

Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan Issued 29 October 2009 A Response from JEM

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1. Preamble:

After careful study of the Report of the Panel of Experts (Full title above), JEM states its utter dissatisfaction with the Report. As it stands, the Report is clearly flawed, unprofessional and riddled with inaccuracies. Conclusions reached in the report are based on incomplete work, erroneous data and witch hunt tactics.

2. In particular, the Panel fails to adhere to its guidelines set forth in Paragraphs 20 and 21 that obligate the Panel of Experts to adopt the following principles:

- (a) Evaluation of sources and source material must comply with the highest standards.
- (b) Evidence reached must reach an acceptable threshold of reliability before being considered appropriate for inclusion in the Panel's Reports.
- (c) Identity of witnesses and informants must be fully explored – their background, motives and political-military positions understood, and their reliability ascertained.
- (d) All reasonable attempts must be made to gather documentary evidence to support allegations (a) to (d) in Paragraph 20.
- (e) Whenever the Panel formulates allegations pertaining to an individual, an organization or a state, a credible attempt must be made to offer an opportunity to reply and to clarify. Particularly important issues should be submitted to interlocutors in writing (see Paragraph 21).

3. The Report does not explain the circumstances that led to the resignation of two of its Panel members, Messrs Bernard Stuart Saunders and Kuldip Sharma. Like any decent Panel mandated to investigate a serious matter such as the one at hand, the UN Secretary General must have composed the Panel in a way that – (a) secures availability of an adequate range of expertise, (b) guarantees impartiality in the discharge of duties and c) makes provision for the ability to handle work load. The resignation of two out of five members raises serious issues regarding integrity, competence, ability to carry workload and impartiality of the remaining members of the Panel. Failure to explain events that led to the resignation of the two Panelists, lack of replacement and the impact of that on undertakings already made, deals a fatal blow to the credibility of the entire Report. Given the serious nature of the work assigned, hiding behind a set date line is not good enough.

4. The Panel fails to visit JEM held areas, despite repeated invitations to do so. On three occasions, a JEM Envoy had to travel and cross Sudan borders to meet Panel Members

(Messrs. Abdelaziz and Huxford) in Chad. Failure of the Panel to observe code “[a]ll reasonable attempts must be made to gather documentary evidence to support allegations” has forced the Panel to rely on secondary information, most of which is false and has not been cross-checked and/or verified (Paragraph 20 of Panel Report).

5. In the few meetings of the Panel with JEM, the latter was not offered any opportunity to respond to allegations contained in the Report. This is a direct breach of the “methodology and working principles” that oblige the Panel to offer interlocutors an “opportunity to respond to allegations” and “in writing” (Paragraph 21 of the UN Report).

6. The Report: The Report dwells considerably on the issue of use of child soldiers in the region. As an emotive issue, the Report seizes on it and goes for the kill, with the particular aim of destroying JEM. However, it is here that the Report disintegrates into derisory amateurish work. Having failed to visit JEM troops to find soldiers who can be labeled as children, the Experts resort to a retroactive approach, in the sense of going backward to see the ages of soldiers a few years ago when they were recruited. The exercise was nonetheless farcical as irregularities below indicate.

7. In Paragraph 246, the Report assures possession of a list belonging to JEM in which it has identified child soldiers who participated in battles. This is bizarre as JEM has never handed over such a list of its soldiers because it has none at all. JEM does not keep a list of its soldiers who are readily known to their commanders and sub-commanders. It is difficult not to conclude that the Panel built its conclusion on a fake list provided by a source other than JEM.

8. Table 3, page 60, details battles in which it is alleged that JEM child soldiers have participated. The list of battles or battlefields include: Kalees, Tamesh village, Karkay, Haleemah village, Rahfad Tatri, Jaleebah, Teesh, Mot Mountain, Thabeeth, Tbeesha and Qadar. JEM had never fought battles in these locations. As a matter of fact, these locations do not exist at all in Darfur. The authoritative Darfur Field Atlas compiled by Humanitarian Information Centre for Darfur also does not include these place names. This is not an issue of misspelling as even an intelligent guess simply fails to identify these locations. It is not known to us whether the Panel was lured into receiving information from a fake informant. However, by listing place names that cannot be located on any good map, the Panel displays a level of incompetence that can hardly be expected of a first year college researcher, let alone investigators labeled as “UN Experts”. Moreover, if places displayed in Table 3 do not exist, what credibility can we attach to the list of child soldiers referred to in the same Table and whose names the Panel claims to keep.

