

**Security Council**

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Letter dated 3 December 2014 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

Further to our previous letters in response to the false allegations raised by Radio Dabanga on the alleged rape of 200 women in Tabit village in Northern Darfur, please find attached the executive summary of the report of the inquiries conducted by the Office of the Prosecutor General for Darfur Crimes (see annex), which is self-explanatory.

Having brought this to your kind attention, I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Rahamtalla Mohamed Osman **Elnor**
Permanent Representative



Annex to the letter dated 3 December 2014 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

[Original: Arabic]

Report on the investigation of the Office of the Special Prosecutor for Crimes in Darfur on the alleged rape of 200 women in the Tabit region

Introduction

The village of Tabit is located 55 km to the southwest of the city of Fasher. It was under the control of the rebel movements from 2003 to 2009, with the result that most of its inhabitants were displaced to the Abu Shouk, Zamzam, Salam, Nifasha and Fasher camps, and others to Nyala. In 2010, the Government regained control of the region and assigned to it a military garrison under the command of a major.

Tabit is one of five villages in Darfur selected for development and repatriation projects. Thus far, some \$6 million has been funnelled into development projects there by the Government of Qatar.

The people of Tabit belong to various tribes. In view of the circumstances, some of them live in the region, some live in the camps and some migrate seasonally for agriculture. Most of the residents are older persons and children. They include between 300 and 500 females, who live in family settings with their husbands or relatives. Without advance warning, a report was broadcast on Radio Dabanga that 200 women from Tabit, including girls and students, were mass-raped on 31 October 2014 by members of the Armed Forces garrison in Tabit. There was no mention of the names of the victims, the rapists, or the location where the rape occurred.

We have learned that although the Sudanese Armed Forces are deployed at more than 50 locations in Northern Darfur State, these kinds of issues have arisen only in Tabit.

According to the decision appointing the Special Prosecutor for Crimes in Darfur (No. 36/2012), his mandate includes investigating crimes that have taken place in Darfur since 2003, including war crimes, crimes against humanity and serious violations of international humanitarian law and human rights law. The 2011 Doha Document for Peace in Darfur called for the appointment of a Special Prosecutor for Crimes in Darfur to receive and investigate complaints and reports in order to right the wrongs suffered by citizens there. For that purpose, he travels when necessary to places where incidents have occurred, such as Kutum when the commissioner of that oasis was assassinated in 2012; Jabal Amer in Northern Darfur when there were clashes between the Abala and Bani Hussein tribes in 2013; Nitega in Southern Darfur when the Tanzanian contingent was attacked in 2013; and Ardamata in Western Darfur when the Nigerian contingent was attacked and lost two personnel. Those are but a few examples. The Special Prosecutor has travelled to the field dozens of times and has investigated hundreds of cases that have fallen within his jurisdiction. Such field visits streamline the proceedings and allow direct interaction with victims and perpetrators wherever they may be found. Even so,

return trips to Tabit along with the entire office and its personnel constituted a new challenge for the justice system in its investigation. The visits have helped to uncover the facts and reassure the inhabitants.

As soon as we received this information, the Minister of Justice immediately gave instructions to travel to the region, where we met with community leaders and ordinary citizens. They were unanimous that there had been no rapes, and a statement to that effect was released to the news media. We filed a detailed report with the Minister, who gave instructions for investigations to be conducted covering all parties in the region, including both civilians and the Armed Forces.

The Office of the Special Prosecutor did indeed travel to Tabit on 20 November 2014, along with all his counsellors, included the following:

1. Third Counsellor Makram Rizqullah Khalil;
2. Third Counsellor Ayman Abdulmun'im al-Sayyid Ahmad;
3. Counsellor Muhammad Harun al-Simt;
4. Mr. Nur Qurashi al-Makki, executive assistant to the Special Prosecutor for Crimes in Darfur.

Each of the counsellors interviewed, inter alia, a number of women, girls, men, civil society leaders, teachers, nurses, religious figures and Armed Forces members. The Special Prosecutor and his aides spent roughly four hours, and the team conducted a criminal investigation. It should be noted that this was the second visit.

