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Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in the Sudan

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi. The report is submitted pursuant to Human Rights Council resolution 33/26, in which the Council decided to extend for a period of one year the mandate of the Independent Expert, and requested him to report to it at its thirty-sixth session. The report covers the period from October 2016 to June 2017. In it, the Independent Expert assesses the implementation of the previous recommendations, outlines recent developments and the continuing human rights challenges in the country, identifies technical assistance and capacity-building needs and provides a list of recommendations, addressed to the Government and other stakeholders, necessary for addressing the human rights challenges in the country.

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Report of the Independent Expert on the situation of human rights in the Sudan

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I. Introduction

1. In its resolution 33/26, the Human Rights Council extended the mandate of the Independent Expert on the situation of human rights in the Sudan for a period of one year, and requested him to report to it at its thirty-sixth session on the implementation of his mandate, including recommendations on technical assistance and capacity-building.
2. The present report covers the period from 28 September 2016 to 30 June 2017. In compliance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, a draft report was shared with the Government of the Sudan in order to provide it with an opportunity to comment on the observations and findings of the Independent Expert.
3. The report is based on information made available to the Independent Expert during his visit to the Sudan and on information provided by the Government of the Sudan, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and other sources, including civil society organizations, United Nations agencies, funds and programmes working in the Sudan and the donor community.
4. The Independent Expert expresses his gratitude to the Government of the Sudan for its invitation and cooperation, to the Office of the United Nations Resident and Humanitarian Coordinator in Khartoum and to UNAMID for supporting and facilitating his mission to the country. He also thanks the donor community and civil society organizations for their important work in promoting and protecting human rights in the country.
5. He also thanks all other organizations, groups and individuals who provided assistance and shared information with him.

II. Methodology and engagement

6. The Independent Expert undertook two visits to the Sudan during the reporting period, from 10 to 22 February and from 11 to 21 May 2017, and visited Khartoum, Darfur and Blue Nile.
7. In Khartoum, the Independent Expert held wide-ranging discussions with senior government officials, including the Minister for Foreign Affairs, the Minister for Minerals in his capacity as Secretary of the Sudan National Dialogue, the Under-Secretary for the Ministry of Justice, and specialized government units and agencies, the Speaker of the Parliament and the Legislative Committee of the National Assembly. He interacted with the Chief Justice and high-ranking members of the judiciary and had a fruitful exchange with the newly appointed Attorney General. He also had frank and fruitful discussions with the Director of the Legal Department of the National Security Service. He was updated on the situation of human rights in the country by the Rapporteur to and members of the Advisory Council for Human Rights, and was encouraged by their response to some of the issues he raised. He also met with the Chair and members of the National Commission for Human Rights, the Head of the Humanitarian Aid Commission, the Chair and members of the Bar Association, and the Chair and members of the National Press Council. He also met with representatives of civil society organizations, human rights defenders and victims of human rights violations and abuses, some of whom shared their personal experiences with him. He met with members of the diplomatic community, representatives of opposition political parties, staff members and students of the University of Khartoum and of the International University of Africa in Khartoum, from whom he received valuable information on the human rights situation in the country.
8. In Northern Darfur, the Independent Expert met with the Governor of the State of Northern Darfur, members of the judiciary, including the Special Prosecutor for the crimes committed in Darfur, the regional representative of the National Commission for Human Rights, officials of UNAMID and United Nations agencies in Northern Darfur and civil society organizations. He also visited the Sorotoni camp, which hosts internally displaced persons from the Jebel Marra area.

9. In Western Darfur, the Independent Expert held meetings with the Governor of Western Darfur State and his team, and visited the local community in Adi Kong, a city located on border between the Sudan and Chad.

10. In the Blue Nile State, the Independent Expert met with the State Governor and his team, the State representative of the Humanitarian Aid Commission, representatives of United Nations agencies and civil society organizations. He also visited the Azaza internally displaced persons camp.

III. Key recent developments

11. On 10 October 2016, the Sudan National Dialogue adopted an outcome document containing 981 recommendations developed by six committees. It included recommendations for a federal and presidential system of government, a two-chamber parliament — one for deputies and the other for the Council of States — and the separation of the three branches of government. It endorsed principles of democracy and underlined the concept of equal citizenship and the diverse Sudanese identity. On 26 October, the Sudan National Dialogue secretariat presented the document to the National Assembly as the basis for drafting a new permanent constitution within three months. On 5 December, the Higher Coordination Committee of the Sudan National Dialogue was dissolved and a new committee established to follow up on the implementation of the document.

12. Opposition groups, including the Sudan Call coalition, maintained that the Sudan National Dialogue was not an inclusive and consensual process, as agreed upon in the road map agreement, and that the conclusions of the Dialogue could only be used as basis for a new, broader process that it would be ready to join under certain conditions.

