

## **STATEMENT BY THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE SUDAN**

**Third Committee  
New York, 12 November 2002**

Mr. Chairman,  
Excellencies,  
Ladies and Gentlemen,

I have the honour, for the second time, to address this august body to present my report, which is mainly based on my last visit to the Sudan, Kenya and Egypt in September-October 2002. As part of the visit, I also travelled to El-Fasher, northern Darfur, to look into the issue of Special Courts.

I wish to welcome the Machakos Protocol, as well as the resumption of the peace talks on 14 October 2002. This is the first real chance for peace in a long time. Since the beginning, I stressed the important role that the United States could play. The Danforth's initiative was a good preparation for this process. In my view, peace negotiations are not compatible with on-going hostilities. A comprehensive cease-fire is a pre-condition for the peace process to continue. Similarly, human rights abuses must be stopped, too. Indeed, human rights must be central to the peace process.

Accordingly, Machakos should be built on specific mechanisms for the promotion and protection of human rights. These must include the creation of independent internal institutions (1) as well as the establishment of an effective monitoring system from the outside. In the same vein, I noted with appreciation that the civil society is playing an increasingly active role. Human rights NGOs are more visible, organised and keen to participate actively in the peace process.

The country needs increased assistance to build up civil society, to prepare the population for peace and democratic governance. This includes civil administration and education. Specific human rights benchmarks should be envisaged in the peace process, within an established timeframe. To this end, I prepared a list, which is attached herewith as an Annex.

Mr. Chairman,

During my last visit, I had noted a number of new elements mainly focussing on the building up and/or strengthening of institutions and training activities. I took note of the new CEAWC structure, the on-going discussions relating to the creation of a national human rights institution; the training activities organised by the Office of the

High Commissioner for Human Rights within its technical co-operation program and, in rebel-held southern Sudan, the initial steps taken towards the strengthening of the civil society.

In my report, I provided an overview of the situation, by comparing the commitments made by the Government during the last year and action taken. Most of the commitments have not been sufficiently implemented. In some other important human rights areas, no commitments were made. I conclude therefore that, overall, the human rights situation has not yet changed significantly. However, some positive areas need to be highlighted.

## **I. The civil society**

In general, political opposition parties, politically active students, and representatives of independent newspapers or human rights NGOs have continued to be subjected to different forms of harassment. Daily or periodic summoning to the security as well as torture, in both physical and subtler psychological forms, have continued to take place. It was reported that prisoners are often moved away from their community of origin, which deprives them of their family's support and assistance. Overall, individual cases have continued to occur and it remains difficult to identify perpetrators. Some sources referred to recent cases of students being subjected to torture in the past 2-3 months. I met with one of these students who had 13 cigarette burns on his arms and forearms.

I was informed that students who are involved in human rights and/or political activities as well as political opposition party members ? particularly from the Democratic Unionist Party (DUP) and Popular National Congress (PNC) - have continued to be harassed. PNC leader Hassan al-Turabi's detention has been further renewed by Presidential Emergency Order .

I am particularly concerned at information received regarding students riots taking place at the Khartoum University during the last week of October. Reportedly, the immediate cause of the demonstrations was the cancellation of a political rally, although restrictions to the freedoms of association and assembly seem to be part of the problem (2). According to information received demonstrating students were attacked by Anti-riot police. The operation resulted in two students being seriously injured by gunfire and/or beating and some 100 students detained. I appeal to both parties to seek peaceful solutions to this situation and refrain from resorting to violence.

Since my first visit, I encouraged Government authorities as well as representatives of the civil society to consider the establishment of an independent human rights national institution. I was glad to report that the civil society had followed up on my proposal and that discussions were being held to this end, including in the presence of Government officials. I learnt, however, that on 19 February, a meeting had been scheduled to discuss the issue and security officers prevented some participants from attending. I raised this incident with the Minister of Justice, who assured me that the President had no objection to the creation of such an institution. In view of the Minister's above-mentioned position, I call upon him to follow closely the situation with a view to avoiding similar incidents. In addition, I heard rumors whereby the Advisory Council itself could be "upgraded" into a national institution. In this connection, I wish to recall that the Advisory Council is a governmental body dealing with human rights within the Ministry of Justice. I also wish to refer to the Paris principles on national institutions with a view to highlighting their independent and participatory character.

