

**Permanent Mission of  
The Republic of the  
SUDAN - Geneva**



البعثة الدائمة  
لجمهورية السودان  
جنيف

SMG 99/18

The Permanent Mission of the Republic of the Sudan to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights (OHCHR)/Special Procedures Branch and with reference to the communication Ref. UA SDN 3/2018 Sudan from Ms. Beatriz Balbin, Chief, Special Procedures Branch, dated 14 May 2018 regarding the Joint Urgent Appeal from Special Rapporteurs concerning [REDACTED] has the honor to submit herewith the **response** of the Government of the Sudan to the aforementioned appeal.

The Permanent Mission of the Republic of the Sudan avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights (OHCHR)/Special Procedures Branch the assurances of its highest consideration.



United Nations Office of the High Commissioner for Human Rights (OHCHR)  
Special Procedures Branch  
Geneva  
Email: [registry@ohchr.org](mailto:registry@ohchr.org); [rcortesao@ohchr.org](mailto:rcortesao@ohchr.org)

## SUDAN'S RESPONSE TO THE URGENT APPEAL

CONCERNING 

- 1- The Government of the Republic of the Sudan welcomes this opportunity to respond to the joint communication *UA SDN 3/2018* sent by the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary execution; the Independent Expert on the provision of technical assistance and capacity building to Sudan; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women; and the Working Group on the issue of discrimination against women in law and in practice.
- 2- It is evident that the information received by the honorable mandate holders, and on reliance of which they addressed this communication, has not emanated from its relevant authenticated and credible sources; which are in this case: the procedures and deliberations of the court of first instance in its public and open hearings that were accessible for anybody who desired to attend the session. Rather, the communication seemed to rely exclusively on the media in establishing facts and reaching conclusion. Even some designations used in the communication are typically erroneous as firstly published by the media, e.g. the "*Central Criminal Court of Omdurman*", though the correct naming is the "*General Criminal Court..*".
- 3- Mandate-holders should rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up.<sup>1</sup>
- 4- The subject matter of this communication is a judicial process of an independent court of law in a sovereign State, and has been considered and

---

<sup>1</sup> Manual of Operations of the Special Procedures of the Human Rights Council, August 2008.

decided by such court impartially, on the basis of facts and in accordance with the law, and the court delivered its ruling, pursuant to the evidence substantiated thereto, and according to the conviction of the court's judge. The said ruling is preliminary and subject to 3-stage means of challenge before the judiciary, and a fourth possible challenge before the Constitutional Court before it becomes final.

- 5- The imperative language used in the communication which criticizes the court and dictates to it how it should act and how it should apply the law, is an unacceptable interference with the judicial process of a sovereign State. "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."<sup>2</sup>And "there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law."<sup>3</sup>
- 6- The accused, [REDACTED] was prosecuted and tried in accordance with the Criminal Procedures Act 1991 , for a charge under section 130 of the Criminal Act 1991 (murder). Since referral of the case to trial, the court requested the Legal Aid Department of the Ministry of Justice to nominate a lawyer for defense, and a legal counsel was delegated to represent the defense, who was later on joined by two private lawyers appointed by the family of the accused.
- 7- The court, throughout several sessions, examined all the defenses raised by the defense lawyers and other defenses provided for in the Criminal Act, which might lead to acquittal or altering conviction from murder to culpable homicide

---

<sup>2</sup> Para. 2 of the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and endorsed by General Assembly resolutions 40/32.

<sup>3</sup> Ibid, Para. 4.

not amounting to murder (manslaughter), including the right of legitimate self defense, sudden fight, provocation and insanity. The trial judge found that he is of opinion that the accused benefited of none of those defenses, having regards to the facts, evidence and surrounding circumstances, as established before the court. In particular and as far as the plea of self-defense is concerned, the court entered into the record the accused's statement that she "entered the room where the deceased was lying in bed, I stabbed him on the back and when he turned up to resist I stabbed him again on his abdomen".

8- According to Chapter VII of the Criminal Procedures Act 1991 the finding and sentence by the General Criminal Court is appealable to the Court of Appeal<sup>4</sup>. The decision of the Court of Appeal may be objected to by way of cassation at the Supreme Court<sup>5</sup>. Further, any judgment of capital punishment or life imprisonment must automatically be submitted to the Supreme Court for confirmation, whenever it becomes final<sup>6</sup>. The Supreme Court or the Court of Appeal may, on its own motion or upon request, order bringing before it the record of any criminal proceedings in which a judicial measure has been issued by a court within its jurisdiction, and examine the same in order to verify the due process of law and achievement of justice<sup>7</sup>. In addition to that, the Chief-Justice may constitute a circuit of 5 Supreme Court justices for revision of any judgment issued by the Supreme Court if it appears that such judgment involves contradiction with *Sharia*, or a mistake in the law, or application or interpretation thereof.<sup>8</sup> The Constitutional Court is mandated with the protection of human rights and fundamental freedoms<sup>9</sup>, including the right to fair trial and equality before the law, as guaranteed by the Bill of Rights enshrined in the Constitution.

