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**AUX DROITS DE L'HOMME**

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**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on the situation of human rights in the Sudan; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on the situation of human rights in the Sudan; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, 18/16, 17/5, and 16/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged excessive use of force in the context of recent peaceful demonstrations resulting in killings, injuries and torture and ill-treatment, and mass arrests.**

The excessive use of force during peaceful demonstrations and the alleged arbitrary arrests of several human rights defenders, including Ms. Rashida Shams al-Din, were the subject of a communication sent on 6 July 2012, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

According to the information received:

Since the start of the recent protest movement, on 16 June 2012, which took place in the University in Khartoum and in neighbouring cities, several human rights defenders and protesters have been arrested and detained. Against this backdrop, it is reported that in the month of July 2012, police and security forces have violently dispersed peaceful demonstrations in Khartoum, Nyala and in other cities.

a) Excessive use of force resulting in killings

On 6 July 2012, security forces used tear gas and fired rubber bullets against a peaceful demonstration held opposite the Sayyid Abdelrahman mosque, in the Wad Nubawi neighborhood of Omdurman, a suburb of Khartoum, while protesters were reportedly chanting “Peaceful; Peaceful” and sat on the ground to show cooperation with the police. On 17 July 2012, security forces reportedly broke up a demonstration in front of national security headquarters in central Khartoum organized by dozens of people demanding the release of their relatives detained for taking part in recent protests.

On 31 July 2012, the Sudanese police and NISS fired live ammunition and tear gas into a group of protests protesting against fuel prices and the cost of living in Nyala, South Darfur. They used machine guns and artillery to shoot at protestors, allegedly with orders to shoot to kill. Reportedly, twelve individuals, including at least five individuals under 18, who participated in the protest, have died from gun shots, while several tens were wounded by sharp weapons.

b) Arbitrary detention and ill-treatment in custody

On 24 June 2012, Mr. Mohammed Salah Mohammed, aged 23, the spokesperson of the democratic front at the University of Khartoum and president of the Nubian regional students’ association, was arrested a few hours after he had participated in a peaceful protest at the University of Khartoum. He was reportedly having dinner with two friends in the al-Riyadh neighbourhood of Khartoum when about 20 plainclothes security guards entered the restaurant, beat them up and arrested them.

It is reported that the National Security Service (NISS) initially refused to disclose the whereabouts of Mr. Salah, and subsequently rejected without any explanation the family’s request to visit him. On 14 July 2012, when his family was eventually allowed to visit him for only ten minutes in Kober prison, Khartoum North, the visit reportedly took place under the supervision of two NISS personnel, and his family was ordered not to ask him any questions about his wellbeing, nor about his conditions in prison. According to the information received, during the visit his family noticed that Mr. Salah’s hands and legs were shaking and that his shoulders were shivering despite the hot weather, his

forehead was bruised and the colour of his skin was altered with dark spots across his hands and feet. Reportedly, Mr. Salah has no access to clean water despite a chronic kidney disease, and is deprived of his permanent eye glasses without which he cannot see. It is also reported that the NISS refused to let him receive his study materials while in detention although he is supposed to have the exams of his final year at the University in August. It is further reported that Mr. Salah has not been charged with any offence and was denied access to a lawyer.

It is further reported that 12 other persons remain in detention in the context of the aforementioned protest movement. These include Ms. Rashida Shams al-Din, member of youth movement Girifna and member of “No to Women's Oppression”, Mr. Mohamed Al-Usbat, journalist and activist, Ms. Nahid Gabralla, women’s rights activist, member of Sima Organisation for Child Rights, Ms. Amira Osman, women’s rights activist, member of “No to Women's Oppression”, Mr. Faisal Shabou, women’s rights activist, member of Sima Organisation for Child Rights, Mr. Tarig El Sheikh, lawyer, member of Darfur Bar Association, Ms. Marwa el Tigany, journalist and human rights defender, Mr. Al Said Mustafa, Chairperson of Al Shiroog Cultural Forum, Mr. Ramzi Yahia, lawyer, affiliate of Al Shiroog Cultural Forum, Mr. Abdulgadir Mahmoud, affiliate of Al Shiroog Cultural Forum, Messrs. Radwan Daoud, and Widad Dirwish, members of Girifna. According to the information received, only two out of these 12 detainees have been charged. Messrs. Radwan Daoud and Widad Dirwish were charged with calling for opposition to public authority by use of violence (article 63 of the Criminal Code 1991), participation in a terrorist or criminal organization (article 65), rioting (article 67), disturbance of public peace (article 69), polluting the environment (article 71) and exposing ways and means of transport and communication to danger (article 72). It is reported that these charges might be politically motivated as they do not reflect the peaceful activities undertaken by Messrs. Radwan Daoud, and Widad Dirwish. The other human right defenders remain in custody without any charges. According to the information received, Mr. Widad Dirwish was released on bail by personal guarantee on 23 July, but the charges have reportedly not yet been dropped.

