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**Advance Unedited Version**Distr.: General  
15 May 2015

Original: English

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**Committee on the Elimination of Racial Discrimination****Concluding observations on the combined twelfth to sixteenth periodic reports of Sudan\***

1. The Committee considered the combined twelfth to sixteenth periodic reports of Sudan (CERD/C/SDN/12-16) at its 2335<sup>th</sup> and 2336<sup>th</sup> meetings (CERD/C/SR2335 and 2336), held on 4 and 5 May 2015. At its 2347<sup>th</sup> and 2348<sup>th</sup> meetings, held on 12 and 13 May 2015, it adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the submission, in a single document, of the State party's twelfth to sixteenth periodic reports despite the considerable delay. The Committee notes the oral presentation and the responses provided by the delegation during the consideration of the report.

**B. Positive aspects**

3. The Committee welcomes the adoption of the following legislative and institutional initiatives taken by the State party:

- (a) National Human Rights Commission Act, in 2009;
- (b) Persons with Disabilities Act, in 2009;
- (c) Children's Act, in 2010;
- (d) Anti-Trafficking Act, in 2014; and,
- (e) National Action Plan for the Promotion and Protection of Human Rights 2013-2023.

4. The Committee welcomes the adoption of the Southern Sudan Referendum Act in 2009 as well as the holding of the referendum on 9 January 2011, on the basis of the Interim Constitution of 2005.

5. The Committee also notes with appreciation that, since it last considered the periodic report from the State party, Sudan has ratified or acceded to the following international instruments:

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\* Adopted by the Committee at its eighty-sixth session (27 April – 15 May, 2015).

- (a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009; and,
- (b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the Optional Protocol to the same Convention on the involvement of children in armed conflict, respectively in 2004 and 2005.

## **C. Issues of concern and recommendations**

### **Inter-ethnic relations within Sudan**

6. The Committee notes with concern the persistence of old, and the emergence of new conflicts with strong ethnic dimensions in different parts of the State party, notably in the Darfur region as well as in South Kordofan and Blue Nile states. The Committee also expresses its concern at ethnic tensions in other parts of Sudan at risk of intensification, including in the Nubian region in North Sudan, as well as in the Eastern periphery in Red Sea and Kassala states that are predominantly inhabited by ethnic minority groups. (arts. 1, 2 and 5)

**The Committee urges the State party as a matter of priority, to embark on a national reconciliation process among all ethnic groups and parties to the conflicts, which integrates the principles of equality and non-discrimination in all its initiatives and plans aimed at conflict resolution and peace building. To this end, it should, inter alia, pursue the necessary initiatives and adopt the required legislation and policies supported by effective implementation mechanisms, with a view to fostering a culture of tolerance and mutual respect.**

### **On-going conflict in Darfur**

7. While taking note of the delegation's statement that the long-standing tensions over land and other resources between settled agriculturalists and nomadic pastoralists in Darfur are free of ethnic dimensions, the Committee is concerned that the conflict in Darfur may have evolved into a conflict with an ethnic component. It is also concerned at the protracted violence between Government forces and rebel groups mostly of non-Arab origin. Furthermore, it expresses its concern that:

- (a) The conflict in Darfur is marked by serious violations of human rights, including killings, torture, sexual violence, arbitrary detention and ill-treatment of civilians, particularly those belonging to the Fur, Zaghawa and Masaalit ethnic groups;
- (b) Judicial responses to serious human rights abuses have remained weak, and that the creation of the Special Criminal Court for Darfur has not proven to be adequate or effective in bringing perpetrators to justice; and,
- (c) Past reconciliation attempts between the Government of Sudan and Darfur-based rebel groups, including the 2011 Doha Peace Agreement, have failed to restore peace and rule of law.

**The Committee urges the State party to intensify its efforts to put an end to the ongoing conflict in Darfur. To this end, the Committee recommends that the State party:**

- (a) **Examine thoroughly the underlying causes of the conflict as well as its resultant discriminatory effects that have a strong ethnic component, and based on this examination, develop and implement an action plan to put an end to the conflict, in consultation with the concerned parties;**

(b) Establish, as a matter of priority, fair treatment between the Darfur region and the other regions of Sudan in the distribution of national resources with a view to regaining the confidence of Darfurians in the Government; and,

(c) Take effective measures to investigate past and on-going serious human rights violations in the context of the Darfur conflict, and provide the Special Court for Darfur with the necessary resources, including by seeking international assistance, to enable the Court to discharge its mandate effectively with a view to ending impunity, and include in its next periodic report information on progress achieved in this regard.