During our four hours there, care was taken to preserve the confidentiality, dignity and privacy of the interview subjects. No attempts were made to influence them, and the interviews took place with only the Special Prosecutor or one of his aides in direct contact with the witnesses. The latter were informed of their legal rights, including their right to file a report or complaint. They were told that they were not subject to legal liability, and that they should tell the truth. They were provided with all sufficient guarantees.

The approach was that of a professional technical investigation. Each person's name, age, profession, address, tribe, community affiliation and telephone number were recorded. The investigation covered the following: the length of time the person had been in the region; the relationship between the Armed Forces and civilians; the circumstances of the alleged rape incident; whether there had been any deaths on the date of the incident under investigation; whether there had been any injuries to men, women or children; the number of inhabitants overall and the number of women and children in particular; when and how they had heard about the rape allegation; what harm they had suffered as a result of that rumour; if any members of the Armed Forces garrison in Tabit had married any of the village women; and so forth.

Legal procedures

1. Members of the Office of the Special Prosecutor were divided into four working teams. Each of them, including the Special Prosecutor, conducted interviews with a number of residents of Tabit of various categories.
2. On the day of the investigation, some 88 witnesses underwent extremely detailed interviews with a view to uncovering any rape incidents. The investigation

focused on the physical and mental elements of the crime in conjunction with legal evidence consisting of witness testimony, victim statements, expert evidence (from a doctor or medical assistant), direct evidence, form 8 injury reports, and so on.

3. Diversity of tribe, age, culture and place of residence were taken into account. Even displaced persons in the camps in Fasher who were in contact with their families living in Tabit were included.

4. A number of residents of Tabit and their families were interviewed, as well as non-residents, including the families of soldiers, teachers, development project workers, officials and representatives in the local legislative council.

5. The Special Prosecutor for Crimes in Darfur and his aides reached the conclusion that there had not been a single case of rape. We did not find a single victim or witness to the alleged events, or any piece of evidence, document, or anything else that proved or suggested that occurrence of a rape.

Summary of the interviews

1. Everyone reported that the women of Tabit live under the protection of men, whether their fathers, brothers or husbands, as members of families in their homes. It would not be possible for a crime this serious to have happened without the men lifting a finger or having any reaction.

2. Everyone reported that the soldiers in the garrison had been there since 2010, and there had been no incidents of harassment, crimes or any violence against civilians. The garrison is 2 km away from the village, and includes soldiers originally from the village itself. More than 35 soldiers from the garrison are married to women from the village and are thus family members who live among the townspeople.

3. In the course of the interviews, civil society leaders reported that they had received no reports of any rape. The medical assistant also reported that he had not encountered any cases of sexual or physical violence. Teachers who were interviewed also reported that none of their female pupils in Tabit's schools had been raped.

4. All those interviewed agreed that the reputation of the people of Tabit had been seriously tarnished by this rumour, and they all wanted whoever was behind it to be brought to justice.

Observations of the Special Prosecutor and his aides

1. The persons interviewed represented all segments of society in Tabit. They came to the interrogation site to give their testimony voluntarily.

2. Based on their appearance and psychological state, there were no signs of any rape or sexual violence.

3. All were outraged by the damage to their reputation. They filed criminal reports against Radio Dabanga and the African Union-United Nations Hybrid Operation in Darfur (UNAMID), including the following: "Report no. 1214/2014, Fasher central police department. Plaintiff: The women of Tabit, represented by Ms. Jamilah Bush. The accused: A. Radio Dabanga; B. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA); C. Maryam Sadiq al-Mahdi". They also held a protest march and filed a complaint with the Secretary-General of the United Nations.

4. We observed that the garrison has five officers and a substantial number of soldiers who are deployed in defensive roles around the region. They leave their posts and heavy weapons only when a relief shift has been arranged and permission to mobilize has been received.

Legal opinion

Sudanese law provides a legal definition for every criminal act in accordance with the principle of legality. The 1991 Criminal Code sets out crimes and punishments. Article 3 thereof defines the word “crime” as follows: “Includes any act punishable under the provisions of the Criminal Code or any other law”.