9. The panel claims to have found a child who was recruited at age nine and who fought with JEM. The child was among the injured “soldiers” taken to the Chadian city of Iriba for treatment (Paragraph 247). While the Report does not disclose the name of the child in the Report, JEM has tracked down the individual in question. To begin with, and following the battle of Muhajeriya, JEM helped three categories of injured people into Iriba: (a) JEM soldiers, (b) GoS soldiers and (c) non-combatant citizens. The child referred to in the Report was neither injured nor was he a member of JEM. He was simply in Iriba accompanying his convalescent father. The claim of the Report regarding connection of the child with JEM is yet another figment of the imagination of the Panel data gatherers.

10. The report claims that “JEM was not able to provide enough evidence of adequate mechanism that prevents the recruitment of children” (Paragraph 245). Then in a bizarre addition to prove that JEM uses “aggressive recruitment drives” to enroll children in its ranks, the Report quotes a speech by an allegedly senior official of JEM addressed to Darfurians in Iriba:

“Every person who plans to get married should renounce it to join us, every person who plans to travel should renounce it for the benefit of the rebellion, every person who wants to circumcise his children should renounce it to fight for our country, every person who would like to organize his brother’s funeral should renounce it to join us, because we all have the objective of toppling the dictatorial regime of Mohamed El-Bashir”.

The quotation and the purpose for which it was used gives a classic example of investigators making a wrong choice of narratives only to jump to their preconceived verdicts that do not logically follow from the quotation. A rudimentary fact that hardly needs more than simple common sense is quite telling here. Children do not get married, plan to travel, circumcise their children and organize funerals for their deceased brothers. Paradoxically, the UN Panel expects those same children to fight for JEM.

11. Table 3, Page 60 also shows year dates of the alleged JEM child soldiers. Altogether, an alleged number of 54 children are shown in the Report. As is well known, JEM army is primarily rural based and rural people do not know their exact ages. To date, Darfur rural people are mostly born outside hospitals. Traditional midwives who help with child delivery are mostly illiterate and are all unauthorized to issue birth certificates. Moreover, Darfur people do not celebrate birthdays and hence lack periodic reminders of their ages. In practice, those who attend schools at around age seven or above are not required to produce medically estimated birth certificates until they finish their first eight years of schooling and successfully proceed to Secondary Schools. The Panel’s identification of birthdates for all the 54 children is a riddle to us and until that question is satisfactorily addressed, the information remains of little value. It is not clear to us whether the Panel is aware of the very fact that youngsters who grow up in areas characterized by poverty, shortage of food and a lack of adequate health facilities, such as prevails in Darfur, look younger and smaller compared to their real ages. An estimate of their age based on appearance is always skewed in favour of lower ages.

12. Remaining with the issue of children, the Panel has yet to address other queries:

- a) The Panel must have operated through a network of interpreters whose names are withheld in the Report. These interpreters must have worked through numerous Darfur languages not spoken by Panel members. Does the Panel know the political affiliations of these interpreters and any other mitigating factors that might influence the accuracy of their translation? Or alternatively, did the Panel rely on their Arab members to avoid use of outsiders as interpreters? At least on the few occasions when the Panel met with JEM, Mr. Abdelaziz did not use any interpreter.
- b) There are several branches of Darfur Movements that claim to be JEM and some call themselves so. Is there any guarantee that Panel was able to differentiate between them and the mainstream JEM?
- c) Is there any relationship between these alleged soldiers and the claims made by the Khartoum government following Operation Long Arm of JEM? It is well known that these

children were collected from a well-known Khartoum Q'uranic school and forced to declare themselves as JEM soldiers! Has the Panel made any use of the video made by YouTube about the torture of these children?

d) Over the past years, JEM has been working with several international organizations regarding the protection of children in Darfur. The process included preparation of a list of children who presented themselves to JEM and have been sent away either to their relatives or to Refugee camps. Has the Panel confused this list for what is referred to in the Report? If so, why there is no reference to the fact that these children have voluntarily appeared at JEM camps, that JEM has given reasons for sending them away and that JEM has made this information available to Panel member, Mr. Abdelaziz?

e) The Panel has opted to take a retrospective approach to incriminate JEM in the alleged recruitment of child soldiers. At the same time, the Report fails to refer to children currently among JEM troops. Does that mean the Panel believes that JEM's recruitment of child soldiers is confined to the past? Does the Panel have any explanation as to why other UN Reports have not identified children who are active in JEM army?