Regarding NGOs, I am glad to report that there has been some progress. A network of NGOs working on human rights has been established following the first training organized by the Office of the High Commissioner for Human Rights. The Network has not been harassed by security so far, although single organizations have experienced difficulties at times in the discharge of their mandates.

## **II. Role of police and security officers**

The state of emergency has remained in force since December 1999, which has provided the basis for the imposition of security measure, often arbitrarily implemented. I already referred to the amendment to the National Security Forces Act, as well as the amendments to the Criminal Procedure Act of 1991. Overall, the role of the security apparatus, as the main responsible for the occurrence of human rights abuses as well as impunity of security officers, remains an issue of serious concern. The state of emergency should be lifted, together with the amendments to the above-mentioned acts.

## **III. Freedom of the press**

I acknowledge the plurality of publications existing in the Sudan. However, in spite of a temporary lifting of censorship in late November 2001, and contrary to information received from the National Press Council, independent newspapers have continued, from time to time, to be targeted through the imposition of direct and indirect forms of censorship and restrictive measures such as high fines,

#### **IV. Freedom of religion and belief**

While sources reported that it was difficult to give specific cases of abuses in the past 6 months, discrimination against/harassment of Christians, i.e. denial of visas, permissions to build new churches and equal participation in the educational system, have continued to be reported. Confiscation of properties remains a problem that has not yet been addressed in a satisfactory manner; in this connection, reference was made to the Catholic Club case.

Sources lamented that the Council of Christians has not been appointed in a democratic, participatory manner and that its members were appointed by the Government. As a result, the Churches seem to have no trust in the Council.

#### **V. Human rights and humanitarian law in the context of the conflict**

The month of October has been a challenging, but also rewarding month, on the humanitarian front. The flight restrictions over Eastern and Western Equatoria and the suspension of humanitarian activities for over a week made it particularly difficult for humanitarian operations to work effectively. In terms of impact, it was reported that some 500,000 people were denied access. During my visit, I stressed in no uncertain terms that the humanitarian access should be fully respected as a principle and cannot be dealt with on an ad hoc basis.

I also strongly condemn the bombing of civilians and civilian installations during the last months. I believe that investigations of war crimes should be undertaken as soon as conditions permit.

In this connection, I welcome the developments occurred as from mid-October, notably the Memorandum of Understanding, signed on 15 October between the Government and the SPLM/A to cease hostilities for the duration of talks, as well as the signing, on 26 October, of what has been defined a "landmark aid deal", between the Government, the SPLM/A and the United Nations allowing unimpeded humanitarian access.

#### **VI. The situation of internally displaced**

The situation of IDPs has remained an issue of concern. Sources refer to it as "exasperating".

During my last visit, I inquired about future prospects, in view of the magnitude of Sudan's IDP population, in case of a positive outcome of the peace talks. It seems likely that there might be new waves of movements and that therefore a number of issues will have to be considered,

including in terms of protection and creation of new opportunities in the south in order to provide people with attractive options.

It was reported that the Government has received support for its IDP policy following the first mission of the IDP Inter-Agency Unit last summer. All sources stressed the importance to follow up on this issue. I am therefore glad that the Unit has planned a further mission, currently on-going, aimed at mapping out a UN system strategy for supporting the Government and regional authorities in conceptualizing, resourcing and implementing durable solutions for IDPs, with a main focus on community-based interventions.

## **VII. The situation of women**

During my last visit, I was informed that some, though still limited, progress was made in the field of abductions, following the restructuring of CEAWC on the one hand, and further to the fact that the train from Babanusa to Wau has not been running lately, on the other. It was not clear, though, whether this was due to a political decision or not.