The 1991 Code of Criminal Procedure also sets forth relevant provisions and procedures. Article 3, paragraph 1, provides that “the provisions of this Code shall be applicable to the proceedings of criminal cases, investigations, arrests, trials and punishments relating to the crimes provided for in any other law”.

There is also the 1994 Code of Evidence, which clarifies what type of evidence is required for proof of a crime and who bears the burden of proof.

All of these provisions are implemented by law enforcement agencies (the police) and the justice system (the prosecutors and the courts). The incidents of which we have become aware were handled in accordance with those legal references and principles.

On the instructions of the Minister of Justice, we opened a preliminary investigation. Preliminary investigations are conducted in accordance with the 1991 Code of Criminal Procedure, article 4. By “preliminary investigation” is meant an investigation that occurs before a criminal case is opened, in order to verify the suspicion that a crime has in fact been committed. By “suspicion” is meant the supposition, before an indictment is issued, that a crime has been committed. According to the provisions of article 39, a prosecutor, in addition to his authorities provided for in article 19 of the Code and elsewhere, also has “the authority to initiate an investigation on his own when necessary”.

Based upon the rumours circulating about the rape incident that had come to the attention of the Special Prosecutor (the prosecutor in this case), and in accordance with the Code of Procedure, article 47, procedures were initiated to conduct a preliminary investigation to ascertain the facts of the “rape”, or rather the suspicion thereof, even though no report or complaint had been filed, with a view to verifying whether or not the events took place.

We shall address those events from three aspects:

I. The objective aspect

The 1991 Sudanese Criminal Code, article 149, provides that “any person shall be considered to have committed the crime of rape who has sexual intercourse involving sodomy or adultery with another person against their will”.

Article 145 defines the perpetrator of the crime of adultery as follows:

- (a) Any man who has intercourse with a woman outside of a legal bond.
- (b) Any woman who enables a man to have intercourse with her outside of a legal bond.

Paragraph 2 of that same article provides that “intercourse consists of penetration of the entire glans or the equivalent thereof into the vagina”.

Article 148, paragraph 1, provides that “any man who inserts his glans or the equivalent thereof into the anus of a woman or another man, or enables another man to insert his glans or the equivalent thereof into his anus, shall be considered to have committed the crime of sodomy.”

By this description, rape is a material crime with material and mental elements. It is not a verbal crime such as slander, verbal abuse, religious blasphemy, perjury, and so forth.

One can speak of it only where its material and mental elements are present, and they must be substantiated by evidence and not public statements.

II. The procedural aspect

The Code of Criminal Procedure, paragraph 33, provides for the opening of a criminal prosecution, and article 34 thereof defines the correct procedure for filing a report or complaint as follows:

1. A complaint may be filed by any person charged with maintaining public security and order, or by any person in the case of crimes relating to the public interest.
2. A complaint may be filed by anyone who is the victim of the crime, or who has responsibility for the scope of the crime, or by the representative of such a person. If the victim is a minor or a person with a mental disability, his guardian may submit a complaint on his behalf.

It follows that radio stations or organizations are not among the persons defined by the law as persons who may initiate a prosecution or submit a report or complaint. The investigation did not uncover a single rape victim in the village. We travelled to the field and interviewed such a wide variety of people that they could not possibly have all conspired to cover up a rape incident; yet we received no report or complaint of rape, let alone any proof.

III. The probative aspect

The 1994 Code of Evidence defines proof as follows: “Legal proof is the establishment before a judge, by means of procedures defined by the Code of Evidence, of the existence of a legal act that has resulted in ...”

The Code of Evidence, article 5, sets out a series of principles that must be followed, including the following:

- (a) The defendant is presumed innocent until proven guilty beyond a reasonable doubt.
- (b) A prima facie case is presumed sound, and the burden of proof is on the person who claims something contrary to it.

Criminal evidence in the Sudan is based on the principle of proof beyond a reasonable doubt. Both in linguistic usage and according to the Word of God, evidence is something that clarifies and reveals the truth. The Most High said: “We

have sent our Messengers with clear evidence, and sent down with them the Book and the balance so that people might maintain justice". (Koran, 57:25).

The Most High also said: "Prior to you, we sent only men whom we inspired. So ask the bearers of the Message if you do not know. We sent them with clear evidence and Scriptures, and we revealed to you the Message that you might make clear to the people what was revealed to them and that they might be mindful". (Koran 16:43-44).

