

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

**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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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

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

REFERENCE: UA G/SO 218/2 Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (78-15) G/SO 214 (53-24)  
SDN 3/2012

8 June 2012

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 15/21, 15/22, 16/5, 17/2, 16/33, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. **Bushra Gamar Hussein Rahma**, a human rights defender who is currently detained in Kober Prison in Khartoum North.

According to information received:

Mr. Bushra Gamar Hussein is from Southern Kordofan and a member of the Nuba ethnic group. He is an X-ray technician and the founder and chair of the Human Rights and Development Organisation (HUDO), a human rights organization which also provides humanitarian assistance to the people of Nuba ethnic origin in Southern Kordofan. On 26 June 2011, Mr. Hussein was arrested at the home of a relative in Al Thawra district of Omdurman in Khartoum by the National Intelligence and Security Service (NISS) for allegedly "working with international organizations hostile to Sudan," a crime under Articles 50, 51, 53, 63, 64, 65 and 66 of the Sudanese Penal Code. Mr. Hussein had travelled to Khartoum on an

official mission calling for humanitarian assistance for displaced people in Southern Kordofan.

Reportedly, on 13 July 2011, the NISS Attorney General ordered that Mr. Hussein be transferred to Kobar General Prison in Khartoum North. It is reported that investigative authorities failed to establish any evidence to substantiate the allegations against Mr. Hussein in over a month of investigations and, on 14 August, a judge ordered his release. Notwithstanding the judicial order in favour of Mr. Hussein, NISS agents allegedly re-arrested him when he left the courthouse.

While in the custody of the NISS, Mr. Hussein was placed in incommunicado detention where he was reportedly beaten until he went into a coma. He was allegedly forced to stand for long hours during interrogation by NISS officers. He reportedly received a death threat and was called a “slave” due to his Nuba ethnic origin.

Mr. Hussein’s health has seriously deteriorated as he suffers from asthma and heart disease. While in detention he allegedly developed a number of other health conditions including a prolapsed disc, peptic ulcers and hemorrhoids. Allegedly, Mr. Hussein was taken to the General Police Hospital in Khartoum as a result of his health complications. His condition has been worsened by stress and trauma allegedly caused by the physical and racial abuse suffered during his incommunicado detention.

To date, Mr. Hussein has allegedly been detained without charge or trial. Reportedly, he has been denied access to a lawyer and despite repeated requests by the Prosecutor General for evidence and witnesses to warrant Mr. Hussein’s continued detention, the NISS has allegedly failed to provide this. The latest request for his case to be reviewed was rejected on 17 May 2012. The State Security Prosecutor reportedly stated that Mr. Hussein’s arrest and detention regard crimes allegedly committed in relation to state security which qualify as offences that are punishable by death or life imprisonment.

Concern is expressed that the arrest and detention of Mr. Hussein is directly related to his legitimate activities as a human rights defender and to his humanitarian work providing assistance to the people of Nuba ethnic origin in Southern Kordofan. Further concern is expressed at Mr. Hussein’s deteriorating health and at the allegations of physical and mental abuse he has suffered while in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Hussein is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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 (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

In this connection, , we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular to the following principles:

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

We would like to refer your Excellency's Government to 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. In particular:

- Principle 6: The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

Furthermore, we would highly appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of the person mentioned above. This right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded to on 18 March 1986), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, including detainees.

We also wish to refer your Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that "States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventative, curative and palliative health services..." (para.34).

We also would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22 (2) provides that "sick

prisoners who require specialist treatment shall be transferred to specialized institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.” Rule 25 (1) provides that “the medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.”

Furthermore, we refer your Excellency’s Government to the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in its resolution 45/111, according to which “prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (Principle 9).

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of association with 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.”

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, and in particular to the 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.

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Hussein. 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) and the International Covenant on Civil and Political Rights (ICCPR).

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 refer your Excellency's Government to article 5 (b) of the International Convention for the Elimination of All Forms of Racial Discrimination, ratified by your Excellency's Government on 21 March 1977, which provides that "States parties have the obligation to guarantee the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution without distinction as to race, colour, or national or ethnic origin".

We further call upon the attention of your Excellency's Government to paragraph 58 of the Durban Programme of Action which "urges States to adopt and implement [...] effective measures and policies [...] which encourage all citizens and institutions to take a stand against racism, racial discrimination, xenophobia and related intolerance, and to recognize [...] and maximize the benefits of diversity [...] in working together to build a harmonious and productive future by putting into practice and promoting values and principles such as justice, equality and non-discrimination, democracy, fairness and friendship, tolerance and respect within and between communities [...]".

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Bushra Gamar Hussein Rahmain compliance with the above international instruments.

Moreover, 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. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victim or the family of the victim.
6. Please provide information concerning the legal grounds for the arrest and detention of Mr. Hussein and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected 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 the above mentioned person 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  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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Special Rapporteur on the rights to freedom of peaceful assembly and of association

Anand Grover  
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