I was informed that the Government has finally followed up on its pledges and given CEAWC 200,000 USD. CEAWC considered that this was a satisfactory amount of money, while lamenting decreasing funding from donors.

I was also informed of a new rule whereby any new cases of abductions will be prosecuted and won't benefit from the current procedure, as described in my previous reports. As I reported, after one year since CEAWC's restructuring, also old cases will be referred to prosecution. The new rule falls within the CEAWC rules of cooperation and its nature is legally binding. It should be noted however, that so far not much has been done in terms of prosecuting responsible people.

Also, some sources reported as a positive development that it was now possible to reunify former abductees with their families in SPLM/A areas.

In view of information received, I paid particular attention to the issue of Female Genital Mutilation (FGM). I encourage the Government to play a more active role including in terms of awareness-raising, with a view to eradicating such a traditional harmful practice.

During my last visit, I received further information on discrimination against women: dismissal from public offices is continuous, women cannot travel unless they get a travel permit from their "guardian", women living alone are reportedly often harassed by the security, including sexually.

Since my appointment, I have been urging the Government to continue discussions and awareness-raising with a view to acceding the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). I am pleased to report that OHCHR will address this issue in the framework of its technical cooperation program and that an activity has been foreseen for the beginning of 2003.

Regarding the situation of women in SPLM/A-held territories, I was informed of the limited involvement of women in development projects, due to the fact that the local society is totally man-dominated. Women are generally not educated and when they reach the age of 10 or 12, most of them are reportedly taken as wives by local leaders or commanders. It seems that the situation varies only slightly from region to region.

### **VIII. The situation of children**

No progress was recorded on the situation of children; street children and juvenile justice remain areas of concern. Only two reformatories exist and children are very often detained with adults and subjected to inhumane treatment.

I was informed that child exploitation continues to take place particularly in the agricultural and pastoral sectors. Networks are reportedly flourishing to exploit them, including sexually. A stronger Government involvement is necessary.

I was also informed that forced recruitment of children in war areas has continued.

### **IX. The SPLM/A-controlled territories**

In view of the flight ban affecting Eastern and Western Equatoria, regrettably I was unable to travel to southern Sudan.

As for violations of human rights and international humanitarian law occurring within the framework of the conflict, I condemn disregard for international standards and appeal to the SPLM/A and allied militias to do their utmost to prevent human rights abuses.

Overall, the human rights situation remains of concern. Problems remain in terms of what has been defined as "enormous power of the security", severe restrictions to freedom of opinion and expression, speech, assembly and association. There continues to be no political opposition in southern Sudan, nor any newspaper, in short, no alternative to the SPLM/A. It should be taken into account, however, that reports from different sources continue to refer to the mounting of an internal

opposition and to the fact that the SPLM/A is to some extent confronted by the civil society when it fails to deliver. This would seem to confirm that the SPLM/A is not yet taking full responsibility as a ruling party.

While in Nairobi, I met with representatives of the SPLM/A with whom I discussed my main concern, notably the building up and/or strengthening of the civil society and democratization. I was informed that relevant initiatives sponsored by the New Sudan Council of Churches and bilateral donors are continuing. I welcome the outcome of the Chukudum Crisis Peace Conference. I wish to hereby reiterate my unconditional support to grass-roots, people to people initiatives which help pave the way for peace.

I also inquired about the holding of elections for the so-called National Congress, which, though supposed to be held every 4 years, have been repeatedly postponed. This was again the case this year, owing to the on-going fighting. I wish to note however, that some sources point to very high portions of war-free areas in southern Sudan, which would allow for the undertaking of initiatives aimed at fostering democratization, as is proven by the numerous programs of assistance on-going in southern Sudan. Some of my counterparts working in southern Sudan lamented the absence of a civil society, thus the difficulties to establish partnerships and formulate exit strategies. Opinions on this issue, however, differ to a certain extent. Reference was also made to more stable areas (notably Western Equatoria), where the development of the civil society has been defined as "remarkable" and some success has been reported in the separation of military and civilian structures.

