament, Demobilization and Reintegration (DDR) authority, in northern Sudan, and another authority in southern Sudan, in accordance with a Republican Decree of 2006. The DDR authority, composed of military personnel and representatives of several government ministries, had estimated the number of children under 18 involved in military operations at 7,000, including 3,000 recruited by "friendly forces".

6. UNICEF was involved in the child demobilization and social reintegration process, and contacts were being established with the International Committee of the Red Cross delegation in Khartoum to include it in the process, particularly in the effort to return child recruits to their families. In fact, a number of children had already been returned to their respective provinces: 24 children in Gadarif, 16 in Khartoum, and others in Darfur and eastern Sudan. The DDR authority had organized awareness-raising workshops for the various warring parties that had signed the peace agreements, stressing that the recruitment of children was a violation of human rights and the principles of humanitarian law, and constituted a war crime. Workshops had also been held for information officers in the most affected regions. An important meeting had been organized between the leaders of the DDR authority and some of the tribal chiefs in Darfur, with a view to moving the process forward.

7. Numerous problems nevertheless remained, mainly due to the ongoing armed conflict in Darfur, where tribes refused to discuss child disarmament. Although the continuing clashes between factions in southern Sudan constituted a major obstacle to the process, the DDR authority had achieved significant results. The late arrival of the Eastern Forces from Eritrea to the Sudan had delayed surveys on child recruitment in southern Sudan, thus preventing effective follow-up of the situation. He reiterated, however, his Government's determination to put an end to the problem of child recruitment.

8. Mr. AMOR expressed his appreciation to the Sudanese delegation for the very useful statistics provided in its written replies and its references to implementation of the Comprehensive Peace Agreement and the Political Parties Act. He commended the important developments in the area of human rights in the Sudan since the submission of its second periodic report in 1997, including efforts to achieve peace in the south and to develop the Constitution. Important efforts had also been made with regard to the protection of women, although much remained to be done. Assaults by police and armed forces, particularly in Darfur, also required forthright action. Dialogue had started on ways in which the Covenant might be implemented with regard to the role of the judiciary, the abduction of women and children, and the recruitment of children into the army.

9. Referring to question 1, he called for further clarification of certain constitutional and legal aspects. He asked whether the Covenant had constitutional value, since the delegation had stated that Covenant articles had been invoked before regular courts and the Constitutional Court, pursuant to article 27 of the Constitution. In fact, since an Interim Constitution was currently in

force, he wondered whether a revision of the Constitution could be envisaged to bring it into line with the Covenant. It could at the same time draw attention to aspects of domestic legislation relating, inter alia, to the application of Islamic sanctions, the status of personnel and torture. Were there any internal committees within the Ministry of Justice that were seeking to make the Constitution compatible with the Covenant?

10. Turning to question 4, he referred to the serious crimes committed by all the parties involved in Darfur and the investigations pertaining thereto. The limits of those investigations had become clearly apparent. He asked the delegation to provide more details concerning violations against women, including cases that had been neglected or not investigated. Indeed, the question arose whether the Sudan had the judicial and material capacity to combat those atrocities. He requested clarification in the light of frequent assertions that victims or witnesses often avoided lodging a complaint or testifying for fear of the consequences.

11. While noting that a genuine peace process was under way (question 6), he wondered whether the measures taken, including the compilation of statistics, would be sufficient to enable the referendum mentioned in article 222 of the Interim Constitution to be held within the envisaged time frame.

12. Violence against women was a daily occurrence in Darfur and, according to the delegation itself, the victims distrusted the Sudanese police force and were afraid to report assaults. Some individuals suspected of involvement in acts of violence against women had apparently been granted immunity from prosecution. He wondered whether such a worrying situation could be attributed only to women's lack of legal protection or also to society's tendency to see women as inferior to men, an attitude based upon tradition and religious belief. It was every State's duty to change such attitudes and ensure that members of both sexes enjoyed equal rights, including the right to protection from violence. He asked if there was a genuine cultural and intellectual movement in the Sudan to bring about social change of that kind.

