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HUMAN RIGHTS COMMITTEE
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SUMMARY RECORD OF THE 2458th MEETING*

Held at the Palais Wilson, Geneva,
on Wednesday, 11 July 2007, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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* No summary records were issued for the 2456th and 2457th meetings.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Third periodic report of the Sudan (CCPR/C/SDN/3; CCPR/C/SDN/Q/3 and CCPR/C/SDN/Q/3/Add.1 (Arabic only))

1. At the invitation of the Chairperson, Mr. Abduldaim Zamrawy, Mr. Ibrahim M. I. Mohamed Kheir, Mr. Omar D. F. Mohamed, Mr. Abdulla Ahmed Mahdi, Mr. Mustafa Matar, Mr. Mohamed Hassan Kheir, Ms. Bothina Mahmoud Abdulaziz, Ms. Rahman Salih Elobeid and Ms. Igbal Elamin (Sudan) took places at the Committee table.

2. Mr. IBRAHIM M. I. MOHAMED KHEIR (Sudan) said that his Government was eager to cooperate with the Human Rights Committee, just as it had with the Human Rights Council and other treaty bodies. He thanked the Committee for its very useful concluding observations, formulated in 1997, on the previous country report. For the first time, his Government had seen its efforts recognized in an objective manner. That had certainly been very encouraging, especially since in the past, it had heard nothing but criticism about the human rights situation in the country.

3. Today, the Government was focusing its attention on what was happening in the field. Experience had taught it that it was not sufficient to introduce principles or legislative measures: it was also necessary to verify their implementation in practice. Accordingly, the Government had been working to collect a large quantity of statistical data, which unfortunately it had not been possible to forward to the Committee in advance. The statistics showed how much the situation had changed since 1997. It was fair to say that the Sudan was undergoing a real revolution in the area of civil and political rights: a multi-party political system, freedom of the press, a proliferation of newspapers, television channels and radio stations, and access for women to universities, none of which had existed ten years earlier.

4. Although problems persisted, as evidenced by the Darfur crisis, the Government had agreed to the deployment in the region of a hybrid United Nations/African Union force, and it was convinced that a political solution would be found, just like in southern Sudan, where no fighting had been reported since the ceasefire agreement that had put an end to 19 years of civil war. In that connection, it should be pointed out that the population of southern Sudan had exercised its right to self-determination, a right that was rarely granted, even though it was the first one enunciated in the Covenant. That was an historic development which the Committee would not fail to appreciate. If the Committee wished, it could be provided with the two reports which the Government had produced on the implementation of the Comprehensive Peace Agreement on southern Sudan and the Darfur Peace Agreement.

5. Mr. ZAMRAWY (Sudan) said that the Sudanese Government was pleased to consider its third periodic report with the Committee and was convinced that the dialogue would be constructive. Important changes had taken place since the preparation of the report, including the signature of the peace agreements and the adoption of the Interim Constitution of 2005, and the delegation would attempt to update the information provided to take account of those developments.

6. The Interim Constitution of 2005 was a major step forward. It had allowed for a resolution of the situation both in southern Sudan and in other regions. It had provided for a more equitable distribution of the country's wealth and had introduced the institutions needed for the transition to democracy. Each of the federal states had been given its own constitution, and an important legislative reform had been undertaken. New laws had been passed on the political parties, the civil service and the armed forces, and others were being examined, including on the electoral system, the police and basic rights. However, as already indicated, the Government was not merely promulgating legislation, it was also working to ensure that they were implemented in practice. Hence, after explaining in its report the legal framework for the implementation of the Covenant, it would demonstrate, with the help of comprehensive statistics, the reality of that implementation. The statistics showed that considerable progress had been made towards gender equality, that the rights of women were better ensured and that increasing numbers of women exercised political, legislative or judicial functions; that members of the security forces had been tried for human rights violations, thus demonstrating that no one was above the law; and that progress had been made in the areas of information and politics.

7. Of course, the situation was far from perfect, and violations continued to take place. Above all, however, it was important to guarantee the effectiveness of mechanisms set up to address such violations. With regard to Darfur, the delegation assured the Committee that the Government was complying with its obligation to protect civilians and to combat violence against women. It had cooperated with the Human Rights Council, and it hoped that the international community would do likewise, instead of indulging in sterile confrontations. It was in that same spirit of cooperation that the Government had entered into the dialogue with the Committee; it was convinced that their ties would emerge strengthened, thereby helping to improve the implementation of the Covenant in the Sudan.

