

**Mandates of 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 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; and the Independent Expert on the situation of human rights in the Sudan**

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Excellency,

We have the honour to address you in our capacity as 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 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; and Independent Expert on the situation of human rights in the Sudan, pursuant to Human Rights Council resolutions 25/2, 32/32, 33/9, 25/18, and 27/29.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning criminal charges brought against, and trial of, six human rights defenders, including two women, who are staff members and affiliates of the Centre for Training and Human Development (TRACKS), in part related to their cooperation with the United Nations human rights mechanisms, and the on-going arbitrary detention of three of them based on two overlapping criminal cases. The criminal charges, if the defendants are found guilty, can lead to the application of death penalty.

TRACKS is a Khartoum-based organization which provides and facilitates trainings on a variety of topics ranging from human rights to information technology for national civil society organisations and the private sector. Mr. **Khalafalla Mukhtar** is the Director of TRACKS, Mr. **Midhat Hamadan**, Ms. **Arwa Elrabie**, Mr. **Alhassan Kheiri** are staff members of TRACKS, and Ms. **Imany Leyla Raye** is a volunteer affiliated to TRACKS. Mr. **Mustafa Adam** is the Director of the Al Zarqa Organisation for Rural Development and provides trainings for TRACKS.

TRACKS' members have reportedly been continuously targeted by agents from the National Intelligence and Security Service (NISS) over the past two years. Their offices have been raided twice, and their documents and equipment, as well as their passports, have been confiscated by NISS agents.

TRACKS and its members have been the subject of three previous communications dated 27 April 2015 (SDN 2/2015 published in A/HRC/30/27), 5 April 2016 (SDN 2/2016, published in A/HRC/33/32) and 25 August 2016 (SDN 6/2016). We regret that, to date, no response has been received from your Excellency's Government

regarding the above-mentioned communications, despite the serious nature of the allegations.

According to the information received:

On 22 May 2016, Mr. Khalafalla Mukhtar, Ms. Arwa Elrabie, Mr. Midhat Hamadan, Mr. Alhassan Kheiri, Mr. Mustafa Adam, and Ms. Imany Leyla Raye were arrested by NISS agents. On the same day, NISS reactivated criminal case no. 56/2015, brought against Mr. Mukhtar, which included seven offences, of which three under the category of crimes against the State, which carry the death penalty. Ms. Elrabie was informed that she had also been accused in the same case.

On 30 May 2016, Ms. Elrabie and Ms. Raye were released on bail of 5,000 Sudanese pounds (820 USD). A week later, Mr. Kheiri was also released on bail.

On 15 August 2016, criminal case no. 110/2016 was filed against all six human rights defenders, who were reportedly charged by the Prosecution Office under articles 21 (joint acts in execution of criminal conspiracy), 50 (undermining the constitutional system), 51 (waging war against the State), 53 (espionage against the country), and 65 (criminal and terrorist organizations) of the 1991 Penal Code of the Sudan. These charges, if confirmed, can lead to the application of the death penalty.

Mr. Adam and Mr. Hamadan were additionally charged under article 14 of the Information Crimes Law, which relates to producing, setting, sending, storing or promoting indecent content through the Internet, computer or alike that affect public order or morals. These charges can lead to imprisonment of up to ten years and a fine.

The trial against the six human rights defenders was initially scheduled to start on 24 August 2016. The first session was postponed to 30 August 2016, and later again to 4 September 2016.

During the hearings of 4, 22 and 29 September 2016, the Prosecutor presented private photos and videos belonging to the human rights defenders, which were obtained during the alleged arbitrary raid on the TRACKS offices in February 2016 and reportedly seemed of little relevance to the substance of the case. The audio-video material featured friends and family members of the defendants in what appeared to be an attempt of intimidation against the latter.

On 22 and 29 September 2016, the Prosecutor reportedly claimed that TRACKS was operating without being registered as a training centre, since their licence had expired on 27 March 2015. TRACKS, however, submitted an application for licence renewal in due time and paid the registration fees to the National Centre for Training. The renewal procedure has reportedly been delayed by Sudanese

authorities. It is alleged that Sudanese legislation allows Training centres to continue their activities, while the status of their application is considered by Government authorities.