#### **Security escalation in South Kordofan and Blue Nile states**

8. The Committee expresses its grave concern about the escalation of violence in South Kordofan and Blue Nile states, and in particular about the excessive and indiscriminate use of force, including the aerial bombardments, by Government Armed Forces having a disproportionate effect on the Nuba and other ethnic groups, as well as causing damage to civilian objects. These attacks have resulted in the deaths of numerous civilians and the displacement of thousands of others from the Nuba. (arts 2, 5 and 6)

**The Committee recommends that the State party refrain from carrying out any violent act that is directed at, or has a disproportionate effect on, a specific ethnic group. The Committee further calls upon the State party to ensure that its Armed Forces refrain from attacking civilians and civilian objects. Moreover, it should take the necessary measures to peacefully resolve the conflict in South Kordofan and Blue Nile, while ensuring the “popular consultation” of the affected groups, as stipulated by the Interim Constitution.**

#### **Political status of Abyei**

9. The Committee is concerned that despite the lapse of time since the conclusion of the Comprehensive Peace Agreement in 2005, the final status of Abyei has not been resolved and continues to impact negatively on the enjoyment of the rights enshrined in the Convention by the different ethnic groups living in this area.

**The Committee encourages the State party to resume its efforts to resolve the political future of the Abyei area, taking into consideration the will of the people living in this area so that they can fully enjoy their rights protected under the Convention.**

#### **Internal displacement**

10. The Committee is deeply concerned at the large-scale displacement of persons in the State party having a disproportionate impact on ethnic or tribal groups, which is further exacerbated by the ongoing conflicts. It is particularly concerned at:

(a) The emergence of new waves of internally displaced persons within Darfur and Nuba Mountains, many of whom belong to groups protected by the Convention;

(b) The limited access to basic services by the displaced persons, as well as the obstacles to the access of humanitarian aid agencies into areas inhabited by internally displaced persons; and,

(c) The scarce efforts to ensure the safe return of those displaced persons willing to go back to their homes. (arts 2 and 5)

**The Committee urges that the State party, as a matter of urgency, ensure that ongoing conflicts do not generate further waves of displacement. It should redouble its efforts to cater to the needs of internally displaced persons and facilitate humanitarian access**

to those in need of such aid without discrimination on any ground, including by enhancing existing and developing new cooperation arrangements with humanitarian agencies. The State party should also strengthen its efforts to facilitate the safe return of those displaced who are willing to return to their homes and take measures to ensure their reintegration into society.

#### **Sexual violence in conflict areas**

11. Despite the responses provided by the delegation concerning allegations of mass rape by soldiers of the Sudan Armed Forces of women belonging to the Fur ethnic group in Thabit village of North Darfur in late October 2014, the Committee remains concerned that these allegations have not been thoroughly and effectively investigated. The Committee further expresses its concern about the reported reoccurrence of similar cases of sexual violence in conflict areas, and that the perpetrators remain at large unpunished. (arts. 5 and 6)

**The Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, and strongly urges it to ensure that State forces and groups under its control do not perpetrate sexual violence. The Committee further calls on the State party to exercise due diligence to prevent, investigate and punish acts of sexual violence in conflict areas, including the alleged mass rape in Thabit village, in compliance with international human rights standards, as well as to fulfil the obligation to provide reparation for victims. It should also facilitate other entities' investigation endeavours including those carried out or attempted by the African Union/United Nations Hybrid Operation (UNAMID).**

#### **Definition of racial discrimination and anti-discrimination legislation**

12. The Committee is concerned about the lack of a definition of racial discrimination in the State party's legislation. It regrets that the 1998 proposed amendment to section 64 of the Criminal Code (1991) that would have defined racial discrimination in line with article 1, para 1, of the Convention, was never passed. Furthermore, while noting the existence of some constitutional provisions on equality and non-discrimination and some measures taken in this area, the Committee is concerned that the State party has still not adopted an overarching anti-discrimination law. (arts. 1, 2 and 4)

#### **The Committee recommends that the State party:**

**(a) Expedite its efforts to introduce a comprehensive definition of racial discrimination in its legislation, including all acts of direct as well as indirect discrimination, in accordance with article 1, para 1, of the Convention;**

**(b) Ensure that racist motivation is defined as an aggravating circumstance in its criminal legislation; and,**

**(c) Adopt and effectively enforce legislation prohibiting the dissemination of ideas based on racial or ethnic superiority and expressions of racial hatred, as well as incitement to racial discrimination and violence against any group of persons of another ethnic group in compliance with art 4 of the Convention.**

#### **Freedom of expression and excessive use of force by law enforcement officials**

13. The Committee is concerned about the reported excessive use of force by law-enforcement and security officials in the context of demonstrations, which in several instances has resulted in loss of life. The Committee is also concerned about information that human rights defenders, particularly those belonging to minority groups, continue to be

persecuted and are subject to harassment, arbitrary detention, and ill-treatment by the police. (art. 5)