On the issue of child soldiers, in spite of some progress made on their demobilization, as previously reported, some sources reported that forced recruitment of children around 15 years of age continues to take place in conflict areas. Sources also reported that demobilized children are sometimes recruited again.

Forced recruitment is also reportedly on-going.

### **VIII. International conventions**

I wish to once again encourage the Government to accede to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the Government promised to do last year, on the occasion of my first visit.

In this connection, I welcome the training seminar organised by OHCHR in the framework of its technical cooperation program, on ratification of CAT and CEDAW,

with the participation of international experts from the Committees.

Regarding the status of reporting obligations, I noted that the Government has presented all the reports due under the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

## **IX. Individual cases**

In my interim report, I referred to the fact that I had received no reply nor any information on action taken on most of urgent appeals sent. More specifically, I received 1 reply, from the Permanent Mission in Geneva, on 1 out of 11 urgent actions sent. I reiterate my appeal to the Sudanese authorities to follow up on any individual cases received and inform me and my thematic colleagues of any action taken, as appropriate.

## **X. Darfur**

During my last mission I travelled to El-Fashir, northern Darfur, to look into the issue of special courts. I held extensive discussions with the Heads of the Judiciary of southern and northern Darfur. I visited the local prison where I met with representatives of the Rizeigat tribe, who had been arrested and sentenced to death followed an incident occurred in April-May, which had opposed them to the Mahlia in tribal clashes. I also raised the case of the presence of at least 1 prisoner who was underage, reportedly 14.

From my discussions it clearly appeared that there was no time allowed for individual cross-examination; that the trial targeted the group for three weeks; that some of the prisoners had not been given any reasons for being sentenced to death; that most of the others were sentenced for carrying out an armed attack and murder. All have appealed. I noted that all prisoners were held in shackles, which, I was told, is customary for prisoners sentenced to death. Due to the heat, the shackles had to be wrapped in paper and/or plastic to avoid contact with the skin.

In the course of my discussions, I repeatedly asked my counterparts what was the reason for establishing Special Courts. I was informed that 8 Special Courts were established in North and South Darfur (3) in May 2001 and that they are composed of 3 judges, 1 civilian and 2 military. All those tried by the Special Courts were given legal representation and the right to appeal. However, accused are represented by "a lawyer as a friend", meaning that the "accused has the right to speak for himself and the lawyers do not speak for the accused"; rather " the



lawyer indicates to the accused what he should say". Defendants also reportedly have the right to withdraw their confessions. However, that confession would be considered as evidence if corroborated by other evidence.

As for the right to appeal, normally the decision of the Head of the Judiciary is final, with the exception of death sentences and amputations, whereby the accused can appeal, including through a lawyer. In these cases, judgement is referred to the High Court in Khartoum. Reportedly, it takes months for the High Court to decide on appeal cases. None of the participants to the meeting could say how many.

I appeal to the Sudanese authorities to abolish the Special Court and focus on alternative means to settle tribal conflicts, notably by resorting to traditional conflict-resolution means, as has been done successfully in other areas. I also appeal to the Constitutional Court to play its role in all pending cases.

## **XI. The oil issue within the context of the right to development**

I repeatedly stated that oil is exacerbating the conflict, insofar as the war is the result of a fight for the control of power and resources. I refer to last year's debate on the use of oil revenues. I took note of the Government's stand whereby the use of oil revenues is a sovereign decision, not to be covered by my mandate. I responded by focusing on the oil issue in connection with the right to development, and more specifically the use of oil revenues and the need to develop a wealth-sharing arrangement with the South.