On 6 October 2016, TRACKS put forward its request for registration as an organization providing trainings on a wide scope of subjects. The Prosecutor argued that since the registration request did not mention specifically trainings on human rights and human rights monitoring, such activities were to be considered as illegal.

On 13 October 2016, the Prosecutor continued presenting documents allegedly found on the laptops of the defendants as evidence against them, such as a list of names of invitees to the sessions of the UN Human Rights Council, a report on human trafficking in the Sudan by Human Rights Watch, as well as a certificate of Mr. Adam's membership in the Coalition for International Criminal Court.

On 20 October 2016, two journalists were allegedly prevented from attending the court session. One journalist was stopped at the entrance to the courthouse by court police and questioned. Two plain-clothed NISS officers allegedly confiscated another journalist's press card and forced him to leave the court session.

On 22 October 2016, the Prosecutor presented TRACKS' reports about workshops and training sessions on the human rights situation in the Sudan, as well as on the rights and protection of human rights defenders under international law, which were found on the defendants' laptops. Journalists were prevented from attending this hearing.

The Prosecutor accused Mr. Adam and TRACKS members of creating a "negative opinion" of the Government vis-à-vis the International Criminal Court, the United Nations and the European Union, which, in turn, have led to economic sanctions against the Sudan.

On 10 November 2016, the defence team stated that the investigator had committed several procedural irregularities with respect to search warrants and seizures of items that had taken place on TRACKS premises. Two journalists who intended to attend the hearing were arrested and briefly detained by NISS officers.

On 13 December 2016, during the hearing a member of NISS made a number of accusations against the six human rights defenders, including espionage on the Sudanese Government for the benefit of international organizations, embassies, and companies. The NISS officer stated that TRACKS' involvement in drafting reports on the human rights situation in the Sudan for international organizations, such as the United Nations, constituted attempts to bring down the Sudanese government and aimed at causing economic harm to the Sudan. TRACKS was also accused of inciting violence, encouraging armed resistance and being

affiliated with ‘armed groups’. This latter allegation was based partially on a memo found in the offices of TRACKS discussing plans for a peaceful protest in September 2011, and for having provided human rights trainings to the Girifna (“We are Fed up”) movement, a grass-roots, non-violent initiative. Another piece of evidence presented was TRACKS’ association with the award-winning documentary film ‘Beats of Antonov’, which documents the conflict in the Blue Nile and Nuba Mountains regions, focusing in particular on the role of music in helping the affected communities to sustain themselves culturally and spiritually in the face of conflict. The NISS officer also accused TRACKS members of ‘meeting with lawyers’ in an attempt to bring down the Sudanese regime ‘using the law’.

The defence lawyers asked, but were not granted, copies of all above-mentioned documents and digital material presented by the Government as evidence of crimes against the State.

Mr. Mukhtar, Mr. Adam and Mr. Hamadan currently remain in detention at the Al-Huda prison in Omdurman. It is reported that the state of health of Mr. Mukhtar, who suffers from a heart condition, is rapidly deteriorating and that, while in detention, he has not had access to appropriate medical care.

Grave concern is expressed at the on-going arbitrary detention of Mr. Adam, Mr. Mukhtar and Mr. Hamadan, as well as imposition of charges carrying the death penalty against them and Ms. Elrabie, Mr. Kheiri, and Ms. Raye, which are believed to be aimed at sanctioning their legitimate and peaceful work in defence of human rights in the Sudan. Further concern is expressed at the use of criminal charges that are incompatible with international human rights law, as they restrict the legitimate exercise of a wide range of rights, including the rights to freedom of association, freedom of peaceful assembly and freedom of expression.

In addition, serious concern is expressed at the reported procedural irregularities during the trial, including the denial to allow the defendants to view part of the evidence against them, restricted access to the hearings for the public and media, and the undue prolongation of the detention of three human rights defenders. Particular concern is expressed regarding the fact that evidence presented during the trial seems primarily related to the defendants’ peaceful activities aimed at the protection and promotion of human rights in the Sudan.

In this regard, serious concerns are expressed that the charges brought against and ongoing trial of these six human rights defenders might be, in part, related to the possession and use of human rights documents produced by United Nations human rights mechanisms and other international organisations.