13. He recognized that direct attacks on religious and cultural beliefs could be counterproductive, as they often led to protests rather than remedies. However, it must be stated clearly that legal obstacles alone were not preventing women from enjoying full protection. He requested details of any enactments that discriminated against women.

14. The Sudanese Government had demonstrated its political will to reform its legislation and bring it into line with the Covenant. It was therefore important for the Committee and the Sudanese delegation to engage in an open dialogue based on comprehensive explanations.

15. Ms. WEDGWOOD noted that, in the statistics provided by the State party on complaints lodged, proceedings, convictions and sentences passed on members of the police and security forces, no mention was made of cases involving senior officers. In view of the internationally accepted doctrine of command responsibility, she found that puzzling. She asked whether the Government was investigating or intended to investigate any cases involving senior officers.

16. It appeared that the Minister of the Interior had unique powers with regard to the immunity of criminal suspects. That gave too much power to one member of the Government and she wished to know if there were plans to make the relevant process more transparent.

17. She asked for a clarification of the practice of diyya, so that the Committee could assess the balance struck between national or local tradition and compliance with international humanitarian law, particularly the Covenant. She felt that the question of justice in cases of human rights violations went beyond private settlements and was a public matter.
18. She urged the Government to act responsibly and prevent reprisals in Darfur following the signing of the peace agreements. She asked what was preventing the Special Criminal Court on the Events in Darfur from holding the trials it was set up to hear. The Sudan's duty to investigate the events in Darfur had been further emphasized by Security Council resolution 1593 (2005) referring the situation there to the Prosecutor of the International Criminal Court (ICC).
19. Under international law it was illegal for States to fund or provide materiel for destructive acts of warfare that targeted civilian populations. There were reports not only that the Sudanese Government had done so but also that the Sudanese armed forces had been involved directly and indirectly in such attacks. She called on the delegation to comment on allegations of government support for the illegal acts.
20. It was incumbent on all Members of the United Nations, whether or not they recognized the ICC, to ensure that all witnesses giving evidence of events considered by the Court could be safely interviewed. Moreover, any members of the Sudanese Government accused of serious acts committed in Darfur should be relieved of their ministerial duties so that their involvement could be examined. She was referring in particular to the alleged responsibility of Mr. Ahmed Haroun, the current Minister for Humanitarian Affairs.
21. Ms. CHANET said that, in view of the very serious human rights violations committed in Darfur, the Sudan needed not only the will to bring the perpetrators to justice but also the legal and practical capacity to do so. She recalled that the Sudanese Government had dismissed as political the Security Council resolution referring the situation in Darfur to the ICC Prosecutor. Yet the Sudanese authorities themselves had admitted that the country's courts were unable to cope. Apparently, large numbers of individuals had been indicted but she wished to know the exact numbers of those who had been tried and convicted by the Sudanese courts, including the Special Criminal Court on the Events in Darfur. She asked the delegation to comment on the fact that, in a 2006 report by the Secretary-General of the United Nations, the Sudanese courts set up to hear Darfur cases had been described as ineffective. She asked for details of any enactments under which suspects could be tried for genocide, war crimes or crimes against humanity. What procedures did the courts follow and were individuals' rights under the Covenant guaranteed?
22. Turning to the practice of diyya, she asked how many of the crimes involved members of the police and armed forces; such involvement would be particularly inappropriate.
23. Another example of the Government's legal and material inability to guarantee proper justice in cases of the violation of human rights involved the ambiguity of the amnesty legislation. A United Nations report referred to an amicable settlement under that legislation in the case of a 13-year-old child who had been tortured to death in northern Darfur. The child's family had received financial compensation and no one had faced trial. She invited the delegation to comment.

