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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

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

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

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

**Mandates 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 situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the situation of human rights in the Sudan; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24) Sudan  
SDN 6/2013

15 August 2013

Excellency,

We have the honour to address you in our capacities 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 situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the situation of human rights in the Sudan; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 15/18, 16/4, 16/5, 17/2, 17/5, 21/27, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the amendment of Sudan's Armed Forces Law of 2007, which was adopted on 2 July 2013 by the parliament, and its possible incompatibility with the fundamental rights recognized in Sudan's Interim National Constitution, as well as international human rights standards, including the right to fair trial and due process, freedom of expression, the rights to liberty and security, the right to be free from torture and ill-treatment, and the right to life, particularly where defendants face the death penalty.

According to the information received:

On 2 July 2013, Sudan's parliament adopted an amendment to the Armed Forces Law of 2007. It is alleged that the constitutionality of the amendment may be challenged before the Constitutional Court following its coming into force. Yet, according to reports, the Constitutional Court has no record of striking down legislation on the grounds of its incompatibility with Sudan's Bill of Rights, or ordering provisional measures to the effect that a law should not be applied.

The amendment reportedly stipulates that every person – irrespective of their military status or connection with Sudan’s armed forces – who commits or is suspected of committing any act undermining the security of the State is subject to the jurisdiction of Sudan’s military courts, thereby subjecting civilians to the jurisdiction of military courts in relation to a large number of broad and vaguely worded offences.

According to the source, the crimes for which persons may, under the amendment, be brought before military courts include sixteen offences under Part V (“Offences against the State), Part VI (“Offences relating to Disciplined Forces”) and Part VII (“Sedition”) of the Criminal Act of 1991. These offences reportedly include, inter alia, “undermining the constitutional system” (article 50) and “publication of false news” (article 66).

Over the last years, these offences have allegedly been used to prosecute journalists, political opponents, human rights defenders and others for their peaceful activities, particularly for their exercise of their freedom of expression. It is further alleged that a number of those individuals were tried before special courts in proceedings that did not meet fair trial standards, including by accepting evidence alleged to have been extracted under torture. These courts have reportedly imposed the death penalty in several cases.

It is reported that this amendment also creates a number of new offences subject to the jurisdiction of the military courts, namely: “(a) Formation of an armed organization under any name to wage military war against the state through either gathering individuals or training them or collecting arms or military hardware, or incitement to do so. (b) Any attacks by arms or any warfare means against units or camps of the armed forces or other regular forces, or incitement to do so. (c) Taking up arms or any other warfare means to commit an act that threatens stability and security of the country, or endangering its independence and unity.” In addition, the amendment reportedly includes changes to a series of provisions of the Armed Forces Law.

It is alleged that the justification to put forward this amendment was that the current law is inadequate to deal with threats faced as a result of the armed conflict in Sudan, and that subjecting civilians to military courts would constitute a deterrent.

Furthermore, according to the source, the amendment of Sudan’s Armed Forces Law of 2007 comes at a time of concerns over serious human rights violations, particularly in the regions of Southern Kordofan, Blue Nile and Darfur. It is further reported that such amendment was adopted against the backdrop of persistent systemic violations, including the use of repressive laws, arbitrary detention, torture and ill-treatment and unfair trials to repress anything that is perceived to constitute a political challenge, which includes human rights

defenders working or expressing their concerns on the promotion and protection of human rights.

Without prejudging the accuracy of the information made available to us, we would like to express our serious concern about the extension of the jurisdiction of military courts over civilians, even more so when the types of offences seem to be overly broad and vaguely defined. In particular, we are seriously concerned that provisions of this new amendment would adversely impact on a series of human rights, recognized in both the Interim National Constitution of Sudan and international human rights instruments, particularly the right to fair trial and due process, freedom of expression, the rights to liberty and security, the right to be free from torture and ill-treatment, and the right to life, particularly where defendants face the death penalty. We are also concerned that the amendment would strengthen the power of the military and the military justice system at the expense of ordinary courts, even further undermining the latter's authority.

The practice of trying civilians in military tribunals presents serious problems as far as the equitable, impartial and independent administration of justice is concerned. The Special Rapporteur on the independence of judges and lawyers has stated on several occasions that using military or emergency courts to try civilians in the name of national security, a state of emergency or counter-terrorism is a regrettably common practice which runs counter to all international and regional standards and established case law.

In this connection, we would like to refer your Excellency's Government to General Comment No. 32 of the Human Rights Committee, in which the Committee stated: "The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. [...] While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials."

We would also like to refer your Excellency's Government to the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa of the African Commission on Human and Peoples' Rights which state that: "a) The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel. b) While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines. c) Military courts should not in any circumstances whatsoever have jurisdiction over

civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.”

Principle 5 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 held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, also states: “Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

In addition, Principle 29 of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, endorsed by the Commission on Human Rights in 2005 (E/CN.4/2005/102/Add.1), stipulate that: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”

We would also like to remind your Excellency's Government that the State has the obligation to guarantee the independence, impartiality, competence and accountability of the ordinary courts in order to enable them to fully adhere to applicable human rights law and standards, including fair trial and due process guarantees, such that individuals detained under this law will not 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 Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. Failure to do so cannot be used as a justification for the use of military or special tribunals to try civilians under exceptional circumstances.

With regard to the allegation that military courts have accepted evidence alleged to have been extracted under torture and the allegation that military courts are more likely to not investigate torture committed by State agents, we would like to remind your Excellency's Government that article 15 of the Convention against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), which your Excellency's Government signed on 4 June 1986, provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States “To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration

of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;”

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, 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 article 12 paras 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.

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. Since we are expected to report on these cases to the Human Rights Council, 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 case accurate?

2. Please provide detailed information and explanations on how the provisions of the amendment to the Armed Forces Law of 2007 referred to above comply with Sudan's obligations under international human rights law, as well as its own Interim National Constitution, in particular the right to fair trial and due process, freedom of expression, the rights to liberty and security, the right to be free from torture and ill-treatment, and the right to life, particularly where defendants face the death penalty.

3. Has any complaint on the constitutionality of this amendment been lodged with the Supreme Court?

4. Please provide detailed information on the measures undertaken by your Excellency's Government to reinforce the competence, independence, impartiality and accountability of the ordinary system of justice.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report 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 the above mentioned person(s) 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.

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

El Hadji Malick Sow  
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freedom of opinion and expression

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