13. In paragraph 244, the Report claims JEM has not provided adequate mechanisms to prevent the recruitment of children as soldiers. In this regard, the Panel has either been disingenuous or elsewhere has simply failed to discharge its duty in gathering data that are readily available to many, including international institutions:

(a) The Armed Forces Law of JEM and Presidential Directive on Recruitment clearly prohibit recruitment of children into the army. Article 2/2 of JEM Army Penal code states that "international Human Rights and Geneva Conventions and its Protocols have supremacy over JEM laws. JEM Law restricts eligibility of JEM membership to those who are "adult, of sound faculties and Sudanese in nationality".

(b) Mr. Abdelaziz of the UN Panel has been personally informed about efforts exerted by JEM to prevent inclusion of children within its army. He was handed over a list of children who have visited JEM camps together with where they have been sent and the amount of money spent on reuniting them with their families. The Panel fails to mention this fact but equally fails to refer to 13 schools that are established by JEM in Birak and Jabal Moon areas and headed by Hamid Tajuddeen. JEM still supports these schools out of its meager resources.

(c) JEM has engaged many international stakeholders to work together for the protection of Children. JEM has attended several workshops organized, including UNICEF's seminal meeting in 2008, to debate and inform in all matters regarding welfare of children. UNICEF in particular has been in the lead and has worked with JEM in this regard. As recently as October 2009, JEM has had a meeting with a delegation of UNICEF led by Deputy Executive Director Hilda Johnson. The meeting culminated in an agreement to work out a plan of action that includes (i) the creation of a safe haven for children along Darfur-Chad borders and (ii) regular contacts, including surprise visits by UNICEF to JEM territories.

14. In paragraph 211, 212 and 213, the Report refers to Darfur-Hilfe, an NGO established to provide education in Tine for children of Darfur Refugee. The NGO was established by Darfurians in the diaspora and their German friends. The Report claims that overseers of Darfur-Hilfe, namely Abubaker Eltayeb and Gurashi, Adam Ibrahim Eltom and Adam Shogar are "known to the Panel as members of JEM". This is an error of monumental proportion

and a failing of an unbelievable level of incompetence. Darfur-Hilfe has been irreparably damaged by such allegation and it is not clear how the organization manages to overcome the stigma of being reported as having no actual schools in the area.

Had there been any association between JEM and these named individuals, JEM would be pleased to reap the honour of such a link. However, neither Darfur-Hilfe, nor any of the three individuals named in the report has anything to do with JEM and none of the persons mentioned have ever sought affiliation to our organization.

In its characteristic rush to conclusions, the Panel confuses Adam Rihaimtalla Shogar for Adam Ali Shogar in the Report. The former is an associate of Darfur-Hilfe schools while the latter is a member of JEM. Adam Rihaimtalla Shogar is a well-known educationalist credited with the education of numerous youngsters in the area. He has never been known as a politician. As for Adam Ali Shogar, he is a member of JEM but has nothing, whatsoever, to do with Darfur-Hilfe project as the Report claims.

An allegation stated in the Report that Darfur-Hilfe schools do not exist is equally false. These schools are there and functioning and it is difficult to establish what prompts the Panel to deny that.

15. Paragraph 356 takes us back to that old fashion tactic of putting the savages in their place. Tribalism is the catchword that can be waved with absolutely no effort to prove it. Silly as it may be, and we use that word without any apology, the Report states: “there seems to be a consensus among all stakeholders that the leaders of JEM, whose constituency consists largely of Zaghawa and leaders of SLA/AW, whose followers are predominantly members of the Fur tribe, cannot speak for all Darfurians”. The Report seems to be oblivious that its claim to “consensus among all stakeholders” can neither be established nor verified. Any person with the bare minimum training on fact-finding would avoid such a sweeping conclusion. Suffice to say here that JEM enjoins 130 ethnic groups in its membership and twenty-two in its leadership. The Berti ethnic group alone has three members in the Executive Board of JEM and cannot justifiably ask for more representation. They can articulate their views at the highest level and do not need a UN Panel to petition for them. The Panel assumes Zaghawa domination of JEM as an established fact that warrants no justification. Thus, Zaghawa leaders such as Mini Minnawi and others must have been seen as an oddity for their failure to inculcate the wisdom of supporting their fellow tribesman, Dr. Khalil Ibrahim. Probably, the Panel has not yet digested the fact that JEM is a national institution. The Head of its General Assembly is from the Central region, the Head of its Legislative Board is from Kordofan and the Head of its international offices is from Omdurman. JEM takes no pleasure in making Dr. Ibrahim president of the Zaghawa people and we hope that is not too difficult for the Panel to stomach.