24. She welcomed the change in the law enabling women to pass on Sudanese nationality to their children. She nevertheless sought clarification of the fact that, while there were no longer restrictions on the travel of women, married women or female minors were required to inform their husband or guardian. She wondered whether women still required the authorization of their father or uncle to marry and why it was far more difficult for a woman to obtain a divorce than for a man. The Committee would be interested to hear the delegation's comments on the high rate of illiteracy among Sudanese women, despite the decrease in recent years. The Sudanese Government had acknowledged that female genital mutilation was unacceptable but, in addition to prohibiting the practice, the Government needed to raise awareness among the population at large. Albeit fewer than in the past, a large number of young girls continued to be mutilated, often being subjected to type III female genital mutilation under the World Health Organization's classification. She called on the Sudanese Government to eradicate that disgraceful practice.

25. Mr. KÄLIN said that there was widespread concern at the slow implementation of measures to demobilize all children in the Sudan. Under the DDR programme, workshops had been held, but he wondered how the Government ensured that officials working on the ground had experience of child protection.

26. The State party's report mainly focused on the complex causes of the conflict in Darfur and contained scant information about the militia. Yet there were reports of tens or hundreds of thousands of deaths as a direct or indirect consequence of the Darfur conflict, along with large-scale destruction and huge numbers of displaced persons. There were allegations that government forces had in some way supported the pro-government militia or had stood by when they had attacked civilians. The Committee wished to be told of the findings of any official investigations into the direct or indirect role played by government supporters in the conflict. The delegation should explain how that role could be reconciled with a State's duty to protect all citizens. He wished to know what the Government was doing to prevent a recurrence of the events that had taken place in Darfur. He asked what the Government had done, was doing or intended to do to disarm the militia. It has set up commissions and workshops but progress towards disarmament on the ground was slow. He asked the delegation to explain.

27. Mr. O'FLAHERTY welcomed the initiative taken by the Government in including provisions banning torture in the Interim Constitution. The Government also appeared to be ready to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without reservations other than those relating to Islamic sharia. He hoped it would do so soon. The Government's commitment to prohibit torture needed to be integrated into domestic law, in particular in legislation governing the activities of the police and armed forces. That process had so far proved slow. In her 2006 report, the Special Rapporteur on the situation of human rights in the Sudan had urged the Government to make faster progress towards amending its legislation in that regard. Since the definition of torture contained in the Covenant and that in the Convention against Torture differed slightly in scope, the definition adopted in Sudanese legislation should cover both instruments.

28. The State party should indicate whether the planned legislative reforms would involve the repeal of the provisions setting forth the immunity regime currently in place, which was incompatible with the prohibition of torture contained in the Interim Constitution. In particular,

section 26 of the 1999 Police Forces Act, Criminal Decree No. 3/1995, the relevant provisions of the 1986 Trial of Accused Persons Subject to the People's Armed Forces Act and the relevant provisions of the 1999 National Security Act should be repealed.

29. Although the State party had affirmed the effectiveness of domestic courts in handling allegations of torture, statistics revealed that few suspected perpetrators were prosecuted. Also, the penalties imposed for murder and manslaughter resulting from torture appeared relatively light, often involving short-term imprisonment or a fine. Given the seriousness of such crimes, he wondered how the current system of penalties was compatible with the Covenant.

30. Various sources, including reports by the Special Rapporteur on the situation of human rights in the Sudan, alleged a persistent pattern of torture and abuse of detainees by members of the security forces in the State party. Recent NGO reports had further alleged detention and ill-treatment of journalists, inter alia in connection with protests against the construction of the Kajbar dam. He asked whether the State party was taking all necessary measures to eradicate torture and prosecute the perpetrators pending the introduction of relevant legislation.

31. He requested additional information about the number of abducted persons in the Sudan. According to the State party report and other sources, there were some 8,000 recorded cases, although the actual number appeared to be much higher. A media report of February 2006 had suggested that there might be at least 40,000 abductees in northern Sudan. The Committee for the Eradication of Abduction of Women and Children had come under heavy criticism and the Special Rapporteur on the situation of human rights in the Sudan, in 2003, had cited sources describing it as "massively dysfunctional". At the time, the Special Rapporteur had complained about a lack of government support for the Committee's work. The delegation should comment on allegations that the Committee's effectiveness was hampered by a shortage of funds, and that its operational activities had been limited to the West Kordofan and South Darfur regions as from 2002, although the problem extended well beyond.