8. The CHAIRPERSON invited the delegation to reply to the first 15 questions on the list of issues which had been communicated to it by the Committee.

9. Mr. ZAMRAWY (Sudan) said that he would try to expand on the replies provided earlier by his Government. With regard to the place of the Covenant in domestic legislation, it should be noted that, pursuant to article 27, paragraph 3, of the Interim Constitution of 2005, all international instruments ratified by the Sudan were incorporated into the second part of the Constitution and could be invoked in the courts. Any national law that was at variance with an international norm would thus be ruled unconstitutional. Anyone who believed that their constitutional rights had been violated could appeal to the Constitutional Court, the body competent in the area of the protection of human rights and fundamental freedoms. To cite two examples, one appeal had been submitted to contest the constitutionality of the 2006 Act on Volunteer Work on the grounds that it violated the right to freedom of association, and another had been entered to challenge a death sentence handed down against a minor. An appeal could be submitted through the intermediary of a lawyer or a legal representative, a group of persons or a political party. The applicant must pay the equivalent of US\$ 50, and US\$ 1,000 if the appeal was judged admissible, but the fees could be waived under article 19, paragraph 6, of the Act on the Establishment of the Constitutional Court.

10. With regard to the questions on the southern Sudan Human Rights Commission, he said that no one was more competent to reply than Ms. Joy Kwafe, the representative of the Government of Southern Sudan, who had not been able to attend but was expected to arrive later,

and the delegation assured the Committee that replies would be given to those questions by the end of consideration of the third periodic report.

11. As to violations committed by the security forces, it should be pointed out that, pursuant to legislation governing the police and the army, the members of those bodies could not be prosecuted without their immunity first being lifted. The decision to lift immunity was taken by the Commander in Chief of the armed forces, or by the Ministry of the Interior in the case of the police. However, in the event of a refusal, the prosecuting authorities could lodge an appeal against the decision in accordance with the Act on the Establishment of the Constitutional Court. It was not necessary to lift immunity when someone was caught in the act of committing an offence. Consequently, the immunity of the members of the security forces did not mean that they could escape justice, as shown by the very detailed statistics which the Government had put together for the Committee.

12. The delegation had forwarded to the secretariat detailed statistics on convictions and sentences handed down against members of the security forces (documents without a symbol, in English only). He referred to several cases, cited in the documents, of police officers and soldiers who had been found guilty of murder or assassination in a number of states (Khartoum, western Kordofan, Sinnar, Al Qadarif, Red Sea) and had been sentenced to between six months' and four years' imprisonment. The courts had also ordered that compensation ranging between two million and 30 million dinars (the maximum under the law) be paid to the victims. In addition, there had been several cases in 2005 and 2006 in which members of the armed forces deployed in Darfur had been convicted of rape, looting or armed robbery and had received sentences ranging from two years' imprisonment and 50 lashes to five years' imprisonment. He also cited the case of a member of the armed forces and of a police officer who had been sentenced to death by hanging for homicide.

13. Mr. KHEIR (Sudan) said that the delegation had with it, for the Committee's consideration, the complete list of members of the armed forces, the national security forces and the police who had been convicted of human rights violations and had been sentenced between 1990 and 2004. The list was systematically transmitted to human rights organizations active in the Sudan as well as to the relevant special rapporteurs. Citing several cases in the list, he noted that in one, the accused police officer had been acquitted. A prison official found guilty of possession and trafficking in narcotics had been sentenced to two years' imprisonment. Several members of the national security forces who had been convicted of murder had been sentenced to imprisonment and to the payment of blood money.

14. In other cases involving nine members of the national security forces, all the accused had been sentenced to death. However, the law provided that the families of the victims could request that the guilty party should not be executed and instead should pay blood money, which amounted to between US\$ 30,000 and US\$ 40,000. Families had accepted the blood money in five cases, and in the other four cases the offenders had been executed.

15. Mr. ZAMRAWY (Sudan) cited other cases of compensation paid to victims of human rights violations committed by members of the security forces. Compensation paid to family members of the victims ranged between five million and 30 million dinars.