When it comes to the language of the law, the vast majority tend towards the view that the most desirable kind of evidence is eyewitness testimony. Such evidence is subject to conditions. For instance, the facts sought to be proven must be relevant to the case and admissible.

Sudanese law provides for eight major kinds of evidence, including confession, witness testimony, direct evidence, expert testimony and so forth, as well as well as eight kinds of indirect evidence, such as circumstantial evidence, accomplice evidence and so forth.

Perhaps the strongest evidence in these kinds of cases is eyewitness testimony. Even if we were to consider the Radio Dabanga broadcast to fall into that category, from a purely legal standpoint, the Code of Evidence, article 28, states that "hearsay evidence coming from a third party may be inadmissible" for a number of reasons, including the following:

1. The actual witness cannot be interviewed.
2. There are difficulties verifying the accuracy with which the testimony of the actual witness was transmitted.

The 1994 Code of Evidence, article 29, provides that hearsay testimony is admissible only "in cases involving marriage, birth, kinship, religion and death". In addition, according to our investigation, Radio Dabanga is hostile to the State, which makes its testimony subject to challenge on grounds of animus.

The investigation team, in accordance with its mandate, looked for any evidence of the occurrence of a rape, but to no avail. Evidence allows the law to infer something unknown on the basis of something known, or, in other words, to make an assumption that is held to until evidence arises to refute it. We looked for any material evidence, such as the blood-stained clothing of victims, doors broken into at houses of families in the area, and injuries to women or men. However, we found nothing of the sort. We looked for medical reports that might indicate that a victim had been admitted for treatment as a result of rape, and found none. The reports of all the witnesses of various tribes, ages, sexes and cultures were unanimous that there had not been a single case of rape.

All this impels us to conclude with assurance that there was no rape of any woman in the Tabit region.

It is God who grants success.

(Signed) Yasser Ahmed Mohamed Ahmed
Senior Counsellor to the Special Prosecutor for Crimes in Darfur

In the Name of God the Merciful, the Compassionate

Republic of the Sudan
Ministry of Justice
Special Prosecutor for Crimes in Darfur
Tabit Investigation

<i>No.</i>	<i>Name</i>	<i>Age</i>	<i>Occupation</i>	<i>Address</i>	<i>Tribe</i>
1.	Yusuf Abdulmajid Ahmad Muhammad	59	Teacher/legislative council chief	Tawila, Salam neighbourhood	Fur
2.	Tayrab Muhammad Mahmud Kursi	57	Legislative council member	Tunjur reservoir/near Tabit	Fur
3.	Firdus Ahmad Muhammad Ibrahim	16	Student	Tabit	Tunjur
4.	Ibtisam Ahmad Adam Ali	17	Student	Naivasha Camp/Fasher	Fur
5.	Ni'mat Adam Isma'il	45	Farmer	Tabit	Tunjur
6.	Awatif Muhammad Yusuf	17	Farmer	Tabit	Tunjur
7.	Fatiniyah Abdulrahman Isma'il	28	Restaurant owner	Tabit	Masalit
8.	Maryam Abdullah Yusuf	18	Farmer	Tabit	Tama
9.	Nura Muhammad Ahmad Surur	35	University graduate	Tabit	Tama
10.	Hadiyah Muhammad Abdullah	22	Farmer	Tabit	Tunjur
11.	Ai'sha Umar Ali	23	Farmer	Tabit	Tunjur
12.	A'ishah Uthman Adam	40	Farmer	Tabit	Tunjur
13.	Sayyidah Muhammad Salih	28	Housewife	Tabit	Fur
14.	Umm Qumash Hamad Muhammad Abkar	20	Farmer	Tabit	Tama
15.	Buthaynah Isma'il Khabir	32	Farmer	Tabit	Zaghawa
16.	Abdulrahman Abdulqadir Hasan Ahmad	34	Major/Armed Forces	Tabit Garrison	Shuweihat
17.	Siddiq Muhammad Taha Yusuf	30	Officer/Armed Forces	Tabit Garrison	Kawahla
18.	Umar Sulayman Abdulrahman	38	Sergeant/Armed Forces	Tabit Garrison	Dajo
19.	Nawal Tibn Adam	35	Farmer	Tabit	Gimir
20.	Nur al-Din Abdullah Hamid Ahmad	36	Corporal/Armed Forces	Tabit	Baz'ah
21.	Sulayman Adam Ibrahim Hamad	27	Sergeant/Armed Forces	Tabit	Masalit
22.	Ibrahim Umar Ajjan	30	Soldier	Tabit	Barti