32. Sir Nigel RODLEY said that the progress made towards peace and possible self-determination of the Darfur region would certainly facilitate the enjoyment of human rights in the long term. However, several issues required urgent attention, including impunity. Judging from the measures described, it was unclear to what extent the Sudanese Government was willing to bring to justice those responsible for war crimes, crimes against humanity and genocide. Most of the few cases cited were not related to the major incidents. He enquired about the status of the proceedings against Ali Kushayb and asked whether investigations had been undertaken concerning the substantial allegations against Ahmed Mohammed Haroun, former Minister of the Interior and current Minister for Humanitarian Affairs.

33. He had been pleased to learn of the State party's commitment - long overdue - to introduce legislative amendments in order to facilitate ratification of the Convention against Torture. However, amending legislation relating to the immunity afforded to public officials, especially national security personnel, or raising statutory limitations was vastly insufficient. Rather, action must be taken to prevent torture. The detention of suspects for periods of up to nine months under executive order, without the possibility of communicating with the outside world if deemed necessary for the purpose of the investigation, opened the door to torture and abuse. The issue required urgent attention in the context of the forthcoming legislative reforms.

34. Any reservations entered by the State party in regard to the definition of torture or any other cruel, inhuman or degrading treatment or punishment on ratification of the Convention against Torture were of no consequence to its obligations arising under the Covenant. As to the State party's interpretation of sharia law, he found it somewhat bewildering to note that slavery and unlawful detention carried relatively light penalties involving short-term imprisonment or a fine, while adultery, drinking or brewing alcohol, changing one's religion and theft were punishable by flogging, amputation or even death. He certainly did not wish to imply, however, that serious crimes should be punished by death; imposing the death penalty, floggings and similar punishment in the context of human rights protection was highly inappropriate. He was unconvinced that the value scheme reflected in such legislation was compatible with the principles underlying the Covenant. The delegation should provide specific examples where torturers had been sentenced to 3 to 10 years' imprisonment, as provided for in legislation.

35. It appeared that crimes perpetrated by members of the police or armed forces were often settled through payment of blood money. He enquired as to the origin of the often considerable sums of money paid to victims' families and asked what safeguards were in place to ensure that victims were not pressured into accepting blood money. Separate provisions should be adopted for crimes committed by State agents that would normally be subject to the payment of blood money; in such cases, the crime should no longer be treated as a matter to be settled between two families alone.

36. It was regrettable that the Interim Constitution did not reflect international human rights standards. The delegation should explain how Sudanese courts might interpret those provisions of the Covenant that were relevant to the Constitution and State party legislation. The Constitutional Court was currently seized of a case involving the imposition of the death penalty on a minor. It had been suggested that the Court might repeal the sentence on the basis of the Covenant, although the Interim Constitution provided for such a penalty so long as the sentence was executed after the minor had reached the age of 18. He asked the delegation to comment.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

37. Mr. ZAMRAWY (Sudan) explained that the provisions of the Interim Constitution would be reviewed on the basis of the outcome of the referendum on self-determination of southern Sudan. Any changes to the current federal structure of the country resulting from the referendum would need to be reflected in the Constitution. However, none of the amendments would affect constitutional rights and freedoms.

38. Although certain provisions of Sudanese legislation certainly required review, there were no substantive inconsistencies with the Covenant. Flagellation and whipping, for example, were lawful forms of punishment in the Sudan and as such not incompatible with the Covenant.

39. Crimes perpetrated in Darfur were subject to in-depth investigations by the judicial authorities. Special tribunals were only competent to hear very specific cases brought by international and local commissions of inquiry; all cases submitted had been processed. The complex security situation, inadequate infrastructure and mass displacement often made it extremely difficult to locate witnesses and collect data. Also, many crimes were committed in

rebel-controlled areas with limited access for government forces. However, there were no human resource-related impediments to inquiries and judicial proceedings; the Sudan had sufficient lawyers, courts and law enforcements officials to ensure investigation, prosecution and enforcement of sentences.