16. Mr. MATAR (Sudan), replying to the question concerning the general amnesty proclaimed in June 2006 (question 5), said that that decision had constituted a first step towards implementation of the Abuja peace agreement. It had concerned persons who had borne arms in Darfur and had attacked members of the armed forces or civilians. The amnesty had also applied to their accomplices. The offences covered by the amnesty had not included war crimes within the meaning of international law. The amnesty procedure had been simplified: the rebel factions communicated to the authorities the names of persons who might be eligible for the amnesty, and the authorities then issued them pardons, which were signed by the Chief Public Prosecutor of the province.

17. With regard to cooperation with the International Criminal Court, it should be noted that the Sudan had not signed the Statute of the Court. The Sudanese authorities were of the view that the resolution of the Security Council which had referred the situation in Darfur to the Prosecutor of the Court was political in nature and did not respect the fundamental principle of non-discrimination, and they urged the Committee to refrain from engaging in political considerations. In their opinion, the International Criminal Court did not have inherent competence for questions relating to the situation in Darfur, but was an authority that supplemented national jurisdictions. Although the Security Council had referred the question of the situation in Darfur to it, the International Criminal Court was not competent to address the matter. Nor could it do so if the State concerned declined to exercise its domestic jurisdiction. The Pre-Trial Chamber of the Court had disregarded that principle, in violation of international law. Furthermore, the Court had sent several delegations to the Sudan to report on the action of the national authorities, but that had not been taken into account in the Court's decisions. Similarly, the Court's requests for arrest and surrender infringed the principles of international cooperation enunciated in chapters IX and X of the Statute and had no legal basis. What was more, they deprived the accused persons of the guarantees set out in article 20, paragraph 3, and article 89, paragraph 2, of the Statute. The Sudan intended to exercise its sovereign right to prosecute the perpetrators of criminal offences without any discrimination and to use the customary law procedures in force in Darfur, such as reconciliation and the granting of compensation between tribes or ethnic groups.

18. With regard to the implementation of the Comprehensive Peace Agreement (question 6), he indicated that in recognizing the right to self-determination of the region of southern Sudan, the Sudanese authorities had considered that the conditions had been met for the inhabitants of the region to decide, in a referendum, between federal unity and secession. In addition to the formation of a new Government of Southern Sudan empowered to set up regional institutions and which would be represented in the federal Government, the Sudanese authorities had taken three particularly important measures in favour of the right to self-determination of the southern region. Firstly, a commission had been entrusted with drawing the frontier line between the north and the south of the country, respecting the 1956 frontier line established when the Sudan had become independent. The work of the commission, which was composed of experts from the north and the south of the country, was already well under way. Moreover, the two parties in the Government of National Unity had together taken steps to settle questions relating to the administration of the Abyei region, which straddled the border between the north and the south. Secondly, the federal authorities planned to work for the return of persons displaced from southern Sudan in order to facilitate the future population census. Lastly, the President had decided to appoint a council to carry out the population census in the north. An initial trial was currently being conducted in advance of the actual census, which was planned for 2008.

19. Mr. KHEIR said that the delegation had provided the secretariat with a twenty-page report, drafted at the end of May 2007, on the implementation of the Comprehensive Peace Agreement. It contained information on various questions concerning the north and the south of the country.

20. Mr. MATAR (Sudan), referring to non-discrimination, said that article 63 of the Act of 1983 provided that land must be given to families, and not just to the husband; the cadastre must apply the law, which required that land ownership be shared by the spouses. In the event of the death of the husband, ownership of all property was passed on to the wife and children. Land could not be sold without the consent of the spouse. With regard to adultery, the Criminal Code did not make any distinction in the treatment of a man or a woman, because it used the word "person". The fact that a woman was pregnant did not suffice to prove that she had committed the crime of adultery. If a woman affirmed that her pregnancy was due to rape and she provided evidence to that effect, the court could not try her for adultery. An agreement had been concluded with the group of experts appointed by the Human Rights Council to hold two workshops in Khartoum to determine whether there was any confusion about ways of establishing proof of adultery. The Government had indicated that it was prepared to amend the law if it was misleading.