13. Following the decision by the Government on 3 November to cut fuel and electricity subsidies in order to prevent inflation, protests erupted in Khartoum, El Fasher, Nyala and several other locations. The authorities arrested 21 members of opposition parties, including the Chair of the National Congress Party, who was accused of inciting the overthrow of the regime. On 25 November, political activists called for mass civil disobedience from 27 to 29 November. Protests, mainly led by students, were reported in Khartoum, Omdurman, El Fasher and several other locations, and arrests by the security services were reported.

14. In line with the recommendations of the Sudan National Dialogue, the National Assembly endorsed amendments to the Constitution on 26 December 2016, which included: (a) the creation of a Government of National Reconciliation with a four-year mandate; (b) a post of Prime Minister within the framework of the presidential system; (c) modifications to the composition of the National Assembly and state legislative councils; and (d) the separation of the posts of Attorney General and Minister of Justice.

15. In January 2017, the Government of the United States of America announced a temporary and partial revocation of bilateral sanctions against the Sudan on the basis of progress made along five tracks, including the cessation of hostilities, improved humanitarian access, an end to negative interference in South Sudan, enhanced cooperation on counter-terrorism and progress made in addressing the threat of the Lord's Resistance Army. The revocation, which was scheduled to be reviewed in July 2017, allowed for the re-establishment of trade relations between the two countries and was expected to gradually provide significant relief for the economy of the Sudan.

16. After two and a half years in exile, Sadiq al-Mahdi, the Sudanese opponent and leader of the Umma Party, returned to the Sudan on 26 January 2017. In a speech after his arrival, he said that he had returned to the country to stop war, achieve peace and establish democracy and the restitution of rights.

17. On 1 March 2017, President Al-Bashir appointed the First Vice-President, Barki Hasan Saleh, to the post of Prime Minister. He was sworn in the following day, while maintaining his post as First Vice-President. In his new role, Prime Minister Saleh would oversee the implementation of the outcome of the Sudan National Dialogue, including the formation of a Government of National Reconciliation following the dissolution of the current Government on 2 March 2017. A new Government was appointed on 11 May 2017.

18. On 8 March 2017, the President decided to pardon 259 armed movement personnel who had been captured fighting government forces. That number included 66 fighters who had been sentenced to death. This was a welcome development that the Independent Expert hopes will go a long way towards fostering confidence and trust among the parties. In addition, on 11 May 2017, two pastors who had been sentenced to 12 years' imprisonment were released from custody after a presidential pardon. The Independent Expert was also informed of the appointment on 16 May 2017 of the Chair of the National Commission for Human Rights.

IV. Main human rights challenges

19. The Independent Expert would like to commend the Government for taking some concrete steps in certain areas towards the implementation of his previous recommendations. In particular, he welcomes the separation of the Minister of Justice from the Office of the Attorney General, and the efforts undertaken in order to facilitate humanitarian access to conflict-affected areas in Darfur, Southern Kordofan and Blue Nile.

20. In spite of those positive steps, the Independent Expert remains concerned about a number of human rights issues in the country that are still largely unaddressed.

A. Harassment of human rights defenders and curtailment of civil society actors

21. The Independent Expert received reports of incidents of harassment, arrests and prolonged detention of representatives of civil society organizations, without access to legal representation or to their families.

22. In that regard, serious concerns were raised in relation to the case of Hafiz Idris and Mudawi Ibrahim Adam, among others. Mr. Hafiz, an internally displaced person activist from Northern Darfur, was arrested in Darfur by national security officers on 24 November 2016 and forcibly transferred to Khartoum. On 8 December 2016, Mr. Mudawi, a human rights defender, founder and Chair of the Sudan Social Development Organization, was arrested by national security officers along with his driver. A few days later, Nora Abaid, an accountant from Mr. Mudawi's engineering company, was also arrested by national security officers. Another individual, a human rights defender, was arrested for having tried to reach Mr. Mudawi on his mobile telephone as he was not aware of his arrest. All of those persons were detained at the National Security Service premises in Khartoum.

23. While the driver, the accountant and the other human rights defender were released in March 2017, Mr. Mudawi and Mr. Hafiz are still held in custody to date. Their case was transferred to the Office of the Public Prosecutor on 21 and 22 February respectively. The Public Prosecutor charged them with espionage and undermining the constitutional order, and they are currently facing trial. According to Sudanese law, the accusations against Mr. Mudawi and Mr. Hafiz could result in the imposition of the death penalty should there be a guilty verdict. The Independent Expert reiterates his call on Sudanese authorities to release Mr. Hafiz and Mr. Mudawi, as he believes that they are being held solely for their legitimate work on protecting and promoting human rights in the Sudan.

24. Tasneem Taha, a Sudanese lawyer and human rights defender, was arrested in Darfur at the end of 2016 and forcibly transferred to Khartoum, where she was detained by the National Security Service. She was released in March 2017 and has since left the country.

25. The Independent Expert notes with concern that the state of emergency in Darfur continues to curtail fundamental rights and freedoms. Arbitrary arrests and prolonged detentions without judicial oversight are being carried out by the security apparatus, invoking emergency and/or national security legislation. He calls on the Government of the Sudan to repeal emergency laws in Darfur.

