

Mandates 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 situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Independent Expert on the situation of human rights in the Sudan, pursuant to Human Rights Council resolutions 33/30, 32/32, 33/9, 34/5, 31/3, 34/19 and 33/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning six criminal charges brought against the human rights defenders **Hafiz Idris** and **Ibrahim Adam Mudawi**, two of which carry either the death penalty or life imprisonment. On 14 June 2017, their trial began in Khartoum and the next session of the trial is scheduled for 20 July 2017.

Mr. Hafiz Idris is a human rights defender who promotes the rights of internally displaced persons in the Sudan and advocates for their well-being.

Mr. Ibrahim Adam Mudawi is a human rights defender known for his role in exposing human rights violations in Darfur. He was the founder and the chairperson of the Sudan Social Development Organization (SUDO), which promoted human rights as well as conducted humanitarian work, including emergency services in North, South and West Darfur. The organization was closed down in 2006 and has not been permitted to resume its activities despite winning a court action against its closure. Mr. Mudawi received the Front Line Defenders Award for Human Rights Defenders at Risk in 2005. He was a participant in the Sudanese National Dialogue initiative launched in 2016.

Mr. Idris and Mr. Mudawi were subject to a previous communication on 13 December 2016 (SDN 8/2016). We regret that, to date, no response has been received from your Excellency's Government regarding the above-mentioned communication, despite the serious nature of the allegations.

According to the information received:

Concerning Mr. Hafiz Idris

On 24 November 2016, at 10a.m, five plain-clothed members of the Sudanese National Intelligence and Security Service (NISS) allegedly arrested Mr. Hafiz Idris from the house of one of his relatives in Khartoum and forcibly transferred him to an unknown location. During the arrest, members of the NISS covered Mr. Idris's face.

On 22 February 2017, Sudanese security authorities transferred Mr. Idris to the office of the State Prosecutor in Amarat where he was allegedly tortured with the purpose of extracting forced confessions and self-incriminating statements against him and Mr. Mudawi. Mr. Idris was allegedly subjected to electric shocks, severe kicking and hitting of sensitive parts of his abdomen on both sides, which resulted in blood in his urine. While in detention at the office of the State Prosecutor in Amarat, Mr. Idris was reportedly denied adequate health care, both psychological and physical. Mr. Idris continued to be detained in the absence of any official charges, although state-controlled media allegedly reported that the human rights defenders had been charged with committing crimes against the Sudanese State.

On 26 March 2017, the Attorney General of the Sudan decided to Mr. Idris on bail. However, the human rights defender remained in detention, allegedly due to attempts by the NISS to delay the release and gain time to appeal the decision of the Attorney General. According to Mr. Idris' lawyer, serious allegations against him, which may have resulted in capital punishment, were dropped in the decision of the Attorney General.

On 26 April 2017, the Attorney General of the Sudan, decided to retract his decision of 26 March 2017 to release Mr. Idris on bail. The decision was allegedly based upon a request from the NISS to reopen investigations into Mr. Idris' case. Mr. Idris' family was informed of this decision on 5 May 2017.

On 11 May 2017, the First Deputy State Prosecutor of the Sudan charged Mr. Idris with undermining the constitutional system and waging war against the State – both charges potentially carry the death penalty.

On 19 May 2017, Mr. Idris was allegedly beaten during interrogations conducted by the NISS, following his complaint that during the previous interrogation he was tortured and forced to give false confessions.

On 5 June 2017, the Sudanese State Security Prosecution Office officially charged Mr. Idris with six offences, two of which carry the death penalty. The charges include publishing false reports, undermining the constitutional system, waging war against the state, espionage, stirring up sectarian hatred and running a terrorist organization.

On 14 June 2017, the hearings in the trial against Mr. Idris began in Khartoum, in the absence of the plaintiff, the NISS. The next hearing of the trial is scheduled for 20 July 2017.

Concerning Mr. Ibrahim Adam Mudawi

On 7 December, at approximately 1 p.m., Mr. Mudawi was allegedly arrested on the premises of the University of Khartoum and was forcibly transferred to an unknown location. Following the arrest, several officials of the NISS conducted a thorough search of Mr. Mudawi's house.

On 22 January 2017, Mr. Mudawi started a hunger strike, in protest against his arbitrary detention since 7 December 2017. Mr. Mudawi was allegedly badly beaten and restrained by chains, connected to his prison cell by the NISS, in an attempt to force him to end his hunger strike.

On 27 January, Mr. Mudawi's family was permitted to visit him in Kober prison in Khartoum and later reported that the human rights defender was in poor health, as a result of alleged torture and ill-treatment in detention, lack of medication for a pre-existing health condition, and the hunger strike which he began on 22 January 2017. Following the meeting with his family, Mr. Mudawi suspended the hunger strike at 11.30am on 27 January 2017.

On 21 February 2017, Mr. Mudawi was transferred to the office of the State Prosecutor in Amarat by the Sudanese security authorities. He continued to be detained in the absence of any official charges, although state-controlled media allegedly reported that both human rights defenders had been charged with committing crimes against the Sudanese State. While detained at the office of the State Prosecutor in Amarat, since he was transferred there on 15 February 2017, Mr. Mudawi was formally questioned only once by the State Security Prosecution.

On 26 March 2017, the Attorney General of the Sudan decided the release on bail of Mr. Mudawi. However, the human rights defender remained in detention, allegedly due to attempts by the NISS to delay the release and gain time to appeal the decision. According to Mr. Mudawi's lawyer, serious allegations against him, which may have resulted in capital punishment, were dropped in the decision of the Attorney General.