21. Legislation on nationality had been amended in 2005, and newborns could now have the nationality of the mother. As to the legislation requiring that the father or guardian of the future wife approve the marriage, that was actually a social institution which existed in many countries and was designed to guarantee that the rights of women were respected in the marriage. The legislation had been simplified and now provided that marriage required the consent of both spouses, in the presence of two witnesses and two persons, each representing one of the spouses. Thus, the father was not the only person who could represent the future wife: the legal representative could be an uncle, a relative, a neighbor or a friend; the law did not specify. Moreover, the presence of the legal representative was not a precondition for the validity of the marriage. The future spouses could both express their consent or oppose the marriage in court or before the local authorities.

22. With regard to freedom of movement for women, he noted that article 42 of the Constitution guaranteed all citizens freedom of movement, freedom to choose their place of residence and the right to leave the country and to return. The Passports and Immigration Act made provision for that right without any discrimination. On 13 November 2003, the Council of Ministers had promulgated Decree No. 43, which had abolished the obligation for a woman to obtain the authorization of her father or guardian in order to travel.

23. Mr. ZAMRAWY (Sudan), referring to property ownership and land registration, said that land could be purchased by anyone, man or woman, who became its owner and could make use of it as they saw fit, or it could be allocated by the State to families for a token sum. In the past, such land had been registered in the husband's name, but following numerous complaints, a decree had been promulgated prohibiting the husband from disposing of the land without his wife's consent. The decree had subsequently been amended, and land allocated by the State must now be registered in the name of both spouses. An unmarried woman or a widow could also be given land, which was registered in her name. It was thus incorrect to think that land could not be registered in a woman's name.

24. As to statistics on complaints lodged concerning allegations of crimes committed in Darfur and action taken on such complaints and investigations, it should be noted that the acts in question had commenced in 2003 and that the security situation had deteriorated in 2004. In early 2005, the Government had set up a National Commission of Inquiry, composed of legal experts and human rights defenders and mandated to conduct investigations of complaints of violations of international humanitarian and human rights law. The Commission had travelled to Darfur to hear witnesses and had then drafted, and submitted to the President, a report concluding that serious violations of international humanitarian and human rights law had been committed there. Given that evidence collected by a body entrusted with establishing the facts was not admissible in court, the Commission had recommended that a commission of legal inquiry should be set up. That body, directed by a Supreme Court justice and with the membership of another judge and three prosecutors, had conducted investigations on the events that had transpired in Shattaya, Tawila, Kailek, Al Fasher, Bouram and in other regions. It had identified 12 suspects, and more than 150 persons had been accused. Criminal prosecution had been instituted against two members of the armed forces accused of committing acts of torture, and complaints had been lodged against bands operating in Darfur. The commission of inquiry had brought several officers of the armed forces and members of the popular defense forces before a criminal court, which had convicted them. They had all lodged appeals against the ruling, which the competent authorities were examining before referring them to an appellate court.

25. The Special Criminal Court on Events in Darfur had ruled on nine cases and had sentenced the perpetrators to imprisonment or death. More than 70 convictions involving violence against women had been handed down. The Special Criminal Court of Al Fasher had also heard a number of cases and had sentenced several members of the armed forces to death. In northern Darfur, the Special Court had considered 80 cases of violence against women; sentences, including imprisonment, had been handed down in 70 of those cases. In some instances, the accused had been released for lack of evidence. It should be noted that the Special Courts only heard the most serious cases, such as armed robbery, violence against women, the burning of villages and attacks against civilians.

26. As to the legal situation and the relation to the International Criminal Court, it was clear that no one was above the law, and anyone who had evidence that violence had been committed was required to report it. Proceedings on crimes committed in Darfur were continuing in the national courts.

27. Ms. ADULAZIZ (Sudan), referring to the representation of women, said that the Interim Constitution provided for equality between men and women and guaranteed the same civil, political, economic, cultural and social rights for all, including the right to equal pay. The State sought to defend the rights of women and to combat all forms of discrimination and practices that violated their dignity. It provided health care for women, including pregnant women, and for children, and it upheld the rights of the child as embodied in the international and regional instruments to which the Sudan was a party.