B. Continued detention of a UNAMID staff member

26. The Independent Expert was informed about the case of Adam Abdulbari, a language assistant at UNAMID, who was arrested in Darfur by the national security officers on 23 November 2016 and transferred immediately to the National Security Service headquarters in Khartoum, where he was held in custody. In March 2017, Mr. Abdulbari was transferred to the Alnuza police station, where he remains detained under the supervision of the Attorney General for Crimes against the State. The UNAMID staff member is accused of undermining the constitutional system, waging war against the State, espionage against the country and terrorism.

27. The Independent Expert is concerned by the non-compliance by the Government of the Sudan with the provisions of the status-of-forces agreement between the United Nations and host countries. He calls on the Sudanese authorities to release Mr. Abdulbari as it appears that he is being detained for his work with UNAMID.

C. Excessive use of force against Darfuri students in Khartoum and El Gezira States

28. The Independent Expert was made aware of incidents of attacks and arrests targeting Darfuri students in Khartoum and El Gezira States. According to information received, on 27 January 2017, officers of the National Security Service raided a student dormitory in Um Badda district in Omdurman housing mainly Darfuri students. Five of them were reportedly arrested for unknown reasons. On 21 March 2017, officers arrested 13 Darfuri students from the University of Holy Qur'an and Islamic Sciences in El Gezira State and used tear gas and batons to disperse a peaceful demonstration organized by them to protest against the university administration's refusal to honour an agreement exempting the Darfuri students from paying tuition fees. The following day, officers raided the Darfuri students' residence and arrested six of them. On 15 May 2017, officers and pro-government students attacked an assembly organized by the Darfuri student union alliance at Al-Azahari University, preventing the delivery of a speech calling for the full implementation of a fee-exemption policy for Darfuri students agreed to by the Government of the Sudan during the peace talks in 2006 and 2011. Twenty students were arrested and taken to the central police station in Khartoum Bahri, where a case was filed against them for breach of public peace and public. The case was referred to the Central Bahri Public Order Court on 16 May and dismissed owing to lack of evidence.

29. The independent Expert expresses concern about the excessive use of force by the Sudanese authorities as a means to restrict the rights to freedom of expression, association and assembly, which are guaranteed by the Constitution of the Sudan and international human rights treaties to which the Sudan is a party.

D. Restrictions on freedom of religion

30. Another area of concern that the Independent Expert discussed with the relevant stakeholders includes the need to ensure the protection of the freedom of religion, with particular reference to the demolition of churches and places of worship by the national security forces. On 7 May 2017, the Sudanese authorities destroyed the Sudanese Church of Christ building in the Soba al-Aradi area of Khartoum. On 17 May 2017, the Sudanese Church of Christ building in Agadisia in Khartoum was also demolished. While the Government alleged that the demolition fell under the authority of planning authorities and also included also mosques, schools and homes that had been randomly and disorderly constructed, the Independent Expert has yet to receive a list of mosques, homes and schools that were demolished in those areas.

31. The National Security Service has also been used to intimidate and arrest or detain Christian religious leaders. The Independent Expert had raised the issue in his discussions with government officials as a legitimate concern, which the Government of the Sudan needs to pay attention to, in view of the importance of the freedom of religion in a

democratic society. In that regard, the Independent Expert welcomes a presidential pardon that gave way to the release on 11 May 2017 of two pastors who had been sentenced to 12 years' imprisonment.

E. Press censorship

32. The Independent Expert would like to express concern about ongoing censorship of newspapers and increased restrictions on journalists from expressing freely their opinion. Pre-publication censorship continues to be used against newspapers and some journalists were ordered to cease their newspaper columns. The National Security Service continues to intimidate and instil fear of arrest in journalists, which impedes press freedom, freedom of opinion and freedom of expression. In addition, post-publication censorship continued unabated and government security agents seized printed newspapers for allegedly crossing publication "red lines" set by the National Security Service. Between October and June 2017, printed editions of different newspapers, such as Al-Tayar, Al-Jareeda Al-Watan, Al-Youm Al-Tali, Al-Ayam and Akhir Lahza, were confiscated by government security agents without them stating specific reasons. Moreover, the decision by the National Security Service to ban an Al-Jareeda columnist from writing contravened the Interim National Constitution and the International Covenant on Civil and Political Rights, to which the Sudan is a party.

33. The Independent Expert raised the issue in his discussions with government officials as a legitimate concern to which the Government needed to pay attention, in view of the importance of freedom of expression and of the press in the promotion and protection of human rights in a democratic society. The Government was encouraged to amend the Press and Publication Act in order to provide more protection to journalists and newspapers publishers.

F. Human rights violations committed during the demonstrations of September 2013

34. In May 2017, the Government of the Sudan submitted to the Independent Expert a report on the status of implementation of the recommendations made by him to the Government in his previous reports.¹ While the Independent Expert appreciates that initiative, he notes with concern that the report of the Government did not include information on the issue of the victims and families of victims of the oil demonstrations of September 2013.