We reiterate concerns conveyed by the UN Independent Expert on the situation of human rights in the Sudan, who visited the country in April 2016, about cases of arbitrary arrests and detention, as well as allegations of ill-treatment of human rights defenders by

security forces. In this regard, he underlined deep concerns about the National Security Service Act, which provides powers of arrest and detention to NISS, and procedural immunity for acts that should be subjected to criminal liability. He emphasized the important role played by human rights defenders in the country, and stressed the need for the Government of the Sudan to allow them to carry out their activities in an open, safe and secure environment.

Final concern is expressed at the deteriorating state of health of Mr. Mukhtar, who due to his heart condition is in urgent need of appropriate medical care.

While we do not wish to prejudge the accuracy of the information made available to us, the above alleged facts indicate a prima facie violation of the inherent right of every individual to life, as set forth in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Sudan on 18 March 1986.

We would also like to bring to the attention of your Excellency's Government article 6(2) of the ICCPR, which provides that countries which have not abolished the death penalty may only impose it for the most serious crimes. This provision has consistently been interpreted by the Human Rights Committee to mean that the death sentence may only be imposed in respect of intentional killing.

Article 5 of the United Nations Safeguards Protecting the Rights of those facing the Death Penalty provides that capital punishment may only be carried out following a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from arbitrary execution. Furthermore, article 6(4) of the ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence, and that amnesty, pardon or commutation of the sentence of death may be granted in all cases.

In this context, we would like to call the attention of your Excellency's Government to the evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279). This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur on torture has called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Retentionist States are called upon to end the practice of executions with little or no prior warning given to condemned prisoners and their families (para. 80 (c)).

Article 14 of the ICCPR enshrines the right to a fair trial, including the right to access to a lawyer and other essential procedural guarantees. The imposition of a death sentence following a trial in which this provision has not been respected constitutes a violation of the right to life. Fair-trial safeguards also include the right to a fair and public hearing in the determination of any criminal charge, reflected in article 14(1) of the ICCPR. The public can be excluded from a hearing due to reasons of morals, public order, national security or in order to protect the private lives of the parties, but any judgement rendered in a criminal case must be made public.

We would also like to refer your Excellency's Government to articles 19, 21 and 22 of the ICCPR, guaranteeing the rights to freedom of expression, freedom of peaceful assembly and freedom of association respectively. We would like to highlight that while national security is a legitimate objective under these articles, it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The State has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1, 2, 5 and 6 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, as well as right to unhindered access to and communication with international bodies, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Legitimate exercise of these rights by human rights defenders should not be criminalized.

We also wish to refer to Human Rights Council resolutions 12/2 and 24/24 which, inter alia, condemn all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights and call upon all States to ensure adequate protection from intimidation or reprisals.

Moreover, in his 2016 report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/33/19) the Secretary-General reiterates his firm position that all such acts, no matter how seemingly subtle or explicit, are without exception unacceptable and must be halted immediately and unconditionally, effective remedies provided and preventive measures adopted and implemented to prevent reoccurrence (para. 49).

Finally, we would like to refer to the Standard Minimum Rules for the Treatment of Prisoners, which state that “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals” (Rule 22(2)).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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 the above-mentioned person(s) in compliance with international instruments.

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 observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide details of the legal grounds for the on-going detention of Mr. Adam, Mr. Mukhtar and Mr. Hamadan, as well as for the charges against them and Ms. Elrabie, Mr. Kheiri, and Ms. Raye. Please explain how these charges, in particular those carrying the death penalty, are compatible with international human rights norms and standards.
3. Please provide details on the judicial proceedings against the above-named persons, and indicate how they are compatible with international human rights norms and standards on fair trial.
4. Please provide the legal grounds for presenting documents produced by the United Nations human rights mechanisms, including the Human Rights Council, and other international organizations as evidence during the trial, and explain how the possession and use of these documents infringe Sudanese legislation.
5. Please indicate what measures have been taken to ensure that all detainees, and especially Mr. Mukhtar, have access to appropriate medical care.
6. Please indicate what measures have been taken to ensure that human rights defenders in the Sudan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort, and are able to cooperate freely with the United Nations in the field of human rights without fear of reprisals.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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