40. The reluctance of witnesses to testify was mostly due to the security situation. The situation had improved gradually since the signing of the 2005 peace agreement and testimony given to date had made it possible to lay charges in several cases.

41. Tribal conflict resolution and regional customs were employed as means of complementing the existing legal provisions. A number of the cases resolved had helped to create a climate in which victims and witnesses were not afraid to testify, thus minimizing the likelihood that any perpetrators of human rights violations would enjoy impunity.

42. Mr. MONIM OSMAN (Sudan) said that his Government had recently spent some US\$ 150 million on the successful introduction of a common currency in the north, and was currently striving to determine administrative borders.

43. Turning to the situation of women, he said that there was a significant women's movement in his country and a substantial body of legislation protected women's rights. Negotiations were under way to increase the participation of women in elections, both as voters and candidates, including the introduction of a 25 per cent quota of female members of parliament. There were female surgeons, lawyers and judges, and efforts were being made to make provision for adequate maternity leave. Women enjoyed freedom of expression. While the number of violations of women's rights in Darfur had significantly decreased, he urged the international community to provide further assistance in that region.

44. Mr. ZAMRAWY (Sudan) said that if police officers were accused of human rights violations, their superiors were also implicated in the charge. The highest authorities, including the President of the Republic, were subject to the rule of law. Chiefs and their deputies were also punishable if they omitted to take steps to prevent a recurrence of any violations of which they were aware.

45. The majority of people found guilty of manslaughter received the death sentence. According to sharia law, both parties in a legal case had the right to be heard. The families of manslaughter victims could request capital punishment for the perpetrator, or apply for compensation. However, even if a victim's family accepted compensation, the State still required a prison sentence of a minimum of 10 years. The actual length of the sentence was decided at the judge's discretion, depending on the circumstances of the crime.

46. Security Council resolution 1593 (2005) referring the situation in Darfur to the Prosecutor of the ICC was incompatible with human rights since it constituted an act of discrimination between States. He appealed to the Committee to distance itself from that resolution. His Government had stated from the outset that the International Commission of Inquiry into the situation in Darfur had gone beyond its mandate. The Government had, however, remained objective and stated that it would ensure that all criminal acts in the Sudan would be prosecuted

and no individual would enjoy impunity. No one found guilty of torture could be given an amnesty. While the President of the Republic had been pardoned with the aim of maintaining peace, that pardon had not covered crimes against individuals. It had been intended to strengthen trust in the militias and to encourage them to return to peaceful action.

47. Turning to the question of gender equality, he emphasized that all citizens, including women, enjoyed freedom of movement. There were no restrictions on that right. While female genital mutilation was an ingrained social tradition, the Government had clearly outlawed the practice and was continuing its efforts to raise awareness of that issue. The incidence of female genital mutilation was decreasing. Given that there were more women than men working in higher education and schools, the decline was likely to continue.

48. Mr. MONIM OSMAN (Sudan) said that his country had been grateful for assistance from UNICEF and international experts on the demilitarization and social reintegration of child soldiers. Following trials, those found guilty of perpetrating attacks at the beginning of the conflict in Darfur had been prosecuted, and some sentenced to death. Noting that his was the only country that had been required to conduct trials during a conflict, he called on the international community to apply the same principles to the Sudan as it had applied to other States, and allow it to try criminals after the end of the conflict. His Government was striving to find a lasting solution; failing that, a rigorous ceasefire should be imposed as a first step towards peace. It would seem, however, that some States did not support the idea of a ceasefire. After signing the Abuja peace agreement, the Government had established a clear demilitarization plan, which should include all warring factions in Darfur. It was, however, difficult to track down several tribes and persuade them to lay down their arms. His Government had always been willing to cooperate with African Union forces, and was grateful for African Union assistance. He emphasized that the residents of Darfur had never believed that the conflict was a result of government efforts to impose ethnic cleansing. That was clear from the fact that some 1.5 million Darfur residents were currently living in government-run refugee camps under the protection of government troops. The situation in Darfur had improved and the number of violent incidents had significantly decreased.

The meeting rose at 1.05 p.m.