35. The Independent Expert would welcome updates from the Government on the compensation process for the victims and families of victims of the September 2013 incidents. In addition, he reiterates his call on the Government to ensure that an independent judicial inquiry is conducted into the killings and various other human rights violations committed during those incidents, and to bring those responsible to justice.

G. Human rights situation in conflict-affected areas

36. The Independent Expert would like to commend at the outset the decision by the Government of the Sudan to extend the ceasefire in the conflict-affected regions of Darfur and in the two areas of Southern Kordofan and Blue Nile, which is generally holding. He is also encouraged by the decision by the Government to resume peace talks with the different armed opposition groups for a lasting peace in the country.

37. Despite the decline in military operations in those regions, the overall security situation remains volatile and unpredictable.

¹ A/HRC/30/60 and A/HRC/33/65.

1. Darfur

38. The hostilities between the Government of the Sudan and rebel forces have decreased significantly as a result of the three-phased Operations Decisive Summer (from January 2014 to June 2016), which effectively reduced the presence of the armed groups to parts of western Jebel Marra, and the subsequent ceasefire, which has been in place since June 2016.

39. Nonetheless, during his visit to Darfur, the Independent Expert received reports of incidents of banditry, armed robbery, assault, killing, rape, abduction of locals and internally displaced persons, intercommunal clashes over farmland and sexual and gender-based violence, which remain major concerns and continue to have an impact on the peace, safety, security and coexistence of local communities. The frequency and scale of killings in the context of intercommunal violence shows that it has become a major feature of the conflict in Darfur.

40. The Independent Expert was informed of efforts undertaken by the authorities to prevent and respond to such incidents through security measures, engagement with stakeholders and the facilitation of reconciliation processes in some areas of the Darfur region. Nonetheless, the underlying causes of such conflicts related to access to land, water and other resources have not been addressed, and the situation has been exacerbated by a situation of general impunity, a weak rule of law and weak justice institutions.

41. In his discussions with the Chief Justice and the Special Prosecutor for the crimes committed in Darfur, the Independent Expert noted their agreement on the need for serious commitment to combat impunity effectively. He was briefed about a number of steps taken by the authorities in that regard, in particular in the Darfur region, where the authorities deployed additional public prosecutors, judges and police officers as part of the efforts to improve access to justice. However, the Special Prosecutor is facing many challenges, including the volatile security situation in the Darfur region and broad impunity provisions under Sudanese laws that create obstacles to the successful prosecution of members of the Sudan Armed Forces and those of the national security agencies.

42. The Independent Expert is also concerned about the human rights situation of civilians, and particularly vulnerable groups such as internally displaced persons, which remains problematic in the light of their exposure to attacks and difficult social and economic conditions. The initial pattern of violations documented by UNAMID in 2017 showed an increase in comparison to the same period of 2016; in the first six months of the year, UNAMID documented 267 cases of human rights violations and abuses involving 521 victims, including 37 children. In total, 209 cases of human rights violations and abuses involving 357 victims were confirmed, while the remaining 58 cases involving 164 victims could not be verified owing to various factors, including access restrictions.

43. The Independent Expert visited Sorotony, where he met with representatives from the local internally displaced persons' camp, who informed him about the state of insecurity in which they live, mainly owing to the presence of various armed elements and criminality within and outside the camp. Sexual and gender-based violence also remained a serious concern in the camp. According to information received by the Independent Expert, the incidents had been perpetrated by armed individuals when the women were outside the camp engaged in livelihood activities, or inside the camp at night. In that regard, the Independent Expert was informed about nine cases of rape reportedly committed in the Sorotony camp between 27 January and 18 February 2017. Many incidents of sexual violence were not reported owing to fear of social stigma associated with rape, fear of reprisal and the absence of law enforcement institutions in Sorotony to investigate and prosecute perpetrators effectively.

44. The Independent Expert urges the Government, which bears the primary responsibility to protect civilians within its territory, to conduct investigations promptly and bring perpetrators to justice. He also urges the Government to abide by the call by the Security Council for enhanced cooperation with UNAMID in its efforts to protect civilians in Darfur.

45. In Adi Kong, in the Western Darfur State, the Independent Expert met with members of the local community, who remained anxious about the security situation in the area. They expressed the need for enhanced protection of the civilians by the authorities and the provision of basic services, including access to water, education and health care. It is essential for the Government, with the support of its international partners, to protect the rights of civilians effectively and in a sustainable manner.

46. The Independent Expert has on previous occasions raised concerns about the non-issuance of working visas for UNAMID human rights personnel, which undermines the ability of the Mission to implement its human rights mandate. Since December 2014, only one visa had been granted to a newly recruited human rights officer and 15 visas were pending. During the reporting period, visas for serving international human rights officers that had been pending renewal were only renewed for six months.