I recalled the United Nations Declaration on the Right to Development, as well as relevant Commission on Human Rights resolutions. In view of the latest report issued by UNDP on Arab Human Development, I wish to highlight once again the link between development and governance, defined as "the exercise of economic, political and administrative authority to manage a country's affairs at all levels. [?] Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable and it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources" (4).

## **XII. The role of the United Nations**

In conclusion, Mr. Chairman, I already referred to the role of the United Nations, particularly in the framework of the peace process. I believe that Machakos should be

the starting point for a stronger involvement of the UN in the Sudan. Accordingly, while the existing humanitarian structure should continue to look at humanitarian issues, including access, a new political structure, under the direction of a UN political office should be envisaged to tackle more political issues, including those linked to the peace process and its outcome, in terms of a post-conflict scenario. Naturally, such a structure should include a human rights component, entrusted with the monitoring of the implementation of the peace process.

As for my recommendations on the need to support the civil society, I reiterate my appreciation for the technical co-operation activities carried out in the past 1 and a half years by the Office of the High Commissioner for Human Rights in Khartoum, which aim at building and/or strengthening national capacities in the field of human rights through the provision of training on the promotion and protection of human rights. I appreciated the opening of the authorities in Khartoum in the first phases of co-operation, however, besides the establishment of new institutions, more specific action should be taken which has an impact on the overall human rights situation, within a specific timeframe.

### **Conclusions and recommendations**

Once again, I had the opportunity to visit the Sudan at a very interesting time, a time of uncertainty, due to the vicissitudes on the battlefields, as well as in the peace negotiations, but also a time of hope, due to a progressive change in the international context following, among other things, the events of 11 September 2001.

I heard the view that the Government seemed to be satisfied with the outcome of the first round of the peace talks and that therefore there was no need to continue to focus on human rights issues. In my view, human rights do not belong to the post-conflict scenario, but must be an integral part, indeed be put at the heart, of the peace talks, because with no consideration of human rights today there will never be a sustainable and just peace tomorrow.

Once again, I refer to those benchmarks that I mentioned at the beginning, which should be fully integrated in the peace negotiations as further guarantees for the post-conflict scenario. I also wish to reiterate that the peace talks should be a forum for all the parties in the conflict and as such cannot be exclusively linked to the Government and the SPLM/A, which has the further disadvantage of potentially crystallizing the country into two parts, besides making the resolution of the conflict itself more difficult.

I noted that assistance continues to be directed mainly to emergencies. More energies and resources should be devoted

to prepare the population for peace and democracy. Assistance should be community-based, focusing on developing a sense of ownership by the local communities, thus ensuring their sustainability. Traditional means of conflict resolution, healing and reconciliation should be encouraged. Assistance should be targeted at developing coping mechanisms. The civil society as a whole, and women in particular, should be empowered to play an active role not only in the negotiations but also in the post-conflict scenario. Also, development aid should be closely linked to tangible progress in the field of human rights.

The link between peace, democracy and human rights should always be kept into account, with equal emphasis on civil, cultural, economic, political and social rights. In this connection, relevant recommendations contained in the concluding observations of the Treaty Bodies should be the starting point for action, at both the national and international levels. Also, relevant provisions of the Durban Declaration and Program of Action stemming from the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance should be referred to as further guidance.

A long-term, comprehensive, unified approach is the only way for any peace initiative to succeed. A political follow-up by the United Nations is therefore urgently needed to preserve the momentum.

## **Annex I**

Human rights benchmarks for the peace process

1. Lifting of the state of emergency;
2. Reduce the role of the security apparatus by lifting immunities for security officers who should be held accountable for their actions as well as revision of the National Security Forces Act;
3. Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. Acts of torture should be considered as offences under criminal law, accordingly perpetrators of similar acts should be held accountable for their actions and be brought to justice to be subject to criminal, disciplinary or other appropriate proceedings. Any statements which is established to have been made as a result of torture or other cruel, inhuman, degrading treatment or punishment may not be invoked as

evidence against the person concerned or against any other person in any proceedings (5). The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which was signed in 1986 should be ratified.

4. Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity. Accordingly, appropriate measures should be taken to abolish laws and practice, which are discriminatory against women, including harmful traditional practices, and specific provisions should be envisaged to ensure adequate legal protection of women (6). Also, women should be empowered to play an active role in the peace process and post-conflict management. To this end, the Convention on the Elimination of All Forms of Discrimination Against Women should be signed and ratified;

5. Freedom of expression (7): effective lifting of all forms of direct and indirect censorship. Everyone should be free to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, through any media of his/her choice;

6. Independence of the judiciary should be guaranteed by the State and enshrined in the Constitution or the law of the country. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. Every one shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process should not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals (8). More specifically, special courts should be abolished. Traditional mechanisms of conflict settlement should be looked into to solve the problem of tribal clashes. Similar grass-roots, people-to-people initiatives, like the ones used to settle conflicts between Dinka and Nuer or between Dinka and Didinga as well as between Rizeigat and Mahlia could provide useful guidance to this end.

7. Freedom of movement should be ensured both within and outside the country. Lengthy procedures for visa requirements should be speeded up and should not be used as instruments of discrimination against human rights activists, political opponents, including students, or religious representatives;

8. Freedom of assembly and association (9): representatives of the civil society, including non-governmental organizations, students, churches, etc. should be allowed

to assemble peacefully and including to form and join trade unions for the protection of their interests, with a view to playing their role under no constraints other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health and morals or the protection of the rights and freedom of others. All restrictions on political activities should be lifted for political parties to play their role. Political prisoners should be released;

9. The building up and/or strengthening of the civil society, particularly in southern Sudan, should be further encouraged. The SPLM/A in particular should do more to replace existing military structures with civil ones. The international community should support efforts aimed to this end.

10. IDPs: While responsibility for the protection and promotion of IDPs rests first and foremost with the national government and local authorities, it is important for the international community to see how best it can contribute to enhancing the protection of IDPs in conflict and post-conflict scenarios. In this connection, the Guiding Principles on Internal Displacement issued by the Special Representative of the Secretary-General on IDPs are an invaluable tool to guide action on assisting and protecting IDPs.

11. Specific mechanisms of protection should be envisaged for children. In this connection, the concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.190) should be taken into account.

12. Right to development: wealth sharing is inextricably linked to a sustainable peace process. Accordingly, specific provisions have to be put in place to ensure that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Specific provisions, relevant to the right to development, including CHR res 2001/19 should be kept into account.

## **Notes**

1. In accordance with the Paris Principles relating to the status of national institutions
2. Some sources referred to the fact that there has been no students union for the past 7 years and that elections were repeatedly postponed pending the return of those

students who had been sent to war. Some sources also claimed that assistance for lodging for university students had also been cancelled except for those students belonging to the ruling party. It should also be noted that security is reportedly present and active within the campus limits, sometimes called by the University administration itself.

3. According to the Advisory Council, 5 Courts were established in North Darfur and 3 in South Darfur. However, Nyala Special Court No. 1 was reconstituted in May 2002 following the transfer of the President of the Court. It should be noted that the latter was an officer of the Army, who has now been replaced by a civilian judge. 96 people were brought in front of the Court, 10 of whom were acquitted; 86 convicted. All of them appealed to the Appeal Court, constituted of 1 judge, the Head of the judicial organ in Darfur. Their case was further transferred to the High Court and the Supreme/High Court in Khartoum, comprised of 5 judges. They also have the right to appeal to the Constitutional Court.

4. UNDP Arab Human Development Report 2002, Chapter 7, page 105.

5. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by GA res. 3452 (XXX) of 9 December, 1975

6. Declaration on the Elimination of Discrimination against Women

7. ICCPR, art. 19

8. Basic principles on the Independence of the judiciary

9. ICCPR, art. 21, 22; ICESCR, art. 8