<i>No.</i>	<i>Name</i>	<i>Age</i>	<i>Occupation</i>	<i>Address</i>	<i>Tribe</i>
23.	Hasan Ishaq Muhammad Adam	37	Mujahid/Popular Defence Force	Tabit	Fur
24.	Hamidah Ahmad al-Nur Adam	37	Housewife	Tabit	Tama
25.	Awatif al-Nur Adam Isma' il	19	Student	Fasher — displaced from Tabit	Tama
26.	Isma' il Muhammad Adam Bashir	19	University Student	Tabit	Hawara
27.	Hawa Adam Muhammad Yusuf	35	Housewife	Tabit	Bargu
28.	Nawal Adam Yunus Abdulrahman	38	Housewife	Tabit	Masalit
29.	Ikram Abd Ishaq Muhammad	17	Student	Tabit	Tama
30.	Farha al-Nur Adam Isma' il	18	Student	Tabit	Tama
31.	Hajja Idris Yusuf	21	Farmer	Tabit	Tama
32.	Hajja Salih Isma' il	29	Farmer	Tabit	Tama
33.	Nadiyah Uthman Tahir	28	Farmer	Tabit	Tunjur
34.	Shadiyah Sulayman Muhammad Bakr	25	Farmer	Tabit	Tunjur
35.	Umm Samah Abdulrahman Adam	30	Farmer	Tabit	Fur
36.	Umm al-Nas Muhammad Abkar Ya'qub	25	Farmer	Tabit	Fur
37.	Siham Adam Nuruldin Muhammad	17	Student	Tabit	Zaghawa
38.	Fatima Abdulrahman Abkar Ibrahim	30	Farmer	Tabit	Fur
39.	Ikhlas Abdulkarim Idris Khidr	20	Farmer	Tabit	Tama
40.	Fatimah Abdulkarim Ramadan Fadlallah	40	Farmer	Tabit	Tama
41.	Mona Hasan Ya'qub Atim	18	Farmer	Tabit	Tama
42.	Maryam Ibrahim Ahmad Muhammad	18	Student	Tabit	Arab/ Awlad Mana
43.	Ahmad Adam Ahmad Amir	70	Farmer	Tabit	Fur
44.	Ibrahim Musa Muhammad Ahmad	58	Health Assistant	Tabit	Manasir
45.	Al-As Adam Abdullah Ahmad	34	Teacher	Tabit	Fur
46.	Abdulrahim Idris Muhammad Fadul	73	Farmer/village sheikh	Tabit	Tama
47.	Adam Mahmud Idris Muhammad	65	Farmer/village sheikh	Tabit	Fur
48.	Yunus Adam Bakr Muhammad	70	Farmer	Tabit	Fur