47. The Independent Expert reiterates his appeals to the Sudanese authorities to take the corrective measures necessary with a view to ensuring the continuity of the human rights mandate in Darfur. Neither the Mission's mandate nor its role in the Darfur peace process can be achieved without greater focus and mainstreaming of human rights; human rights are central to peace processes, as evidenced in the Doha Document for Peace in Darfur, particularly those sections on human rights and fundamental freedoms, justice and reconciliation.

2. Blue Nile and Southern Kordofan

48. The Independent Expert visited Damazine, Blue Nile State, where he met with the State authorities, community leaders, representatives of United Nations agencies and civil society actors, who shared with him updated information in relation to the security, humanitarian and human rights situation. They expressed the need for technical assistance in the field of human rights. The Independent Expert encourages the Government of the Sudan and the international community to provide adequate means and resources to those community leaders and civil society actors, in order to strengthen their capacity to protect and promote human rights.

49. During his presence in Damazine, the Independent Expert had the opportunity to visit the Azaza camp, which is reportedly hosting more than 4,000 internally displaced persons, whose precarious conditions he was concerned by, and who expressed their willingness to return to their homeland if there was an improvement in the security situation. The Independent Expert calls on the Government of the Sudan and the international community to increase their assistance to internally displaced persons, and to work towards creating the conditions necessary for their return to their homeland. Furthermore, he strongly urges all parties to the conflict to respect international human rights and international humanitarian law and to facilitate access to the conflict affected areas for delivery of humanitarian assistance.

50. The Independent Expert was informed that State authorities and community leaders had established mechanisms and processes to facilitate reconciliation in the region. He welcomes the initiatives and would encourage the Sudanese authorities to work towards addressing the root causes of the conflict for a lasting peace in the region.

51. The Independent Expert continued to receive reports indicating that government forces and the Sudan People Liberation Movement-North had engaged in sporadic military attacks in Southern Kordofan State, despite the declared cessation of hostilities. In that regard, he received information about the attack that had taken place on 12 February 2017 in El Mashayesh, 35 kilometres west of Kadugli, an area reportedly heavily inhabited by the civilian population. The Independent Expert reiterates his call on both parties to the conflict to respect the ceasefire and to refrain from violating human and humanitarian principles in their conduct of hostilities.

52. On a positive note, the United Nations entities and other partners reported some improvement in terms of access to areas previously inaccessible to carry out needs assessments and provide humanitarian assistance to civilians in need. In that context, since the beginning of 2017, humanitarian missions had been allowed to visit several locations in

the conflict-affected areas, including the Jebel Marra area in Darfur, where they had not been given access in the previous five years.

H. Situation of South Sudanese refugees in the Sudan

53. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), more than 417,000 South Sudanese refugees had arrived in the Sudan since the conflict broke out in December 2013. Of those, more than 28,000 had arrived in the first two weeks of May 2017. In 2017, almost 137,000 refugees had arrived from South Sudan, which was more than the total number of arrivals during 2016, according to UNHCR.

54. During the first half of May 2017, almost 20,000 South Sudanese refugees had sought shelter and assistance in the Sudan as a result of the hostilities in Kodok in the Upper Nile State of South Sudan, according to United Nations humanitarian agencies, including the United Nations Development Programme, the United Nations Population Fund, the Office for the Coordination of Humanitarian Affairs, UNHCR, the World Health Organization, the World Food Programme and the United Nations Children's Fund. In September 2016, the Government of the Sudan recognized South Sudanese as refugees following the signing of a memorandum of understanding with UNHCR. The Independent Expert is of the view that this was a step forward that will provide opportunities to enhance solutions for refugees and provide much-needed support to refugee-hosting communities.

55. However, the Independent Expert is concerned about the absence of adequate assistance and the continuing influx, which may cause the South Sudanese refugees to decide to seek refuge in other countries with a view to improving their situation or may put them at risk of being targeted by traffickers. The Independent Expert calls on the Government of the Sudan and the humanitarian community to increase their assistance to the South Sudanese refugees in the Sudan.

I. Illegal migration and human trafficking

56. The Independent Expert held meetings with the International Organization for Migration and the Government of the Sudan in relation to migration and human trafficking in the country. Information gathered showed that the Sudan was a country of origin, transit and destination for irregular migrants owing to its geographical location in Africa. In addition, it was a hub for the north-eastern route for nearly all Eritreans, Ethiopians and Somali migrants who intended to cross to Europe. Those migrants were often subjected to severe exploitation and abuses. Refugees, asylum seekers and other migrants residing or transiting through the Sudan included Chadians, Ugandans and Nigerians.

57. The Government informed the Independent Expert that migrants, unaccompanied minors, refugees and asylum seekers, primarily from Eastern and Western Africa, were highly vulnerable to trafficking and forced labour. In addition, human trafficking and smuggling had a regional dimension reaching far beyond the Sudan, which served as transit point in the eastern Africa migratory route into Northern Africa and towards Europe.

