

**Statement of Mohamed Chande Othman, Independent Expert on the situation of
human rights in the Sudan to the Human Rights Council**

17 September 2010

Mr. President, Excellencies, Ladies and Gentlemen

It is an honour for me to address the Human Rights Council and to report on the situation of human rights in the Sudan for the period June 2009 to August 2010.

I will start by presenting my first report to the Council, which covers the period June 2009 to April 2010. This report sums up the findings of my visit to the Sudan from 23 January to 11 February 2010. Unfortunately, due to ill health I was not able to present this report during the 14th session, and have an interactive dialogue with you. I am glad to have an opportunity to do so now. I will then present my second report covering the period May to August 2010 further to Council decision 14/117 which technically extended my mandate to the end of the 15th session.

First report

Turning to my first report, I wish to thank the Government of the Sudan and the Government of Southern Sudan for their support during my visit to Sudan. I was allowed access to all places and institutions I expressed interest in visiting and to all officials whom I expressed the wish to meet. I visited Khartoum, three States of Southern Sudan, all three States of Darfur, and Abyei in the Transitional Area. I had more than 130 meetings with state and local authorities and numerous human rights stakeholders.

General Human Rights Situation

I acknowledge at the outset the considerable progress made in institutional and legislative reforms by the Government of National Unity in accordance with the Comprehensive Peace Agreement of 2005 (the 'CPA'). As a major step towards democratic transformation envisaged under the CPA, key legislations were passed, such as the Child Act, Elections Act, National Human Rights Commission Act and Southern Sudan Referendum Act.

I would also like to commend the Government for taking steps towards the implementation of some of the recommendations made by the Council's Group of Experts on Darfur. I welcome in particular the deployment of more police in Darfur and the training received by law enforcement officials on human rights. I am also encouraged that child and family units and specialized prosecutors for children have been established as part of law enforcement agencies in the country.

In spite of these achievements, I note with concern the lack of progress in other areas. In particular, I am concerned about the long delay in establishing the National Human Rights Commission which leaves a major gap in human rights protection in the Sudan. I am also discouraged by the fact that the new National Security Act of January 2010 did not withdraw arrest and detention powers of the National Security Service (NSS) in line with the information gathering and advisory role envisioned for that Service in the CPA and Interim National Constitution. I also note with concern that the new Act continues to grant National Security personnel immunity from criminal prosecution and civil liability. I urge the Government to continue the process of law reform to conform to international human standards.

I am also deeply concerned about the application of the death penalty in the Sudan. I made reference in my report to instances where the Government has carried out executions in spite of concerns raised about the lack of due process in trial proceedings including allegations of confessions extracted under duress or torture and failure to grant defendants access to legal representation before trial. I continue to strongly urge the Government to ensure that the application of the death penalty occurs in a very strictly defined set of circumstances including guarantees that minimum fair trial standards demanded by Article 14 of the International Covenant on Civil and Political Rights have been fully met.

Elections

Sudan conducted general elections at all levels of government in April, marking an important benchmark in the CPA. I was disappointed that some opposition parties did not participate. In spite of numerous technical and logistical problems, I was encouraged by the fact that voting went ahead peacefully in most places with an important percentage of Sudanese exercising their right to vote. Women and marginalised groups including the disabled and prisoners had full opportunity to exercise their right to vote.

Despite these positive developments, I also noted a number of incidents in the lead up to the elections and during the process itself, where the exercise of political and civil rights was frustrated through harassments, arrests and detentions. I would urge the Government to draw lessons from the whole electoral process in order to ensure that the referendum on Southern Sudan, which is scheduled for January 2011, does not suffer the same technical and logistical flaws. It is equally important that the Government take concrete measures to address the current legal environment which infringes on the exercise of political rights and freedoms. I must also stress the importance of preventing deadly violence in Southern Sudan to ensure an atmosphere conducive for the peaceful and successful conduct of the referendum.

South Sudan

In Southern Sudan, increasing communal violence continues to result in the large loss of lives, particularly among women and children. Tensions between ethnic groups, competition over scarce resources and acts of indiscipline by the SPLA and other state agents have contributed to this violence. Underlying the violence is the widespread proliferation of arms and ammunition. More than 2500 people died in these clashes in 2009 alone. The situation is further exacerbated by a weak state capacity, particularly in the justice and security sector institutions which have failed to provide remedies to affected persons or ensure accountability for crimes committed. I urge the Government of South Sudan to provide adequate resources to institutions responsible for the administration of justice and the rule of law, including the deployment of judges and prosecutors to rural areas.

Visiting Abyei in the Transitional Area, I noted with concern the absence of the judiciary in the entire region. Justice continues to be dispensed by traditional courts which very often operate without supervision from a judiciary authority. I also noticed the blatant discrimination against women as a result of the application of traditional customs as opposed to an established penal code.

Darfur

In Darfur, I noted that the conflict and political dynamics have changed considerably in the last few years. Intermittent military activities between the parties to the conflict

have continued in some areas with reports of occasional aerial bombardments and troop mobilization by the Sudanese Armed Forces. Nevertheless, the fighting between the Government and its allied militia groups against armed opposition movements is no longer the only source of insecurity. The conflict is now characterised by several distinct patterns of violence including armed hostilities, banditry and criminality, direct and indiscriminate attacks on civilians by all parties to the conflict, and inter communal violence.

In this context, humanitarian workers and UN employees have been persistently targeted through direct attacks and abductions. During the reporting period, several UNAMID peacekeepers lost their lives, and several other UNAMID staff and aid workers were kidnapped and held in captivity by armed groups. I strongly urge the Government to do its utmost to ensure the security of UN and humanitarian personnel, and to conduct thorough and timely investigations into criminal acts committed against peacekeepers and aid workers and ensure that perpetrators are prosecuted and punished.