<i>No.</i>	<i>Name</i>	<i>Age</i>	<i>Occupation</i>	<i>Address</i>	<i>Tribe</i>
49.	Ibrahim Alamuldin Harun	39	Employee	Tabit	Tama
50.	Al-Nur Adam Isma'il al-Nur	65	Farmer	Fasher — displaced from Tabit	Tama
51.	Adil al-Nur Adam Isma'il	43	Self-employed	Fasher — displaced from Tabit	Tama
52.	Mahbubah Isma'il Muhammad	25	Housewife	Fasher — displaced from Tabit	Tama
53.	Umm Na'im Abkar Yusuf	16	Student	Fasher — displaced from Tabit	Fur
54.	Fawziyyah Musa Tahir	35	Housewife	Tabit	Tunjur
55.	Siham Salih Isma'il	28	Farmer	Tabit	Tama
56.	Halimah Abdullah Muhammad Ya'qub	24	Farmer	Tabit	Bargu
57.	A'ishah Adam Ali Adam	43	Farmer	Tabit	Tama
58.	Maqbulah Muhammad Ya'qub	22	farmer	Tabit	Tama
59.	Hasinah Ahmaday Idris	30	Farmer	Tabit	Fur
60.	Hawa' Abdulkarim Abdullah	37	Housewife	Tabit	Hilal
61.	Al-Busayli Muhammad Jum'ah	36	Teacher	Tabit	Fur
62.	Hamid Yunus Adam Abkar	30	Farmer	Tabit	Fur
63.	Abulqasim al-Tahir Adam	33	Farmer	Tabit	Fur
64.	Abdulkarim al-Shaykh Adam Abdullah	68	Farmer/local administration	Tabit	Fur
65.	Farhah Siddiq Harun Muhammad	25	Student	Tabit	Tama
66.	Abdulhamid Yusuf Adam	33	Teacher	Tabit	Fur
67.	Adam al-Nur Adam	21	Farmer	Fasher — displaced from Tabit	Tama
68.	Fatimah al-Nur Adam	27	Housewife	Fasher — displaced from Tabit	Tama
69.	Alawiya Muhammad Yahya	29	Housewife	Tabit	Fur
70.	Hawa' Ahmad Adam	19	Student	Fasher	Fur
71.	Asma' Adam	18	Housewife	Fasher	Fur
72.	Saddam Abdulshakur	22	Student	Fasher	Fur
73.	Fatimah Sayfuldin	40	Farmer	Tabit	Tama

<i>No.</i>	<i>Name</i>	<i>Age</i>	<i>Occupation</i>	<i>Address</i>	<i>Tribe</i>
74.	Hijaziyah Abdullah Isa	30	Farmer	Tabit	Tama
75.	Maqbulah Abdullah Muhammad	19	Student	Tabit	Bargu
76.	Zaynab Abdulrahman Adam	28	Housewife	Tabit	Bargu
77.	Khamis Ibrahim Khamis	95	Farmer	Tabit	Tunjur
78.	Fatimah Ahmad Izzuldin	40	Housewife	Tabit	Bargu
79.	Qunah Abdulmajid Yusuf	18	Student	Tabit	Fur
80.	Nabilah Yahya al-Nur	27	Housewife	Tabit	Fur
81.	Maktumah Muhammad Arbab	17	Housewife	Tabit	Zaghawa
82.	Zaki Adam Harun	32	Farmer	Tabit	Tama
83.	Isma'il Salih	29	Teacher	Tabit	Tama
84.	Muhyildin Salih	24	Graduate	Tabit	Fur
85.	Yusuf Salih	65	Farmer	Tabit	Fur
86.	Hussein Abkar Ibrahim	50	Farmer	Tabit	Fur
87.	Al-Hadi Abdullah Abdulrahman	56	Commissioner	Tawila	Fur
88.	Abdullah Muhammad Ya'qub	62	Farmer	Tabit	Fur

<i>Gender</i>		<i>Age Groups</i>		<i>Tribes</i>		<i>Occupation</i>	
<i>Women</i>	<i>Men</i>	<i>Group</i>	<i>No.</i>	<i>No.</i>	<i>Tribe</i>	<i>Job title</i>	<i>No.</i>
54	34	90-100	1	30	Fur	Farmers	36
		80-90	0	10	Tunjur	Housewives	14
		70-80	0	3	Masalit	Members of Legislative Council	3
		60-70	8	27	Tama	Self-employees	2
		50-60	5	3	Zaghawa	Employees	1
		40-50	7	1	Shuweihat	– Female Students	13
		30-40	32			– Male Students	1
		20-30	18	1	Kawahla	University graduates	2
		10-20	17	1	Dajo	University Student	1
				1	Gimir	Local administration	3
				1	Baz`ah	Officers	2
				1	Hawara	Soldiers	4
				5	Bargu	Popular Defence	1
				1	Awlad Mana	Health Assistant	1
				1	Manasir	Commissioner	1
				1	Awlad Hilal	Teachers	4
				1	Barti		
88				88	Total		88

(Signed) [Illegible]
Special Prosecutor for Crimes in Darfur