9- In Noura's case, an appeal has been lodged to the Court of Appeal by her two lawyers; namely, advocates Hamza Mohamed and Adil Mohamed. Nine other

---

<sup>4</sup> Section 180 (c) of the Criminal Procedures Act 1991.

<sup>5</sup> Section of the Criminal Procedures Act 1991 182.

<sup>6</sup> *Supra*, section 181.

<sup>7</sup> *Supra*, section 188.

<sup>8</sup> *Supra*, section 188A.

<sup>9</sup> Article 122 (1) (d) of the; section 15 (1) (c) of the Constitutional Court Act 2005.

lawyers submitted to the same Court a joint motion with additional reasons for defense<sup>10</sup>. The Legal Aid Department of the Ministry of Justice introduced to the Court of Appeal additional reasons of defense collaborating the appeal. The appeal is still pending before the Court.

10- Forced marriage is not allowed in the Sudanese law. Article 15 of the Interim Constitution of the Republic of the Sudan, as amended in 2017, provides that:

*(1) The family is the natural and fundamental unit of the society and is entitled to the protection of the law; and upon attaining the age prescribed by law, marriage may take place between male and female **by mutual consent**. The family runs in accordance with the religion of the parties or with customs if the parties are of no religion. Posthumous proprietorship, testament, inheritance and such others shall be dealt with in accordance with the relevant law applicable to the parties.*

*(2) The State shall undertake the protection of motherhood, preservation of women from injustice, promotion of gender evenhanded equality and assuring the role of women in family, and empowering thereof in public life*

11- Section 12 (b) of the Personal Affairs (for Muslims) Act 1991 stipulates that concurrence of offer and acceptance is the second pillar of marriage. Section 13 (c) of this Act provides that it is a precondition for the two spouses to be voluntary, and section 34 (1) of the same Act provides that a sponsor of an adult female may supervise her marriage with her permission and her consent to the husband and to the dowry.

12- Any form of marriage which is contrary to the rules mentioned above is either void or voidable at the instance of the competent court. Ms [REDACTED] has the right, since her betrothal to her wedding and at any time, to resort to the court and file her claim.

13- The Sudanese law, though does expressly use the term “marital rape”, criminalizes and punishes for any sexual intercourse by a person with another

---

<sup>10</sup> 1. Summaya Ishag, 2. Ahmed Mohamed, 3. Amanin Osman, 4. Summaya Argawi, 5. Abdullah Mohamed, 6. Ishag Mohamed, 7. ELfateh Hussein, 8. Saadan Hamid, and 9. Islam Mohamed.

person without the latter's consent, whether there is a matrimonial relationship or not.<sup>11</sup>

14- Early and forced marriage is a practice subject to the traditions and culture of certain communities in the country, a fact that could not be denied. However, the State spares no effort in fighting such harmful practices, notably through the policies, plans and programs of the Ministry of Social Security and Development, and the Unit for Combating Violence against Women and Children, such as "*Mawada and Rahma Campaign*", an integrated network designed for the reform of negative communal cultures. In implementing UPR recommendations accepted by the Sudan during its review at the second cycle pertaining to early marriage, the efforts are underway to introduce to the Parliament a Bill of law which increases the age of marriage.

15- Assistance to victims of rape is provided in various forms. Instantaneous medical treatment is provided in accordance with the Ministry of Justice's Circulars No. 2, 7 and 6. A number of centers, many of them are operated by CSOs, have been established for the treatment of psychological shock and trauma of rape victims. The Ministry of Health provides medical preventive tools to rape victims including, treatment of sexually transmitted diseases, HIV treatment and contraceptives. Such tools are available in all hospitals and medical centers.

16- Many official bodies and CSOs continued to provide socio-psychological support to ██████ in the prison. She is generally in a good state of health, thanks to the increasing support initiatives.

17- Concerning the capital punishment, Article 36 of the Interim Constitution of the Republic of the Sudan prohibits the imposition of death penalty save as punishment for extremely serious offences, and it shall not be imposed on a person under the age of eighteen. The limited number of offences which are punishable with death penalty, such penalty is not the sole sentence, but there are always alternative penalties. Since the enactment of the Criminal Act in

---

<sup>11</sup> Section 149 of the Criminal Act 1991, as amended in 2015.

1991, the death penalty has not been carried out in almost 99% of such offences. The reasons for that are many. It could be dismissal of the case or imposition of an alternative penalty by the trial court, quashing conviction or commuting the death penalty by any of the appellate courts, or pardon by the deceased's family or by the President of the Republic, as the case may be. The national constitutional and legal frames embrace a wide range of guarantees for those accused of committing serious crimes that ensure fair trial and availability of defense for the accused at the cost of the State if he/she cannot cater for it. The multiple grades system of appeal and review, as described in paragraph 8 above, avails the best opportunity for achieving justice, and is conformity with article 6 (2) of the International Covenant on Civil and Political Rights.