58. The Government adopted an Anti-trafficking Act in 2014 with a view to addressing that phenomenon. Nonetheless, the Independent Expert notes that gaps remain in the government policy to combat illegal migration. For instance, the Anti-trafficking Act criminalized the seduction, transportation, kidnapping, reception, holding or grooming of people with the intention of exploiting them or using them in illegal acts. However, it failed to define what constitutes exploitation, which in international law includes forced labour and forced prostitutions of others. In addition, the government anti-trafficking unit lacked resources and its investigative capacity remained insufficient.

59. The Independent Expert calls on the international community to provide the Government with the technical cooperation necessary with a view to enhancing its anti-trafficking services and recommends a regional approach in order to address the phenomenon.

J. Economic, social and cultural rights

60. On 3 November 2016, the Government of the Sudan announced cuts to subsidies for fuel and basic commodities and an increase in electricity prices as part of its economic reform programme. According to the Government, the measures were meant to curb inflation and control the collapse of the Sudanese pound by reducing government expenditures and saving hard currency reserves. Since then, fuel prices have increased by nearly 30 per cent. In addition, the price of electricity increased by 50 per cent. Medicines also became expensive for people in the Sudan, according to the Pharmacies Department Consumer Protection Association.

61. The Independent Expert notes that the decision by the Government to cut subsidies affected the poorest people in the Sudan. In addition, in the distribution of the national budget, it is noteworthy that the combined education and health allocation represented about 3 per cent of spending for the defence and security sectors.

62. The Independent Expert calls upon the Government to ensure that the State budget is distributed adequately among key sectors, such as education, health and social services.

V. Technical assistance and capacity-building

63. The current situation in the Sudan, characterized by a decline in military operations between the Government and the opposition armed movements, has created a space in which the international community can assist in the protection and promotion of human rights. From the Independent Expert's perspective, there is a need for the international community to increase its technical assistance to national institutions, both governmental and non-governmental, in the field of human rights. In particular, the Independent Expert is of the view that the Sudan needs assistance for the establishment of an appropriate legal framework, institutional arrangements and democratic reforms, which are key steps to be undertaken by the Government of the Sudan to ensure the effective protection and promotion of human rights in the country.

A. Reform of the national legal framework

64. The 21 articles of the Interim National Constitution bill of rights cover most of the fundamental rights and freedoms, and civil and political liberties, including: the right to personal liberty (article 29); the right to equality before the law (article 31); the right to a fair trial (article 34); the right to litigation (article 35); the right to freedom of expression and media (article 39); the right to freedom of assembly and association (article 40); the right to vote (article 41); the right to freedom of movement and residence (article 42); and the rights of persons with special needs and the elderly (article 45).

65. An appropriate legal framework consistent with the Interim National Constitution and international norms and standards is critical for the promotion and protection of human rights in the Sudan. One of the critical challenges facing the Sudan was the failure of the legislature, especially at the national level, to apply at the national level key international human rights instruments that the Sudan has ratified. The Sudan has ratified 5 of the 10 core treaties, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, including its Optional Protocol on the involvement of children in armed conflict and its Optional Protocol on the sale of children, child prostitution and child pornography. The Sudan has yet to ratify other key universal human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and the Convention on the Elimination of Discrimination against Women.

66. The Independent Expert emphasizes that the Government, in ratifying a treaty, agrees to guarantee the rights enshrined therein by making them part of its domestic laws. That harmonization aims at filling the gaps between the national legal system and

international treaties. In 2015, the Ministry of Justice issued a decree, pursuant to Council of Ministers Decree No. 140 on the national reform programme, by which it established a committee to review a number of pieces of legislations, in particular the Criminal Act 1991. The committee, which is composed of former judges, human rights specialists and academics, is tasked to make the necessary amendments to the legislation in order to comply with international standards.

67. To date, the Independent Expert notes with concern that progress in harmonizing national laws with international human rights instruments ratified by the Sudan has moved at a slow pace. In that regard, the National Security Act 2010, the Criminal Act and Criminal Procedure Act 1991, the Press and Printed Materials Act 2009, the Voluntary and Humanitarian Works Act 2006, the 1997 Emergency and Public Security Act and the Public Order Regime, among others, should be amended and/or repealed in order for the Sudan to comply with its international obligations.

68. During the Independent Expert's meeting with the Legislative Committee of the Parliament, he received assurances that the process for the amendment of the National Security Act 2010 and the Criminal Act and Criminal Procedure Act 1991 would be completed with a view to ensuring their compliance with international standards. In particular, the Independent Expert is of the view that bringing the powers of the National Security Service in line with international standards — the National Security Service being a governmental body operating as an intelligence agency focused on information gathering, analysis and advice to the Government — would help to improve the human rights environment in the Sudan.

69. The Independent Expert calls on the international community to provide technical assistance to the Government and National Assembly of the Sudan to ensure that the legislation reform process is conducted in a coherent and efficient manner.