Technical cooperation and implementation of the Group of Experts on Darfur ('GED') recommendations

My mandate also requires me to ensure effective follow up and to foster the implementation of the remaining recommendations identified by Council's Group of Experts on Darfur. My first assessment of the implementation of the recommendations contained in the addendum to my May report did not benefit from a response from the Government because the Government's response was submitted late. Hence in September I have submitted a new addendum to the Council, which focuses on the response subsequently provided by the Government, as well as additional information subsequently obtained from UNAMID and UNMIS.

In spite of the concrete steps taken to implement some of the recommendations, I am deeply concerned that a significant number of recommendations have not been implemented even though the time frame for implementation elapsed more than two years ago. By my assessment, only four of the 45 recommendations have been fully implemented. In the case of 11 recommendations, there has been no implementation at all which has a direct bearing on the human rights situation on the ground. I urge the Government to take all the necessary measures to implement the recommendations without further delay in a more constructive engagement with the Council, UN and international community.

In my meetings with UNAMID, UNMIS, UN agencies and members of the diplomatic corps, I was informed of various on going support and technical assistance to the Sudan in the field of human rights. A notable example is a technical assistance project for Darfur funded by the Government of Switzerland. I would like to take this opportunity to urge other donor countries and the international community to provide the necessary technical and financial support to the Sudan in the field of human rights.

Human Rights Forums

I welcome as a positive development the establishment of Human Rights Forums in the Sudan. These forums, co chaired by the Government's Advisory Council on Human Rights and UNMIS and UNAMID respectively, with the diplomatic community and non-governmental organisations participating as observers, have provided a platform for dialogue and mutual information exchange. In accordance with my mandate, I attended several meetings of these forums during my mission to

Sudan. I urge the international community to continue to provide support and participate in the forums in order to facilitate a strong partnership between the Government, the UN and civil society in addressing human rights concerns.

Government of the Sudan's response to my report

I would like to take this opportunity to report on the Government's response to some of the issues I have raised. I shared a draft of my report with the Government and solicited its views. In its comments submitted to me late on 17 May, the Government reiterated its willingness to continue cooperating with the UN mechanisms working on the promotion and protection of human rights, particularly the Council through among other things technical assistance and capacity building projects.

On the issue of immunity conferred on National Security personnel in the new National Security Act, the Government states that such immunities are only procedural and could be lifted where there is prima facie evidence justifying the filling of charges against National Security personnel

On the application of the death penalty and the lack of due process guarantees, the Government makes reference to the case of the six men executed on 14 January 2010 for the killing of 13 policemen. It outlined the steps taken to ensure that due process guarantees were met including ensuring the defendants' right of access to counsel and the exhaustion of their right to appeal.

Second report

I would like to now move to my second report covering the period May to August 2010. This report unlike my first report did not benefit from a mission to the Sudan due to my medical condition. Nevertheless, the information contained in it has been obtained from reliable sources, primarily from UNAMID and UNMIS.

The Government continued steps towards democratic transformation including establishing the South Sudan Referendum Commission. However, the period following the elections in April marked a turning point in CPA implementation. The human rights situation was characterised by restrictions in the enjoyment of civil and political rights and curtailment of the freedom of expression and the press. Political opposition party leaders, journalists and students were targeted with arrests and detentions on account of their activities. Detainees often alleged that they were subjected to torture or ill treatment and denied the right to challenge the lawfulness of their detention in court. These developments represent a serious setback, and are of particular concern as the country prepares for the referendum.

I am also deeply troubled by the violence and widespread human rights abuses that characterised the post election period in Southern Sudan, particularly reports of violence used against civilians by the SPLA. Inter-communal violence also continued to claim more civilian lives.

In Darfur, armed violence and insecurity arising from banditry and the threat of abduction persisted, making it difficult for UNAMID and aid workers to operate. Since my first report, five UNAMID peacekeepers have been killed in various attacks. In spite of UNAMID's demarches at the highest level of Government, no one has been held accountable and brought to justice for any of these crimes.

Women and young girls continue to experience insecurity as a result of sexual and gender based violence. Police inaction in conducting thorough investigation into reported cases continues to foster a climate of impunity. Towards the end of July, a

state of unrest and insecurity prevailed in some of the camps for the internally displaced as a result of political differences over the Doha peace process. Violent clashes erupted in two camps in South and West Darfur resulting in the death of more than 10 civilians.

On a positive note, I welcome the establishment of human rights sub-forums in the three Darfur states aimed at increasing human rights dialogue between the Government and UNAMID at the state level. The Government also put forward a new peace strategy for Darfur which would allow a wider spectrum of the Darfur civil society to participate in the political process.

Sudan is at a critical juncture in its history with the referendum on the self determination of Southern Sudan less than four months away. Ensuring a peaceful and conducive environment for the people of Southern Sudan to make their choice freely and in safety will be a critical challenge. It is essential that authorities uphold human rights principles as a way of ensuring a peaceful and credible referendum. It is my hope that the international community will engage and support Sudan towards this goal.

To conclude, I strongly urge the Government to build on the progress made and to promptly address the deficit in the protection of human rights highlighted in my two reports. In this regard, I recommend that the Council remains engaged in the Sudan until it is assured of tangible and lasting improvement in the human rights situation on the ground. It would be premature for the Council to disengage itself now given the shortfalls highlighted, the challenges ahead, and Sudan's expressed willingness to cooperate with the Council and the international community.

Thank you.