On 19 July 2012, three lawyers, Messrs. Abdul Rahman Abu Al Hassan, Ahmed Mohamed Abdallah and Adil Abdallah Nasr El Dein were arrested after they sent a letter, on behalf of “Nyala lawyers” and the people of Nyala, calling on the Governor to release all political detainees who were arrested for engaging in peaceful protests, respect the Constitution and guarantee the right to freedom of expression and association. On the same day, Ms. Mai Shatta, a member of Girifna, as well as Mr. Amro Hamd Omar, a lawyer, were also arrested. A few days later, two other activists, namely Mr. Satti Mohamed Alhaj, a lawyer who defended some of the demonstrators arrested and Mr. Ahmed Alkwarti, a member of Girifna, were arrested. On 23 July 2012, Mr. Ahmed Alkwarti was released on bail but he remains reportedly charged under Articles 62 (“inciting feelings of unrest among disciplined forces and abetment of disturbing order”), 63 (“calling

for opposition to public authority by use of violence or criminal force”), 65 (“participation in criminal and terrorist organisations”), 69 (“disturbance of public peace”) and 77 (“public nuisance, alcohol and gambling public nuisance”) of the Criminal Code of 1991.

Grave concerns are expressed that the allegation of excessive use of force against peaceful protesters has led to the death of twelve persons and many injuries. Serious concern is further expressed concerning the physical and psychological integrity of Mr. Mohammed Salah Mohammed and the other aforementioned detainees, and that their arrest and detention may be solely based on their participation in peaceful demonstrations.

We would also like to recall article 20 of the Universal Declaration of Human Rights (UDHR), and article 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to on 18 March 1986, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

With regard to the reported excessive use of force by the Sudanese police and members of the NISS and to the allegations that they have received instructions to use lethal force, we wish to draw your Excellency’s Government’s attention to relevant international principles and norms governing the use of force by law enforcement authorities. Under article 6(1) of the ICCPR and article 6(1) of the UN Convention on the Rights of the Child, ratified on 3 August 1990, every individual and all children have the right to life, and no person shall be arbitrarily deprived of his or her life. Under international law when force is used without strict compliance with the principles of necessity and proportionality, any loss of life that results is an arbitrary deprivation of life and therefore unlawful.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in itself binding law, provide an authoritative and convincing interpretation of the limits the

prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces. According to principle 4 of the aforementioned Basic Principles, law enforcement officials should as far as possible, apply non-violent means before resorting to the use of force and firearms. However, “[w]henver the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” As stated in principle 13, the same principles are applicable to the dispersal of assemblies that are unlawful but non-violent.

Concerning the reported deaths, there must be thorough, prompt and impartial investigations into all suspected cases of extrajudicial, arbitrary or summary executions in line with the principle 9 of the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65), In accordance with its principles 9, the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. It should further clarify to what extent the principles of proportionality and necessity have or have not been complied with.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Mohammed Salah Mohammed and of the other detainees is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR, and articles 9 and 14 of the ICCPR.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to draw the attention of your Excellency's Government to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]". Furthermore, we would like to recall rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

In addition, article 12 of the CAT requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT requires State parties to prosecute suspected perpetrators of torture.

We would also like to remind to your Excellency's Government paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We would like to remind to your Excellency's Government article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime

responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a prompt response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Mohammed Salah Mohammed and of the other detainees in compliance with the above international instruments.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?

2. Has a complaint been lodged by or on behalf of Mr. Mohammed Salah Mohammed and the other detainees?

3. Please provide information on the measures taken to ensure the physical and psychological integrity of Mr. Mohammed Salah Mohammed and other detainees.

4. Please confirm the legal basis of the arrest and detention of Mr. Mohammed Salah Mohammed, Ms. Rashida Shams al-Din, Mr. Mohamed Al-Ussat, Ms. Nahid Gabralla, Ms. Amira Osman, Mr. Faisal Shabou, Mr. Tarig El Sheikh, Ms. Marwa el Tigany, Mr. Al Said Mustafa, Mr. Ramzi Yahia, Mr. Abdulgadir Mahmoud, Mr. Radwan Daoud, Mr. Abdul Rahman Abu Al Hassan, Mr. Ahmed Mohamed Abdallah, Mr. Adil Abdallah Nasr El Dein, Ms. Mai Shatta, Mr. Amro Hamd Omar, Mr. Satti Mohamed Alhaj and Mr. Fathi Albhiri. Please indicate how these measures are compatible with international norms and standards as contained inter alia in the ICCPR and the UDHR.

5. Please indicate the legal basis of the charges against Mr. Radwan Daoud, Mr. Widad Dirwish and Mr. Ahmed Alkwarti. Please indicate how these measures are compatible with international norms and standards as contained inter alia in the ICCPR and the UDHR.

6. Please provide information concerning the legal grounds for the use of force during the aforementioned peaceful demonstrations and how these measures are compatible with international human rights law. In particular, please indicate what instructions the police and the NISS have received in respect of the use of force and to what extent these comply with the principles of proportionality and necessity.

7. Please indicate whether any medical inquiries and judicial investigations have been carried out in relation to the present cases, and if available please provide the results thereof.

8. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

We undertake to ensure that your Excellency's Government's response is included in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Mohammed Salah Mohammed and of the other detainees are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of

these acts, including through clear instructions to law enforcement officials, that use of force should only be used as a last resort, and that any use of force should strictly comply with the principles of necessity and proportionality.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow  
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