B. Institutional arrangements and democratic reforms

1. Rule of law and administration of justice

70. A transparent legal system that is accessible to all is fundamental to a constitutional democracy. The fair, independent, impartial and transparent administration of justice is a critical component of a society that is based on the rule of law. The rule of law requires that all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and that are consistent with international human rights norms and standards.

71. Article 124 of the Sudan Interim National Constitution sets forth the basic structure of the Sudan judicial system. It states that “[t]he National Judiciary shall be structured as follows: (a) the National Supreme Court; (b) National Courts of Appeal; (c) other national courts, which includes the regular courts, both criminal and civil,² special courts, military courts and rural courts in rural areas that apply customary law to resolve disputes”. In addition, in chapter 3, article 6, of the Emergency and Public Safety Act (1997) and article 10/E of the Judiciary Act (1986) empower the Chief Justice to establish special criminal courts and corresponding appeal courts. Those special courts have jurisdiction “over crimes of particular interest to the State, including offences against the State (such as espionage), robbery, banditry, killing, unlicensed possession of firearms and anything else considered as a crime by the head of the judiciary in consultation with the governor of the concerned state”.

72. The Independent Expert notes that there is no clear delineation of the functions of the specialized courts established under the Emergency Law of 1997 and the new Special Criminal Court for Serious Crimes, which exist concurrently. Both have jurisdiction over the same crimes and it is unclear which cases are assigned to which court.

² There are three levels of district courts and their jurisdiction is defined in the 1991 Criminal Procedure Act.

73. In order to provide meaningful and lasting support in the area of administration of justice, it is important for the international community to consider the rule of law sector in the Sudan in a holistic manner and examine the linkages between the different phases of the justice process (i.e., arrest, start of a judicial procedure, pretrial detention, trial, appeal and imprisonment) and how the different rule-of-law actors function and coordinate with each other (e.g., police, prosecutors, lawyers, judges, court administrators and prison officials).

74. An independent judiciary is essential not only for the adjudication of criminal and civil cases, but also for ensuring that those who hold power may be held accountable in the event of abuse or violations. Judges should be free from coercion, pressure or influence from the executive or other actors in order to render impartial and fair decisions. In that regard, the Independent Expert notes that broad impunity provisions under Sudanese law create obstacles to prosecuting successfully certain categories of Sudanese authorities, including members of the Sudanese Armed Forces and the National Security Service who are responsible for violations of human rights or international humanitarian law.

75. In a report on the status of implementation of the Independent Expert's recommendations, submitted to the Independent Expert during his mission to the Sudan in May 2017, the Government stated that 76 national security officers and staff had been divested of immunity, prosecuted and sent to trial in 2016 for various criminal offences. Moreover, the Government added that, from 1 January 2016 to 31 March 2017, 46 police officers and Sudanese armed forces personnel had been disciplined and prosecuted for various crimes, including murder and injuries. The Independent Expert welcomed that information and would like to discuss the cases with the relevant Sudanese authorities during his next visit to the country.

76. The Independent Expert would also like to highlight that the role of the courts in the process of harmonization of Sudanese legislation is essential. On the one hand, the courts can interpret national laws in the light of international instruments and ensure the compatibility of both. On the other hand, when necessary, the courts can determine when there is a clear incompatibility between national laws and international standards and issue a declaration of incompatibility.

77. During his meeting with the Chief Justice, high-ranking members of the judiciary and the newly appointed Attorney General, the Independent Expert received requests for technical assistance to those institutions. He was also made aware of the ongoing projects in the Sudan to strengthen the rule-of-law and justice sectors. He appeals to the good offices of donors to increase their funding to the rule-of-law institutions in the Sudan, including by providing sufficient funding for the Joint Rule of Law and Human Rights Programme in Darfur.

2. Support to the National Commission for Human Rights

78. The Independent Expert is of the view that national efforts for the protection and promotion of human rights need to be genuine and credible. In that regard, the establishment of a national human rights commission was seen as a step forwards in the commitment by the Sudanese authorities to enhance the national system for the protection and promotion of human rights in the country.

79. In 2009, the National Assembly passed the National Human Rights Commission Act, and repealed the previous 2004 law. The National Commission for Human Rights began to operate pursuant to a presidential decree in 2012. The Act provides for a relatively broad mandate, and its functions apply across a wide range of human rights activities.

80. Lack of human resources is the most significant capacity issue currently facing the Commission. For several years, the Commission had been led by a Chair ad interim, and the mandates of most of the Commissioners have come to an end. The Independent Expert was informed of the appointment on 16 May 2017 of the Chair of the Commission. He would like to reiterate the important role that can be played by an independent national human rights institution. He encourages the Sudanese authorities to fill the remaining vacant positions for the Commissioners in a transparent and representative manner, and to support the national human rights institution with the funding necessary to enable it to function effectively.

81. Moreover, the Independent Expert would like to emphasize the need for the national human rights institution to comply with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in order to play a crucial role in monitoring and promoting the effective implementation of international human rights standards at the national level. In that regard, he would recommend that amendments be made to section 6 of the Act relating to the appointment of the Commissioners, to ensure that appointments are made by the National Assembly following a transparent and competitive process, as provided for under the Paris Principles.