On 26 April 2017, the newly-appointed Attorney General of the Sudan, decided to retract his decision of 26 March 2017, to release Mr. Mudawi on bail. The decision was allegedly based upon a request from the NISS to reopen

investigations into Mr. Mudawi's case. Mr. Mudawi's family was informed of this decision on 5 May 2017.

In a decision issued on 11 May 2017, by the First Deputy State Prosecutor of the Sudan, Mr. Mudawi was charged with undermining the constitutional system and waging war against the State – both charges that potentially carry the death penalty. In the decision, the First Deputy State Prosecutor of the Sudan stated that the NISS had detained the human rights defender, accusing him of espionage, of working within a network and criminal organization against the State and in favor of foreign embassies in Khartoum. Mr. Mudawi was also accused of supporting armed movements in Darfur and fabricating information about the use of chemical weapons and genocide attempts against civilians by the Sudanese government in order to sabotage the image of the state and exert international pressure on the Sudan in order to undermine the constitutional order. The First Deputy State Prosecutor then noted that following investigations, as well as testimonies given by the plaintiff and official documents provided, enough preliminary evidence was gathered to make a decision to charge Mr. Mudawi under Articles 21/50/51/53/64/65/66 of the Criminal Act of the Sudan.

On 14 June 2017, the trial hearings of Mr. Mudawi began in Khartoum, in the absence of the plaintiff, the NISS. The next session of the hearing trial is scheduled for 20 July 2017.

Grave concern is expressed at the on-going alleged arbitrary detention of Mr. Idris and Mr. Mudawi, as well as the imposition of charges carrying the death penalty against them, 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 alleged undue prolongation of the detention of the two human rights defenders who, although detained in November and December 2016 respectively, were not formally charged until May 2017. Particular concern is expressed regarding information according to which evidence presented during the trial, some of which was allegedly acquired through forced confessions under torture, seems primarily related to the defendants' peaceful activities aimed at the protection and promotion of human rights in the Sudan.

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 expressed 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.

In this regard, grave concern is expressed at the allegations of torture and ill-treatment of Mr. Idris and Mr. Mudawi while detained at the office of the Sudanese State Security Prosecution.

Lastly, concern is expressed at reports alleging that Mr. Mudawi was refused access to a personal doctor despite his deteriorating health and that Mr. Idris was also denied adequate health care, both psychological and physical, while in detention at the office of the State Prosecutor in Amarat.

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 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 International Covenant on Civil and Political Rights (ICCPR) acceded to by the Sudan on 18 March, 1986, 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 for crimes involving 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)).

We would also like to highlight to your Excellency's Government articles 3, 8 and 9 of the Universal Declaration of Human Rights, which respectively enshrine the rights to life, liberty and security of the person; the right to an effective remedy by a competent national tribunal for acts committed in violation of fundamental rights; as well as the right to not be subjected to arbitrary arrest, detention or exile.

Furthermore, article 9 of the ICCPR, states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Also, paragraph 4 of the same article states that anyone deprived of his liberty is entitled to bring proceedings quickly before a court, for it to determine the legality of such detention or to order the release of the person concerned without delay.

In this context, the Human Rights Committee has established in its General Comment N° 35, Article 9 (Liberty and security of person) (CCPR/C/GC/35), that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion, expression, assembly and association. According to the Committee's General Comment, article 9 requires compliance with domestic rules that define the procedure for arrest, by identifying the officials authorized to arrest or specifying when a warrant is required. It also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge, where individuals may be detained, when the detained person must be brought to court, as well as the legal limits on the duration of detention. It also requires compliance with domestic rules providing safeguards for detained persons, such as making a record of an arrest and permitting access to counsel. In addition, the Committee further developed and analyzed the rights and guarantees protecting from arbitrary detention, including to be immediately informed about the reasons for the arrest and of any criminal charges, the need for judicial control of detention and the right to take proceedings for release from unlawful or arbitrary detention.

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).

Furthermore, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as reflected, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10).

In this regard, we would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

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, 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 would also like to bring to your Excellency's Government's attention the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988. We would particularly like to draw your attention to principles 1, 5(1), 6, 10 and 21 (1) (2) which state that no circumstance may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment; it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person and; no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

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 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 any comment you may have on the above-mentioned allegations.
2. Please provide details of the legal grounds for the on-going detention of Mr. Idris and Mr. Mudawi, as well as for the charges against them. Please explain how these charges, in particular those carrying the death penalty, are compatible with international human rights norms and standards.
3. Please clarify the reasons why on 26 April 2017, the newly-appointed Attorney General of the Sudan, decided to retract the decision taken by the Attorney General of the Sudan on 26 March 2017 to release Mr. Idris and Mr. Mudawi on bail.

4. 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.
5. Please provide details on why Mr. Idris and Mr. Mudawi respectively remained in detention from November and December 2016 until May 2017 without any charges being imposed on them.
6. Please indicate when Mr. Idris and Mr. Mudawi were informed about the reasons for their detention, when they had initial access to legal counsel and when they were brought before a judge for the first time.
7. Please indicate what measures, if any, have been taken to ensure that Mr. Idris and Mr. Mudawi have access to appropriate medical care.
8. Please indicate the measures being taken to investigate the allegations of torture against Mr. Idris and Mr. Mudawi while being detained by Sudanese security services.
9. 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.

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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