28. Nearly half of all women (49 per cent) were literate. They accounted for 55 per cent of secondary school pupils and 58 per cent of graduates and held 41 per cent of higher positions and 22 per cent of administrative posts. Women made up 9.7 per cent of the members of the National Council and 8.6 per cent of State ministers, and they held 6.8 per cent of posts in the national

ministries. They were guaranteed posts in the judicial system: six women were on the Supreme Court and 31 on courts of appeal. More than 35 per cent of legal advisers at all levels in the Ministry of Justice were women. On the other hand, they also accounted for 87 per cent of the agricultural workforce.

29. Mr. ZAMRAWY (Sudan) said that, pursuant to the Act of 1991, the following offences were subject to the death penalty: incitement to overthrow the State (art. 51), state espionage (art. 53), murder (arts. 126 and 130), incitement of minors to commit suicide (art. 134), adultery (art. 120), unnatural sexual relations (art. 148), rape (art. 149), crimes of honor (art. 150) and treason committed by a State official (art. 177).

30. The application of the death penalty for minors under 18 years of age was expressly prohibited by the Interim Constitution, which provided for exceptions in cases of premeditated murder or crimes punishable by death under the sharia (hudud). As stipulated in article 5 of the Interim Constitution, the source of legislation in the states of northern Sudan was Islamic law (sharia), whereas that was not the case in the states of the south, hence certain differences between provisions in the national Interim Constitution and in the Interim Constitution of Southern Sudan with regard to the application of the death penalty for minors under 18 years of age.

31. The death penalty was carried out by hanging. Persons sentenced to death under the above-mentioned exceptions could appeal to the Constitutional Court. The sentence must be confirmed by at least seven of the nine members of the Constitutional Court. The International Covenant on Civil and Political Rights, which, pursuant to article 27, paragraph 3, of the Interim Constitution, had constitutional rank, was taken duly into consideration. A case involving premeditated murder was currently before the Constitutional Court. The lawyer for the convicted offender had lodged an initial appeal against the sentence, asserting that his client had been under 18 years of age at the time of the crime. The appellate court had rejected the appeal after a medical commission had invalidated that assertion. The Constitutional Court was expected to render a decision shortly.

32. Mr. MATAR (Sudan), replying to a request for statistics on cases of violence against women that have resulted in prosecutions (question 10), referred the Committee to the detailed statistics which had been sent to it. Aware of the scale of violence inflicted on women in the Darfur region in the course of the conflict, the Government had launched a plan of action in the framework of which commissions for combating violence against women had been set up in the three Darfur states. Composed of representatives of the Government, foreign non-governmental organizations (NGOs), United Nations bodies and observers specialized in the area of human rights, the commissions were mandated to receive complaints of violence against women, to forward them to the judicial authorities and to attend the hearings. Thanks to the commissions, such victims now had a voice, whereas in the past they had not come forward for fear of reprisals and police indifference. To encourage victims to lodge a complaint, the plan of action also provided for an increase in the number of women in the police force.

33. The fight against violence against women was not limited to the province of Darfur, but was being conducted throughout the country. A special unit had been set up in the Ministry of Justice. A recently promulgated decree enabled women who had been victims of violence to have direct access to medical care, whereas in the past they had first had to meet a number of

conditions. Private hospitals and the medical units of NGOs and United Nations bodies present in the field were now authorized to receive those women, which had not been the case earlier. Important work was being carried out to strengthen cooperation between the State, the media and religious authorities in order to combat violence against women on all fronts. For example, wide-ranging information campaigns on the need to punish the perpetrators of violence against women, even when they were State officials, had been broadcast by the three national television channels and publications on the subject were to be disseminated soon. The special unit in the Ministry of Justice had elaborated training modules for judges, the police and members of the armed forces.

34. All those measures had helped reduce violence against women considerably, in particular in the Darfur region. The Government was firmly determined to pursue its initiative in that area by making every effort to ensure that the perpetrators of such violence, whoever they were, did not go unpunished.

35. Mr. ZAMRAWY (Sudan), addressing the question of measures taken to combat female genital mutilation, noted that the practice of excision was an ancient tradition which was not unique to the Sudan and was encountered in many African countries. Aware of the disastrous consequences of the practice for young girls, the Government had undertaken to combat it actively. In so doing, it was complying with article 32, paragraph 3, of the Interim Constitution, which required the State to combat traditions which violated the dignity of women, and article 32, paragraph 5, pursuant to which the State must protect the rights of children, in conformity with the international and regional instruments which it had ratified. In accordance with the Criminal Code, excision was categorized as assault and battery and was punishable as such.