**The Committee recommends that the State party take concrete steps to prevent and put a stop to all forms of excessive use of force by State officials. It should widen the legal space for the exercise of political and civil rights, including by political opponents, many of whom belonging to minority groups. Furthermore, the Committee calls on the State party to investigate thoroughly all such acts, bring perpetrators to justice and compensate victims.**

#### **Relevant statistical data**

14. While noting the difficulties faced by the State party to collect statistics, mainly due to its vast area and as result of the ongoing conflicts, the Committee regrets the absence of information on the ethnic composition of the population, including relevant socioeconomic indicators to assess the equal enjoyment by all of the rights covered by the Convention. (arts. 1 and 5).

**In view of the ethnic diversity of the State party's population, in line with the revised guidelines for reporting under the Convention (CERD/C/2007/1, paras. 10–12), and recalling its general recommendation No. 24 (1999) concerning art.1 of the Convention, the Committee requests the State party to collect and publicize reliable statistical data on the ethnic composition of its population as well as on the social and economic situation of the different ethnic groups, disaggregated by areas where minority groups live in substantial numbers and covering the whole territory of the State party, in order to provide an adequate basis for policies to ensure the equal enjoyment of rights under the Convention in the State party. It also encourages the State party to expedite the process of holding a nationwide census.**

#### **Status of the Convention in domestic legal order**

15. The Committee appreciates the information that a new Constitution is being developed by the State party. However, while it notes that article 27(3) of the Interim Constitution (2005) provides that ratified treaties constitute an integral part of Sudanese law, the Committee regrets the absence of cases in which the Convention's provisions have been invoked by, or applied in, domestic courts. (art. 2)

**The Committee recommends that the State party expedite the adoption of the permanent Constitution, and ensure that article 27(3) of the Interim Constitution is reflected fully in its new Constitution, as declared by the delegation during the dialogue. It also recommends that the State party raise the awareness of judges, lawyers, prosecutors and law enforcement officers on the provisions of the Convention to enable the domestic courts to invoke and apply it. Furthermore, it urges the State party to include in its next periodic report specific information about the application of the Convention by domestic courts.**

#### **Independence of the judiciary**

16. Taking into consideration that all individuals must enjoy effective protection and remedies through the competent national courts and other state institutions against any acts of racial discrimination and that the independence of the judiciary is essential, including in cases relating to racial discrimination, the Committee is concerned at allegations that such conditions are not always present in the State party (arts. 5 and 6).

**Recalling its general recommendation No. 35 on combatting racist hate speech (2013), the Committee recommends that the State party increase its efforts to strengthen and guarantee the independence of the judiciary from political control and interference, so**

as to ensure proper administration of justice in particular in cases related to racial discrimination.

#### **National human rights institution**

17. The Committee appreciates the adoption of the National Human Rights Commission Act in 2009 and notes the appointment of 15 Commissioners in 2012. However, it is concerned that the Commission is not provided with the necessary resources for the effective and independent exercise of its mandate. (art. 2)

**Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the State party guarantee the full independence and financial autonomy of the Commission and ensure that it is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex). The Committee also recommends that the State party encourage the Commission to seek accreditation by the International Coordinating Committee of National Human Rights Institutions.**

#### **Representation of minority groups in political life**

18. The Committee regrets the absence of available data on political representation of minority groups in public administration, police and the army. The Committee is further concerned about their reported limited political participation and representation. (arts 2 and 5(c) and (d))

**Recalling that the Convention prohibits indirect as well as direct discrimination, the Committee is of the view that legal guarantees of equal right to be elected are not sufficient as regards political participation of ethnic groups in the State party. It recommends that the State party take steps to promote fair and equitable representation of minority groups in national and local governments' functions, public services, army and the police particularly at high-level positions, including through the establishment of special measures such as quotas where appropriate, consistent with the Convention and the Committee's general recommendation No. 32 The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination (2009).**

#### **Citizenship and risk of statelessness**

19. The Committee notes with concern that the 2011 amendment to the Nationality Act, as introduced in Section 10(2), provides for the revocation of the Sudanese nationality of those who have acquired "de jure or de facto" the nationality of South Sudan, thus exposing many South Sudanese residing in Sudan who have not necessarily acquired South Sudanese nationality to high risk of statelessness. (arts. 5 and 6)

**The Committee recommends that the State party withdraw the 2011 amendment to the Nationality Act and ensure that rules governing citizenship acquisition and deprivation apply equally to all without discrimination based on, inter alia, ethnicity, and protect against statelessness.**

#### **Security of refugees and asylum seekers**

20. While appreciating the adoption of the anti-trafficking law in 2014, the Committee remains concerned about information on abductions of refugees and asylum seekers on the territory of the State party for ransom or trafficking. (art. 5)