As for the SLA/AW, the Report fails to show how it is that the Movement stands for Liberation of the entire Sudan and not for the Fur. A latter position would have favoured the Movement to be named FLA/M (Fur Liberation Army/Movement). This kind of nonsense may pass against other voiceless people of the Third World but certainly not against JEM. While the Report acknowledges JEM’s military supremacy in Darfur, it fails to recognize that it has attained this level precisely because of its popular base in the region. This is commonsense and needs no intellectual rigour from the part of the esteemed UN Panel.

16. Paragraphs 224 and 225 claim JEM was involved in endangering the lives of civilians by its attacks on Muhajeriya, an allegation that is repeated regarding JEM military operations in other parts of the Sudan. While the Report does not refer to any direct assault by JEM on civilians, it implies anecdotally that JEM is responsible for ensuing worsening circumstances for the local people including aerial bombardment by GoS. We commend the Report for not blaming JEM for any direct attack on civilians. Nonetheless, we deplore failure of the Report to indicate that it is the Khartoum GoS that had declared all pre-DPA ceasefires null and void and that JEM has no choice but to take pre-emptive strikes against Khartoum irrespective of where its build-up of arms takes place.

17. Building on cursory information, the Panel concludes that JEM is among those involved in carjacking of vehicles belonging to international bodies including the UN (Paragraphs 153-163). For some peculiar reasons, carjacking seems to attract much attention of the Panel, scoring ten paragraphs compared to half of that for children. Efforts of the Panel to incriminate JEM in carjacking seem to be mainly based on evidence provided by GoS, following Operation Long Arm. Needless to say, this does not warrant any comment on the part of our humble panel. However, we would like to stress the following:

- (a) JEM has established itself as a guardian of all international vehicles roaming its areas. Not a single NGO has ever been able to claim that we have willfully carjacked their vehicles. The same is true with regard to civilian vehicles and we challenge UN Panel to identify a single vehicle stolen by JEM. Moreover, JEM often goes out of its way to retrieve cars belonging to INGOs stolen by other people. A well-publicized case exists where our troops lost lives, including that of a commander in an effort to retrieve an NGO stolen vehicle. The UN Panel should have taken note of that.
- (b) JEM has no resources to procure vehicles from other countries, whether China or the Gulf States. Instead, GoS and its allied militia are our main suppliers. Their cars are seized by JEM at every battle they lose to JEM and vice versa. Some of these vehicles might be stolen but those too will be returned to their legitimate owners if they appear at the gate of JEM.
- (c) JEM also procures vehicles in the open market, whether in Darfur, Chad or Central Africa. JEM procures these vehicles on good faith. We need not labour this issue as the Report makes no claim to finding stolen cars currently in use by JEM. The Panel has never visited JEM troops and its information is courteously of the generosity of the Khartoum Government.

18. In Paragraphs 134, 142, 143, 146, 147,148, 150, the Report accuses JEM of breaching UN Arms Embargo. In this, the Report refers to the use of Chinese arms produced long after the UN Arms Embargo was issued. It would be utterly naïve to expect China to sell arms to JEM. While the Panel does not make such a proposition, it fails to acknowledge two simple facts:

- (a) JEM has no money to buy arms from arms-producing countries and China is unlikely to sell arms to JEM in any case.
- (b) JEM arms are confiscated from SAF and their militias. This is what explains the presence of Chinese weapons in the hands of JEM soldiers. Chinese weapons and trucks obtained by JEM from GoS have been well documented in a BBC Panorama Program, 2008.

19. Conclusion:

(a)JEM has no policy designed to recruit child soldiers

(b)JEM has its own laws and presidential directive that safeguard against children joining our forces and all JEM commanders are under clear instructions to adhere to these rules.

(c)JEM urges the UN Security Council to take note of points raised in this response, particularly when it discusses the Report in question.

(d)We equally urge the UNSC to ensure that future panels engage all interlocutors and obtain their views before making their own conclusions, and

(e)JEM remains ready and willing to cooperate with the UN and all relevant international institutions pertaining to compliance with International Humanitarian Laws and Human Rights Conventions.

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President of JEM

16/11/2009