36. Many information campaigns, seminars and other awareness-raising initiatives denouncing excision had been conducted by organizations of civil society with the Government's support. The Council of the Medical Profession had spoken out, publishing a decision prohibiting physicians and medical personnel from performing excisions. It should be noted that in the past, the practice of excision by physicians had sometimes been encouraged, in the interest of the health of the girl. For its part, the Council of the Islamic Religion had published a fatwa categorically prohibiting excision. The effort to combat the practice had also been made part of training programmes for midwives and in other medical professions. The number of excisions had declined considerably, in particular in the capitals. However, the Government intended to take other measures to intensify the fight against the practice, notably by stepping up cooperation between the State, organizations of civil society and international organizations.

37. With regard to the persistent allegations that the militia in Darfur continued to perpetrate serious violations with the active or tacit complicity of the authorities (question 12), the Committee should briefly recall the context in which the conflict had broken out. The hostilities had started as a conflict of interest between nomadic pastoral tribes and sedentary peasant tribes and had been exacerbated by the growing shortage of water resources and pasture land as a result of the drought. He did not claim that that was the sole cause of the conflict, but it was one of the underlying ones. Other factors had aggravated instability in the region, including a large influx of weapons from neighboring States, a low level of development, inadequate infrastructures and the isolation of the populations.

38. The presence of armed militia in Darfur was an established fact. Some of them were from the pastoral tribes and others from the peasant tribes. The Janjaweds were a separate group and were composed of members of the two types of tribes. Although their motivations differed, those armed groups had in fact been at the origin of tragic incidents (burning of villages, massacring of civilians, plundering of harvests etc.). Some investigations into the events that had transpired at the height of the conflict in 2003 and 2004 were still under way; others had been completed. A number of suspects who had been convicted had lodged appeals, and decisions were still pending.

39. The allegations of complicity of the authorities were unfounded. Replying to questions asked on why the inquiries and judicial proceedings had taken so long, he stressed that the reigning insecurity, the lack of basic infrastructures (roads, means of communication and the like) and the reluctance of the survivors to testify, not to mention the size of the territory involved, had held up the work of the inquiry commissions. Moreover, some members of the militia had gone into hiding outside the territory under the jurisdiction of the Sudanese State, and in such cases prosecution had not been possible. Nevertheless, the Sudan was determined to do everything in its power to ensure that the guilty parties did not go unpunished. It was to be hoped that the continuing cooperation with the forces deployed by the United Nations and the African Union would make it possible to restore calm so that justice could be done.

40. Mr. MATAR (Sudan), replying to question 13, on measures taken to put an end to the torture and abuse committed by members of the national security force during arrests and detention, indicated that article 33 of the Interim Constitution expressly prohibited torture and degrading treatment. Violations of that provision persisted, however, and must be punished. To that end, the prohibition of torture and the criminal responsibility of the perpetrators of such acts would be clearly stipulated in new legislation currently being drafted on the police, the army and the security forces. It was essential for the legislation to specify that the guilty parties could not invoke immunity. A number of cases of torture involving members of the armed forces and the police had resulted in the perpetrators being sentenced to prison terms or the death penalty. The Sudan had also promised the group of experts appointed by the Human Rights Council that it would take measures to ensure that all official instructions emanating from the army and the police would include provisions expressly prohibiting torture and incurring the criminal responsibility of any official found guilty of acts of torture.

41. The Sudan was seriously considering acceding, without any reservations, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was prepared to recognize the competence of the Committee against Torture for conducting investigations on its territory. Moreover, a bill to establish a body mandated to receive complaints of acts of torture was currently under consideration in the Parliament.

42. The CHAIRPERSON thanked the delegation of the Sudan for its very detailed replies, but regretted that the written replies had not been made available in the languages of the Committee. Noting that the members of the Committee must be allowed sufficient time to ask additional questions, he urged the delegation to be more concise at the following meeting.

43. The delegation of the Sudan withdrew.

The meeting rose at 6 p.m.