**The Committee recommends that the State party increase its efforts to prevent and protect refugees and asylum seekers from kidnapping or abduction; investigate thoroughly all such cases and bring perpetrators to justice; effectively and firmly apply its anti-trafficking legislation; and, strengthen its measures to ensure the safety of refugees and asylum seekers in camps, including by seeking international assistance.**

#### **Nubian peoples' right to land**

**21.** The Committee is concerned about reports indicating the Government's plan to resume the construction of the Kajbar dam on lands traditionally occupied or inhabited by the Nubian people. The Committee is concerned that the dam, if pursued, may lead to the displacement of thousands of Nubians, who according to the delegation have been living there for more than 8,000 years, and to the destruction of many archaeological sites with historical and cultural significance for the Nubians. The Committee is also concerned that the amendment to article 43 of the Interim Constitution empowering the President to allocate and confiscate land for investment purposes without restriction, may further contribute to the above-mentioned consequences on Nubians. (art. 5)

**Recalling its general recommendation no. 23 on the rights of indigenous peoples (1997), the Committee recommends that the State party create appropriate mechanisms for effective consultation with the Nubians and any other ethnic groups whose rights to the lands traditionally inhabited by them may be affected by development activities. It is also called upon to ensure adequate compensation to any eventual relocation due to such activities. It further recommends that the State party consider repealing the constitutional amendment to article 43.**

#### **Complaints mechanism**

**22.** The Committee notes the information provided on the possibility of submitting complaints of racial discrimination to some bodies, including the Advisory Council for Human Rights, the National Human Rights Commission, and the Public Grievances and Corrections Board. However, it remains concerned about the lack of a comprehensive complaint mechanism for racial discrimination and about the absence of statistical data on complaints on racial discrimination and their outcomes, despite persistent reports of de facto discrimination against members of certain ethnic groups. (arts 2, 4, 5 and 6)

**Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to:**

**(a) Establish a comprehensive, effective and independent complaints mechanism for discrimination;**

**(b) Assess the reasons for the absence of complaints relating to racial discrimination, actively assist victims of racial discrimination seeking remedies, and inform the public, in particular minority groups, about legal remedies in the field of racial discrimination;**

**(c) Ensure the training of judges, prosecutors, lawyers and other law enforcement officials about the principles and the provisions of the Convention; and,**

**(d) Provide, in the next periodic report, updated information on complaints of racial discrimination and on relevant decisions in court proceedings or other bodies, including statistical data on complaints, prosecutions and sentences for acts prohibited under article 4 of the Convention.**

**National action plan to combat racial discrimination**

23. The Committee notes with appreciation the information provided on the existence of the National Action Plan for the Promotion and Protection of Human Rights (2013-2023). However it expresses its concern about the lack of information on the implementation of the Plan and whether it includes measures to combat racial discrimination. (arts. 2 and 7)

**The Committee is of the view that a national action plan against racial discrimination remains a useful instrument for combating racial discrimination. It encourages the State party to develop such a tool, provide it with adequate resources and effectively implement it. The Committee furthermore requests that the State party include in its next periodic report specific information on the above-mentioned action plan and other measures taken to combat racial discrimination, as well as their impact.**

**D. Other recommendations****Ratification of other instruments**

24. Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments to which it is not already a party, especially those that relate directly to racial discrimination, such as the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); and, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

**Follow-up to the Durban Declaration and Programme of Action**

25. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

**International Decade for People of African Descent**

26. In the light of General Assembly resolution 68/237 proclaiming the International Decade for People of African Descent for 2015-2024 and resolution 69/16 on the program of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable program of measures and policies. The Committee requests as well that the State party includes in its next report precise information on the concrete measures adopted in this framework, taking into account its General Recommendation N°34 (2011) on racial discrimination against people of African descent.

**Dialogue with civil society**

27. The Committee recommends that the State party consult and expand its dialogue with civil society organizations working on human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.



**Amendment to article 8 of the Convention**

28. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992.

**Declaration under article 14**

29. The Committee encourages the State party to make the optional declaration provided for under article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

**Follow-up to concluding observations**

30. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs [10, 19 and 20] above.

**Recommendations of particular importance**

31. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs [7, 8, 9, 12 and 13] above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

**Dissemination**

32. The Committee recommends that the State party's periodic reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

**Preparation of the next report**

33. The Committee recommends that the State party submit its 17<sup>th</sup> to 19<sup>th</sup> periodic reports in a single document by 10 April 2019, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In the light of the General Assembly resolution 68/268, the Committee urges the State party to observe the word limit of 21200 for periodic reports and 42400 for the common core document.

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