82. The Independent Expert reiterates his call to the international community to enhance its technical and financial assistance to the Commission in order to allow it implement its mandate in an efficient manner.

VI. Conclusion and recommendations

83. The Independent Expert acknowledges that, during the period under review, there were some positive steps undertaken by the Government of the Sudan in the field of human rights. They include the separation of the Ministry of Justice from the Office of the Attorney General, the decision by the President of the Sudan to pardon 259 armed movement personnel who had been captured during fighting with government forces in Darfur, the release from custody of two pastors who had been sentenced to 12 years' imprisonment following a presidential pardon, and the efforts undertaken in order to facilitate humanitarian access to conflict-affected areas in Darfur, South Kordofan and Blue Nile.

84. Despite those positive developments, the Independent Expert remains concerned about a number of human rights issues in the country that are still largely unaddressed. The violations of civil and political rights after the holding of the Sudan National Dialogue are of great concern. The Independent Expert is particularly concerned by incidents of harassment, arrests, torture and prolonged detention of civil society actors, without access to legal representation or their families, by officers of the National Security Services. Also of concern are the ongoing censorship of newspapers and increased restrictions on journalists from expressing their opinions freely. Such actions amount to violations of the rights to freedom of expression and of association, and suggest a preoccupying trend, while the aim of Sudan National Dialogue had been, *inter alia*, to guarantee fundamental freedoms, rights and social justice and to agree on independent mechanisms for the protection of such rights.

85. In Darfur, Southern Kordofan and Blue Nile, despite a decline in military operations between government forces and armed opposition movements, the prevalence of armed groups, including government-backed militias and other armed actors, who operate in total impunity, continue to pose a serious threat for the protection of civilians and human rights. The Government of the Sudan has primary responsibility to ensure the protection of its civilians, and it needs to undertake effective measures to address the serious institutional gaps in the justice and security sectors in a coordinated manner in order to promote respect for the rule of law and protection of human rights.

86. In the light of the foregoing observations, the Independent Expert makes the recommendations below.

A. Government of the Sudan

87. The Independent Expert calls upon the Government of the Sudan to:

(a) Take concrete measures to reform the current legal framework, which infringes on the exercise of political and civil rights and fundamental freedoms. Priority should be given to withdrawing enforcement powers, including arrest and detention, from officers of the National Security Service, in line with the information-

gathering and advisory role envisioned by the Sudan National Dialogue, and to ensuring its compliance with international standards;

(b) Ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and perpetrators are brought to justice promptly, in particular those with command responsibility;

(c) Ensure that human rights defenders, humanitarian workers, members of political opposition, journalists, students and other civil society actors are not intimidated, arrested and detained arbitrarily, ill-treated or tortured by State agents on account of their work or opinions, and proceed to the release of those who are currently detained;

(d) Undertake a transparent and inclusive process for the selection of Commissioners of the National Commission for Human Rights and provide the Commission with adequate resources and staff;

(e) Ensure that the State budget is distributed adequately among key sectors, such as education, health, social services, law enforcement and rule of law institutions and national human rights institutions;

(f) Take the corrective measures necessary, including by granting working visas to human rights personnel of UNAMID, in line with the relevant status-of-forces agreement, provide United Nations human rights monitors with full and unimpeded access to sites of human rights violations and not obstruct their freedom of movement to discharge their mandate;

(g) Facilitate the deployment to the Sudan of an OHCHR technical assessment mission in order to discuss potential areas for possible technical cooperation with the relevant Sudanese authorities and other stakeholders, including United Nations entities, civil society organizations and the diplomatic community.

B. International community

88. The Independent Expert calls upon the international community to:

(a) Continue to provide technical and financial assistance to the Government of the Sudan, on the basis of needs assessment, to strengthen national institutions for the protection of human rights, including the Advisory Council for Human Rights, the National Commission for Human Rights, the judiciary, the police, the Unit on Combating Violence against Women, the National Council for Child Welfare, the Human Rights Committee and the Legislative Committee of the National Assembly;

(b) Provide civil society organizations with technical assistance and capacity-building programmes to improve their human rights advocacy and rule-of-law capabilities and to enable them to contribute more effectively to the improvement of human rights in the Sudan;

(c) Engage the academic community in the Sudan to contribute to the strategy to improve the human rights situation in the Sudan and provide it with technical assistance and capacity-building to enhance its capabilities for that purpose.

C. UNAMID

89. The independent Expert calls upon UNAMID:

(a) In accordance with its mandate, and without prejudice to the primary responsibility of the Sudanese authorities, to take the measures necessary to protect civilians, proactively deter attacks on civilians and prevent violations of international human rights law;

(b) To continue to provide support and technical assistance to the Government of the Sudan and civil society organizations, in particular to provide human rights training and support to judicial institutions and non-governmental institutions across the Sudan.
